

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 1551/2013

Date of Institution... 28.11.2013

Date of decision... 22.11.2017

Bahadar Sher Khan S/O Muhammad Riaz Khan Ex-C.T GMS Kala Katha, haripur
R/O House No. 66, Sector No.1, Khalabat Township, Haripur.

... (Appellant)

Versus

1. Director of Elementary and Secondary Education Department, Khyber
Pakhtunkhwa, Peshawar and 3 others. (Respondents)

MR. NOOR MUHAMMAD KHATTAK,

Advocate

... For appellant.

MR. KABIR ULLAH KHATTAK

Additional Advocate General

... For respondents.

MR. NIAZ MUHAMMAD KHAN,

MR. AHMAD HASSAN,

... CHAIRMAN

... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: Arguments of the learned counsel
for the parties heard and record perused.

FACTS

2. The appellant was removed from service on 17.11.2012 against which he filed departmental appeal on 15.08.2013 which was not responded to and thereafter filed the present service appeal on 21.11.2013. The delay in filing of departmental appeal was due to his involvement in criminal case and being behind the Bar.

ARGUMENTS

3. The learned counsel for the appellant argued that the appellant was involved in a criminal case vide FIR dated 07.01.2012. That he was suspended by the department in a criminal case on 21.07.2012. That despite his being in the prison he was proceeded by the department

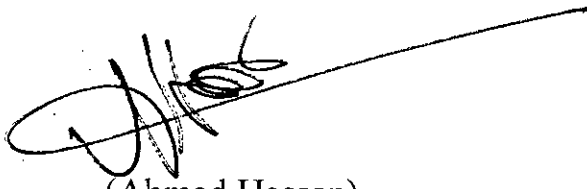
under Rule-8-A of the Khyber Pakhtunkhwa Government Servant (Efficiency and Disciplinary) Rules 1973 which could not be done as the appellant was not willfully absent.

4. On the other hand, the learned Addl: AG argued that the appellant remained absent right from the date of lodging of FIR. That he committed misconduct for not informing the department regarding his involvement in a criminal case. That the impugned order was rightly passed.

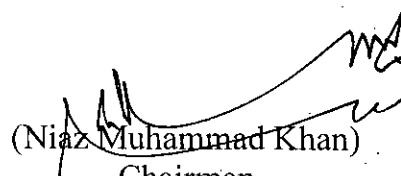
CONCLUSION.

5. The very suspension order of the appellant dated 21.07.2012 is itself the proof that the department was aware about the involvement of the appellant in a criminal case. No proceedings could be initiated under Rule-8-A mentioned above because this rule is meant only for wilful absence of a government servant. Involvement in a criminal case is not a wilful absence. Secondly when a civil servant is involved in a criminal case then the department should have proceeded by adopting the regular procedure of enquiry.

6. As a sequel to above discussion, the whole proceedings are illegal. The appeal is therefore accepted and the appellant is reinstated in service. The department is however, at liberty to conduct de-novo proceedings in accordance with law. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan)
Member



(Niaz Muhammad Khan)
Chairman
Camp Court, A/Abad

ANNOUNCED
22.11.2017

18.01.2017

Appellant in person and Mr. Muhammad Siddique, Sr.GP with Mr. Abdul Samad, ADEO for the respondents present. Requested for adjournment as counsel for the appellant has not turned up from Peshawar. To come up for arguments on 17.05.2017 before D.B.

Member

Chairman
Camp court A/Abad.

25.05.2017

Since tour programme to camp court, Abbottabad for the month of May, 2017 has been cancelled by the Worthy Chairman, therefore, to come up for the same on 22.11.2017 at camp court, Abbottabad. Notices be issued to the parties for the date fixed accordingly

22.11.2017

Counsel for the appellant and Addl: AG for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today . Parties are left to bear their own cost. File be consigned to the record room.

Member

Registrar
Chairman
Camp Court, A/Abad.

ANNOUNCED
22.11.2017

20.10.2015

Appellant in person and Mr.Said Badshah, ADO alongwith Mr.Muhammad Tahir Aurangzeb, G.P for respondents present.. Requested for adjournment. To come up for written reply/comments on 21.01.2016 before S.B at Camp Court A/Abad.


Chairman
Camp Court A/Abad.

21.1.2016


Appellant in person and Mr. Said Badshah, ADO alongwith Mr. Muhammad Saddique, Sr.GP for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 15.8.2016 at Camp Court A/Abad.


Chairman
Camp Court A/Abad

15.08.2016

Junior to counsel for the appellant and Mr. Muhammad Siddique Sr.GP for the respondents present. Rejoinder submitted. Counsel for the appellant is not in attendance. To come up for final hearing before the D.B on 18.1.2017 at camp court, Abbottabad.


Member


Chairman
Camp court, A/Abad

21.05.2015

Appellant in person present. Counsel for the appellant has sent request for adjournment. Adjourned for preliminary hearing to 23.7.2015 before S.B at Camp Court Abbottabad


Chairman

Camp Court Abbottabad

8 23.7.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was serving as C.T (BPS-15) when terminated from service vide impugned order dated 17.11.2012 on the ground of wilful absence regarding which appellant preferred departmental appeal on 15.8.2013 which was not responded and hence the instant service appeal on 28.11.2013.


That the absence of the appellant was not wilful as he was charged in a criminal case and subsequently detained in judicial lock up and, furthermore, the inquiry was not conducted in the prescribed manners as no opportunity of hearing was extended to the appellant nor show cause notice served nor law under which the punishment was imposed has been mentioned.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 20.10.2015 before S.B at camp court A/Abad.


Chairman

Camp Court A/Abad

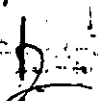
Appellant Deposited
Security & Process Fee



4. 17.2.2015

Appellant present in person.

Submitted Wakalat Nama of Mr. Noor Muhammad-Khattak, Advocate, and requested for adjournment. To come up for preliminary hearing before S.B on 18.3.2015 at camp court A/Abad.


Chairman
Camp Court A/Abad

5 18.3.2015

Appellant in person present. Due to strike of the Bar seeks adjournment. To come up for preliminary hearing on 21.4.2015 at camp court A/Abad.


Chairman
Camp Court A/Abad

6 21.4.2015

Appellant in person present. Counsel for the appellant has not turned up from Peshawar. Seeks adjournment. Adjourned for preliminary hearing to 21.5.2015 before S.B at camp court A/Abad.


Chairman
Camp Court A/Abad

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1551/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	28/11/2013	<p>The appeal of Mr. Bahadar Sher Khan presented today by him may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2	10-12-13	<p>This case is entrusted to Touring Bench Abbottabad for preliminary hearing to be put up there on <u>19-5-14</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
3	19.5.2014	<p>No one is present on behalf of the appellant. To come up for preliminary hearing at camp court A/Abad on 17.11.2014.</p> <p style="text-align: right;"><i>[Signature]</i> Chairman Camp Court A/Abad</p> <p><i>A appellant present in prison. The petition is incomplete. To come up for preliminary at camp court A/Abad on 17-2-15.</i></p> <p style="text-align: right;"><i>[Signature]</i></p>

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1551 of 2013

Bahadar Sher Khan S/O Muhammad Riaz Khan Ex- C.T GMS Kala Katha
Haripur R/O House No 66, Sector No 1, Khalabat Township Haripur.

Appellant

Versus

- 1 Director of Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2 District Education Officer (Elementary & Secondary Education), (Male) Haripur.
- 3 Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Peshawar.
- 4 District Accounts Officer Haripur.


Respondents

SERVICE APPEAL

INDEX

S.No	DESCREPTION OF DOCUMENTS	ANNEXURES	PAGE NO
1	Memo; of Service Appeal alongwith Affidavite.	----	1 to 5
2	Copy of Copy of F.I.R dated 07/01/2012	A	6
3	Copy of termination order dated 17/11/2012	B	7
4	Copy of bail granted order dated 10/07/2013.	C	8 to 9
5	Copy of application for re-instatement in service dated 15/08/2013.	D	10
6	Copy of letter dated 06/09/2013	E	11
7	Copy of reply dated 20/09/2013	F	12

Dated: 21/11/2013.


Bahadar Sher Khan
(appellant inperson)

1

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

G.W.F. Province
Case No. 1593
Date 28/11/13
of 2013

Service Appeal No: 1551

Bahadar Sher Khan S/o Muhammad Riaz Khan Ex- CT GMS Kala Katha Haripur
R/o House# 66, Sector# 1, Khalabat Township Haripur.

Appellant

VERSUS

1. Director of elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (Elementary & Secondary Education), (Male) Haripur.
3. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Peshawar.
4. District Accounts Officer Haripur.

Respondents


Appeal
28/11/13

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE ORDER 12214-18 DATED 17-11-2012 WHEREBY A SERVICE OF THE APPELLANT HAS BEEN TERMINATED WITH EFFECT FROM 07-01-2012. AS WELL AS DEPARTMENT APPEAL DATED 15-08-2013 OF THE APPELLANT HAS NOT BEEN DECIDED YET.

PRAYER

It is respectfully prayed before this Honourable Tribunal That the instant appeal may graciously be accepted, the impugned order No. 12214-18 dated 17-11-2012 may kindly be set aside and the appellant may please be re-instated in service with all back benefits with effect from 07-01-2012

2

Respectfully Sheweth,

FACTS

- 1) That the appellant was serving as CT teacher in Elementary and Secondary Education Department Haripur, for last 22 years. He was charged in pre-plan F.I.R dated 07/01/2012; the complainant was the local MPA himself (Gohar Nawaz Khan) he was then included and the MPA of KPK Provincial Government. Copy of F.I.R is annexed as **Annexure A.**
- 2) That appellant for save his life and similarly due to influence of Complainant in the Provincial Government and in police station, he could not give his arrest to the police for inquiry, in his absence he was removed from his service on 17/11/2012 with effect from 07/01/2012. Copy of termination order is annexed as **Annexure B.**
- 3) That appellant on completion of KPK Provincial Assembly period and when Assembly dissolved, appellant gave his arrest to the police and the Court of Additional Session Judge-I, Haripur granted bail in the said case on 10/07/2013. Copy of bail granted order is annexed as **Annexure C.**
- 4) That appellant after released from jail, submitted his application to respondent no 1 for his re-instatement in service, whereupon respondent no 1 wrote a letter dated 06/09/2013 to respondent no 2 for further process but respondent no 02 inspite of re-instating the appellant in his service, sent his reply back to the respondent no 01 on 20/09/2013, case is still pending and is delaying it on one or other pretext. Copy of application for re-instatement in service, letter dated 06/09/2013 and reply dated 20/09/2013 is annexed as **Annexure D, E & F.** respectively
- 5) That now at present stage appellant's application dated 15/08/2013 for his re-instatement in service is still pending/undecided and respondents under the undue influence and personal pressure of local MPA, are not being re-instated the appellant in his service inspite of completion of 90 days of his application dated 15/08/2013 and there is no final order

passed by the respondents, thus no other efficacious remedy provided by law to the appellant except to avail option of section 4 (1) (a) KPK service Tribunal Act by filing his instant service appeal before this Honourable Tribunal. Hence this Service appeal, inter-alia on the following grounds.

Grounds

- a) That it is an admitted fact that complainant of FIR is local MPA (Gohar Nawaz Khan) in present provincial assembly of KPK, who was also MPA in previous provincial assembly of KPK and registration of case is under his influence, under this factual position it is the legal duty of respondents, and is required to look into the merits of the case and give a decision, as to why the appellant after having his bail granted by the competent court of law, was not legally to be re-instated in service with all back benefits.
- b) That the impugned action of respondents, not decided the application for re-instatement in service dated 15/08/2013 is arbitrary, unjust, melafide and against all the norms of justice which has deprived the appellant from his legal and constitutional rights.
- c) That under the law respondents were/are bound to consider the bail granting order dated 10/07/2013 passed by competent Court of law which attained its finality.
- d) That respondents illegally ignored the case of appellant for his re-instatement in service and did not fulfill/complete the cardinal principle of natural justice to decide the application for re-instatement in service dated 15/08/2013 within reasonable time, and they have not any power to ignore or kept pending his genuine case under the political pressure of local MPA, which is against law.

- e) That in the process of termination, no impartial and independent inquiry was conducted rather the appellant was victimized for his case with local MPA and all is done under his political /personal pressure as respondents had clearly been informed and factual position was in their knowledge that appellant was facing difficult situation and it is admitted fact that department can not provide life protection/personal security to the appellant when complainant of FIR is local MPA, thus termination and delaying in re-instatement itself proclaims its own malafide.
- f) That respondents impugned action not re-instated the appellant in his service is irrational and unreasonable resulting into grave miscarriage of justice.
- g) That the learned Additional Session Judge-1 Haripur has been pleased to give concession of post-arrest bail after considering (absconder) the facts and circumstances of the criminal case and appellant's re-instatement case is directly and totally depends upon criminal case which is its natural base, and when competent Court has granted bail, how respondents are not issuing the order of re-instatement ? thus this impugned action is beyond their jurisdiction, otherwise they were/are bound to do so.
- h) That appellant has granted bail from in the case, and under the same position the several precedent are available for his re-instatement, some are as under.
- 1) 2002 SCMR 57
 - 2) 2008 PLC (c.s) 855
 - 3) 2001 SCMR 269
 - 4) 1991 SCMR 209
 - 5) 1985 SCMR 1483
 - 6) 2000 PLC (c.s) 331
 - 7) 1994 SCMR 247.

It is there fore respectfully prayed that appellat's service appeal may kindly be accepted, and respondents be directed to re-instate the appellat in service with all back benefits with effect from 07/01/2012 according to law within reasonable time in the interest of justice.

Any other relief for which the appellat is entitled and same is not asked/prayed specifically may kindly be granted in the favour of the petitioner too.

Dated: 21/11/2013.

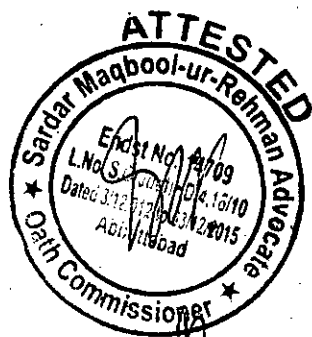
Bahadar Sher Khan
Bahadar Sher Khan
(appellant inperson)

Affidavit

I Bahadar Sher Khan S/O Muhammad Riaz Khan Ex- C.T GMS Kala Katha Haripur R/O House No 66, Sector No 1, Khalabat Township Haripur, appellat do here by affirm on oath that contents of instant appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and this instant appeal is first appeal & same nature of any other appeal is not pending before Honourable Tribunal.

Dated: 21/11/2013.

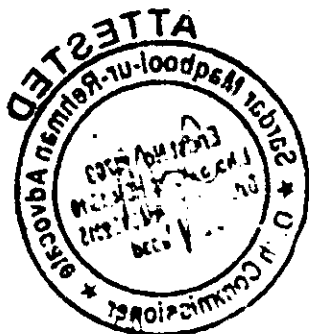
Bahadar Sher Khan
Bahadar Sher Khan
(appellant inperson)



22/11/2013

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Annexure B₁

Office of the Executive District Officer
Elementary & Secondary Education Haripur
PH No. 0995-610178, 610268

7

Termination Order

Mr. Bahdar Sher CT, GMS Kala Katha Haripur, who is involved in case FIR No.17 dated 07.01.2012 U/S 324/109/148/149 7ATA PS City District Haripur and absconder/absent from duty w.e.f 07.01.2012, absent notice was sent on his home address for resumption of duties vide this office Endst: No.7224 dated 21.07.2012, and final show cause notice for resumption of duties published in Daily Sarhad News and Daily Pine Abbottabad dated 15-09-2012, but he failed to resume his duties under Article A-8 E&D rules 1973, he is hereby removed from his service w.e.f 07-01-2012 in the interest of public service.

Note: - He is not entitled for any benefit by the Department.

-30-
Executive District Officer
Elementary & Secondary Education
Haripur

Endst: No. 12214-18

Dated: 17/11/2012

Cc:

- 1- The Director Elementary & Secondary Education Khyber Pakhtunkhawa Peshawar.
- 2- The District Coordination Officer Haripur.
- 3- The Senior District Accounts Officer Haripur.
- 4- The Headmaster GMS Kala Katha Haripur.
- 5- Mr. Bahdar Sher Ex-CT, GMS Kala Katha House No.66 Sector No.1 Village & P.O KTS Haripur.
- 6- Office record file.

[Signature]
Executive District Officer
Elementary & Secondary Education
Haripur

attested
[Signature]

Annexure C

Court of Additional Sessions Judge-1, Haripur

بدرالت حیات نو، دارا گڑڑا پور، ضلع ہری پور I
مقررہ 194
10/7/13

8
No. of Order
Processing
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O.R.D.E.R
10.7.2013

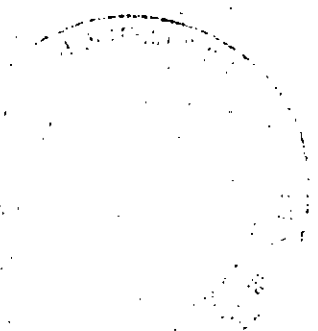
سرکار رزاک ذولفقار احمد دی

This order will also result the disposal of connected bail before arrest application (B.B.A No. 216/4 of 2013) titled "Faizan Khan ... VS ... The State", as both these petitions are the outcome of same case registered vide F.I.R No. 17 dated 07.1.2012 under sections 324/148/149/109 P.P.C at Police Station (P.S) City, Haripur.

Mr. Maqbool Hussain Advocate for i. Zulfiqar Ahmed, ii. Sher Afghan & iii. Bahader Sher, accused-petitioners of the instant bail application while iv. Faizan Khan, accused-petitioner of the connected bail before arrest application with his counsel Mr. Khalid Sultan Advocate present. S.P.P for the State present while learned counsel for the complainant has already made submissions in this case.

The prosecution case in brief, is that complainant Gohar Nawaz, on 07.1.2012, made report on arrival of the police to the spot stating therein that on the same date, he along with his official gunmen Sajid Amin, Yousuf & driver Babar Khan Tareen was on his way back in his bullet proof vehicle No. PLR-4845 followed by his escort vehicle No. BEA-1 boarded by his private gunmen by the names of Arshad, Muhammad Yousuf, Abdul Waheed and Constable Tahir Ejaz after offering fateha (فاتحہ) of father-in-law of Provincial Minister Qazi Muhammad Asad but when reached at K.T.S road near Dohra Shah Baba Shrine at 06:15p.m, he saw accused i.

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Authorized U.A. of
Judge of the Court order 198

26-07-13

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Attested
Fahad Khan

Usman Azam, ii. Sher Afghan with rocket launchers, iii. Faizan Azam, iv. Sher Bahader along with five unknown persons were standing there with Kalashnikov rifles who on seeing the vehicles of complainant, took positions, started firing at the vehicles indiscriminately but the complainant and his companions escaped unhurt while the firing made with Kalashnikov rifles hit the vehicles. The complainant also stated in his report that accused v. Zulfiqar and vi. Asad Javed abetted the offence committed by the aforesaid accused, which also caused terror amongst the people. Apart from complainant, his companions were stated to have witnessed the occurrence. The complainant charged the aforesaid accused for the offence and present case was thus registered against them.

I have heard the arguments and gone through the on hand record.

It is obvious from record on file that the complainant, who was the main alleged target along with his companions had appeared before the Court and got their joint statement recorded wherein they have already pardoned accused-petitioner Faizan Khan in the name of God Almighty by waiving off their rights of Qisas & Diyat. They in unequivocal terms stated before the court that they would have got no objection, if the pre-arrest bail to the accused-petitioner Faizan Azam was ^{confirmed} while already presented joint affidavit to this effect. It is also important to note that the family of the accused-petitioner Faizan Khan also effected

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10.7.2013
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Author of U.A. of
Gauon e Shihad
Date 6.07.13

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Attested
Bahader Sher

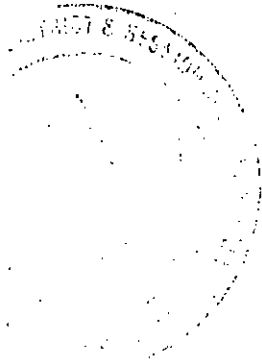
O.R.D.E.R
Continued

compromise with complainant Gohar Nawaz in a case registered against him under sections 302/324/148/149/109 P.P.C vide F.I.R No. 41 dated 01.2.2009 at P.S K.T.S, Haripur wherein the father of accused-petitioner Faizan Khan was murdered while his mother and sisters got injuries in the said case. The complainant party of this case has already resolved the matter with the accused-petitioner Faizan Khan and are not interested to prosecute him in the present case because of the compromise, which is in the best interest of the parties especially when the murder case against the complainant of the present case resulted his acquittal on the basis of statements of compromise. The sending of the accused-petitioner behind the bars would serve no useful purpose.

As regards, accused-petitioners Bahader Sher and Sher Afghan, the complainant charged them for ineffective firing in the present case while prosecution has not collected so far any evidence of abetting the present offence by accused-petitioner Zulfiqar Ahmed. There is no recovery of crime weapons from the possession or on pointation of any of the accused-petitioners. Most of the co-accused in this case have been acquitted and their acquittal has not been challenged in appeal till date. The accused-petitioners namely Zulfiqar Ahmed, Bahader Sher and Sher Afghan are behind the bars since the



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Attested
Authorised
Signature

26-07-13

attested Bahader Sher

date of their arrest i.e 03.4.2013 and are no more required for further investigation in this case. Mere abscondance of the accused petitioners should not be hurdle in the way of bail as they are, otherwise entitled to the concession of post-arrest bail. There are no reasonable grounds for believing that the accused-petitioners are connected with the commission of the present crime but their case requires further probe within the contemplation of section 497 Cr.P.C.

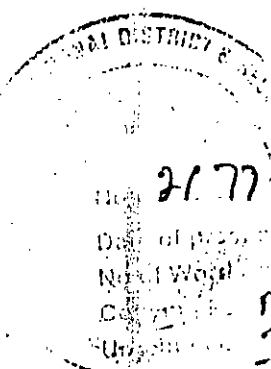
Keeping in view the above, the instant application of the accused-petitioners i. Zulfiqar Ahmed khan, ii. Sher Afghan & iii. Bahader Sher is accepted and they are admitted to bail, provided they furnish bail bonds in sum of Rs. 100,000/- (one hundred thousand rupees) each with two sureties in the like amount to the satisfaction of Area/Duty Magistrate 1st. Class, Haripur. The sureties must be solvent, local and reliable. While connected bail application of the accused-petitioner Faizan Azam is also accepted and the anticipatory bail already granted to him is confirmed on existing bail bonds. File to record room.

Announced:
10.7.2013

(Signature)
(Nasrullah Khan Gandapur)
Additional Sessions Judge-I,
Haripur.

afterward
Bahader Sher

26-07-13
(Signature)



2177? 26-7-13

62320257

(Signature)
26-7-13

26-7-13

26-7-13

اپیل برائے! Reinstatement of Suspension

15

Annexure 1D,

جناب عالی!

گزارش ہے کہ سائل ایلمینٹری اینڈ سیکنڈری ایجوکیشن ضلع ہری پور میں ریگولر ملازم ہے۔ اور BPS(15) کی C کی پوسٹ پر گورنمنٹ مڈل سکول کالا کٹھہ ہری پور میں اپنے فرائض منصبی سرانجام دے رہا تھا کہ 07/01/2012 کو بے بنیاد اور چھوٹے مقدمہ میں ملوث کر دیا گیا اچانک کی اس صورتحال میں جان بچانے کے لیے سائل کو ڈیوٹی سے غیر حاضر رہنا پڑا۔ 07/01/2012 سے 02/04/2013 تک Abscondar رہا۔ اس دوران محکمانہ کروائی کرتے ہوئے مجھے نوکری سے قارع کر دیا گیا۔

حالات میں کچھ بہتری آنے پر 03/04/2013 کو گرفتاری پیش کردی اور جیل چلا گیا اور 10/07/2013 کو ایڈیشنل سیشن جج نمبر 1 ہری پور۔ ضمانت منظور کرتے ہوئے رہا کر دیا۔ سائل عرصہ 22 سال سے ریگولر نیچر کی حیثیت سے فرائض انجام دیتا رہا ہے۔ اب جب کہ باقاعدہ گرفتاری دینے کے بعد ضمانت ہو چکی ہے آپ جناب سے اپیل ہے کہ فدوی کی ملازمت کو بحال کرتے ہوئے مکمل عدالتی فیصلے تک Suspension کو بحال کیا جائے۔ ضروری اخراجات درخواست کے ساتھ منسلک ہیں۔

اپیل کنندہ

Shehbaz Khan

بہادر شیر خان CT گورنمنٹ مڈل سکول کالا کٹھہ ہری پور

مکان نمبر 66 سیکٹر نمبر 1 کھلابٹ ٹاؤن سب ہری پور

فون نمبر: 0311 - 9582176

15-08-2013

attested
Shehbaz Khan



Annexure (E)

11

Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
No. / F.No 1020/A-15/Re-Instatement/All District Dated Peshawar the 6/9/2013

To

The District Education Officer
(Male)Haripur.

Subject:-

RE-INSTATEMENT OF SUSPENSION OF BAHADUR SHER KHAN EX-CT

Memo,

I am directed to enclose herewith a copy of the application alongwith its enclosures in respect of Bahadur Sher Khan Ex-CT, GMS, Kala Kattah District Haripur for further necessary action under the rules.

Encls As above.

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

Endst No. 1254 /

Copy forwarded for information to the:-

1- Bahadur Sher Khan, Ex-CT, GMS, Kala Kattah House No:66, Sector No:1, Kalabat Township District Haripur.

6/9/2013
Deputy Director (Establishment)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.

attested
Bahadur Sher

Annexure F,



Office of the District Education Officer (Male)
Haripur

PH No. 0995-610178, 610268

No. 904 /E.B

Dated: 20 /09/2013

To

The Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Subject: - **RE-INSTATEMENT OF SUSPENSION OF BAHADUR
SHER KHAN EX-CT**

Memo:-

In response to your office letter No. 1253/F.No 1020/A-15/Re-Instatement/All District dated 06-09-2013, on the subject cited above.

The report is as under please.

1. The teacher concerned was involved in FIR No. 17 dated 07-01-2012 U/S 324/109/148/149 7ATA PS City District Haripur and it was intimated Senior Superintendent Police District Haripur vide his No. 237 dated 16-01-2012 and he was suspended by this office under Endst: No. 734-39 dated 19-01-2012. (Copy attached)
2. It was the first responsibilities of the applicant to surrender before the law being an educated citizen and more than a civil servant and also intimate the Department about the charges leveled against him, but he failed to do so and remained absconder/ absent from his duties without any information.
3. An absent notice was served to applicant for resumption of duties /surrender before the Police vide this office No. 7224 dated 21-07-2012, but he failed to do so. (Copy attached)
4. The Deputy Director information District Abbottabad was asked to publish final show cause notice for resumption of duties vide this office No. 10103 dated 08-09-2012 alongwith enclosures but same was not published by the information Department. (Copy attached)
5. The reminder-1 was sent in continuation the final notice quoted above under letter No. 10834 dated 04-10-2012 and which was published in the News paper 1. The Daily Pine Abbottabad dated 15-09-2012, and the Sarhad News Abbottabad dated 15-09-2012 (copies attached), even the applicant failed to resume his duties /appear before the Department for justification and remained absconder/ absent from his duties as usual. (Copy attached)
6. After completion of whole process required for the termination of Civil servant under the A-8 E&D rules 1973, he was terminated from his services purely on merit in the light of Policy framed by the Provincial Government for civil servants. (Copy attached)
7. Now the appeal submitted by the applicant is baseless /time barred /without any justification.

Hence, the report is submitted for your kind information and further process please.

attested
[Signature]

[Signature]
District Education Officer (Male)
Haripur

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Abbottabad Bench
 _____ OF 2015

Bahadar Sher Khan (APPELLANT)
 (PLAINTIFF)
 (PETITIONER)

VERSUS

Education Department (RESPONDENT)
 (DEFENDANT)

(I/We Bahadar Sher Khan)

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter; without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 17 / 07 / 2015

Bahadar Sher Khan

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
 (ADVOCATE)

OFFICE:

Room No.1, Upper Floor,
 Islamia Club Building, Khyber Bazar,
 Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

OF 2013

Bahadar Sher

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Department

(RESPONDENT)
(DEFENDANT)

I/We Bahadar Sher

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ___/___/2013

Bahadar Sher

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
(ADVOCATE)

S
SYED IMDAD HUSSAIN SHAIH
ADVOCATE

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

Syed Imdad Hussain Shaih
Advocate

45

**BEFORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 1551/2013

Title. Mr. Bahadar Sher Khan S/O Muhammad Riaz Khan Ex- CT GMS Kala Katha
District Haripur..... (Appellant)


V/S

1. Director E&SE Department, Khyber Pakhtunkhwa, Peshawar & Others.
(Respondents)


INDEX

S.No.	Description of Document	Annexure	Pages
1.	Reply/comments		01-04
2.	Affidavit		05
3	Copy of Notice dated 21-7-2012	A	06
4	Copy of Show cause Notice	B	07
5	Copy of rules (relevant page)	C	08
6	Copy of Termination Order	D	09

Respondents


**District Education Officer (M)
Haripur.**

P-01



**BEFORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 1551/2013

Title. Mr, Bahadar Sher Khan S/O Muhammad Riaz Khan Ex- CT GMS Kala Katha
District Haripur..... (Appellant)

V/S

1. Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (M) Haripur.
3. Govt. of Khyber Pakhtunkhwa through Secretary E&SE, Department,
Peshawar.
4. District Accounts Officer Haripur..... (Respondents)

Joint Para wise reply/comments on behalf of respondents no.1,2&

3.

**Respectfully Sheweth;
Preliminary Objection**

1. That the appellant has no cause of action/Locus Standi.
2. That the instant appeal is badly time bard.
3. That the appellant has concealed the material facts from this honorable
Court hence liable to be dismissed.
4. That the appellant has not come to this court with clean hands.
5. That the present appeal is liable to be dismissed for non-joinder/mis-joinder
Of necessary parties.
6. That the appellant has filled the instant appeal on malafide motives.
7. That the instant appeal is against the prevailing law/rules.

8. That the appellant is estopped by his own conduct to file the present appeal/petition.
9. That the present appeal is not maintainable in the present form and also in Present circumstances of the issue.

Comments on Facts.

1. Correct to the extent that the appellant was an employee in Education Department as CT Teacher and was charged in F.I.R dated 07-01-2012, While other contention contained in this Para relates to his personal matters, needs no Comments.
2. Incorrect, the appellant being a Civil Servant, never fulfilled the Requirements and also never adopted proper procedure and remained willful absent from his duty w.e.f 08-01-2012 till the issuance of termination order dated 17-11-2012, while a absence notice was served upon his home address vide this office Endst. No. 7224 dated 21-07-2012 and final show cause notice, published in Daily Sarhad and Daily Pine Abbottabad, dated 15-09-2012 but he failed to resume his duty, therefore He was removed from his Service w.e.f 07-01-2012 in the interest of public interest under Article A-8 E&D rules 1973. (Copy of notice dated 21-07-2012, a copy of show cause notice dated 15-09-2012 and copy of relevant page of rules 1973 are attached as annexure A, B & C)
3. That the appellant remained absconder/ willful absent for a long period without any information, during which the Department by observing all Codal formalities, terminated his Services. Furthermore he was no more in Service at the time of his arrest by the Police. (Copy of termination order dated 17-11-2012 is attached as annexure- D)
4. That the application of the applicant could not be justified at this stage as his Services were terminated and he was no more in service.

5. Incorrect, the appellant was no more an employee of this Department as his services had already been terminated due to his willful absence before the submission of his application.

Reply/ Comments on Grounds;

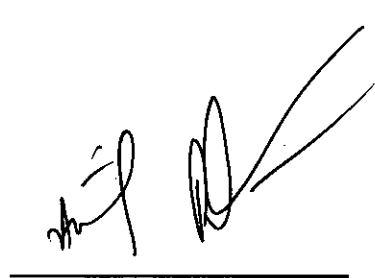
- a) That the respondents have already fulfilled their duty by observing all Codal formalities and terminated the services of the appellant w.e.f 07-01-2012 due to his willful absence.
- b) Incorrect, the appellant is no more employee of the Education Department w.e.f 07-01-2012, therefore he has no vested rights to be re-instated into Service.
- c) That as the appellant remained willful absent during the period mentioned above and the respondents have observed all codal formalities before terminating his services.
- d) Incorrect, the case of the applicant could not be justified at this stage as the appellant was no more an employee of this Department and his services had already been terminated due to his willful absence before the submission of his application.
- e) Incorrect, the respondents have observed all Codal formalities and terminated his Services. Furthermore the appellant never brought his case in the knowledge of respondents before his application dated 15-08-2013.
- f) Incorrect, the termination order dated 17-11-2012 got its finality and the contentions contained in this Para could not be justified at this belated stage.
- g) Incorrect, the termination order dated 17-11-2012 got its finality and the respondent cannot re-instate the appellant at this stage.

Prayer.

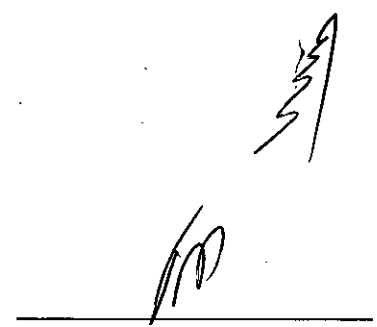
It is therefore most humbly prayed that on acceptance of the above comments the appeal of the appellant may very graciously be dismissed with cost please.

Respondents


The Secretary,
Elementary and Secondary Education Deptt.
Khyber Pakhtunkhwa, Peshawar.
(Being respondent No, 3)



The Director,
Elementary and Secondary Education,
Khyber Pakhtunkhwa, Peshawar.
(Being respondent No. 1)



The District Education Officer (M)
Haripur
(Being respondent No, 2)



P-5

**BEFORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 1551/2013

Title. Mr, Bahadar Sher Khan S/O Muhammad Riaz Khan Ex- CT GMS Kala Katha
District Haripur..... **(Appellant)**

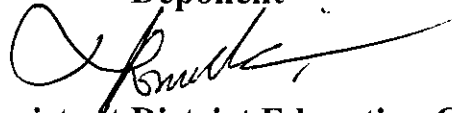
V/S

1. Director E&SE Department, Khyber Pakhtunkhwa, Peshawar & Others.
(Respondents)

AFFIDAVIT

I Mr. Said Badshah Assistant District Education Officer (M) Haripur do hereby solemnly affirmed and declare that the contents of Para wise comments on behalf of the respondents are true and correct to the best of my knowledge and belief and nothing has been suppressed/concealed from this Honorable Court.

Deponent



**Assistant District Education Officer (M)
Haripur**

#202-0942984-1

Annexure — "A" P-5
OFFICE OF THE DISTRICT OFFICER

No.

7224

PII No. 0985-610178, 610268

Dated: 21/07/2012.

To



Mr. Bahadur Sher CTS/O Muhammad Riaz Khan
House No- 66 sector No-1 Village & P/o KTS.

Subject: - Absent Notice .

Memo:

Consequent upon your involvement in case FIR No-17 dated .07.01.2012 U/S 324/109/148/1497ATA PS City District Haripur you were suspended from your services w.e.f 07.01.2012 vide this office Endst: No- 734-39 dated 19.01.2012 . You neither surrendered before the police nor reported in your institution. Yu are directed to report in your institution / in the office of Executive District Officer E&SE Haripur with in 15 days , after receiving this letter .Otherwise you will be considered as absconder and further proceeding will be initiated against you as per rules.

---sd---

Executive District Officer
Elementary & Secondary Education
Haripur

Dated: 21/07/2012

Endst: No. -

7225-27

Cc:-

1. The District Coordination Officer Haripur .
2. The Sr. Superintendent of Police Investigation Haripur with reference to his No- 237 dated .16.01 2012 for information Please.
3. The Headmaster concerned.
4. Office record File.

District Officer (Male)
Elementary & Secondary Education
Haripur

P-712

ABC CERTIFIED

Daily PINE Abbottabad

337360 فیس

روزنامہ

قیمت 5 روپے

ایسٹ آباد

چیف ایڈیٹر

شیراز احمد

dailypine@brain.net.pk Pinenewsagency@gmail.com

جلد 6

دنہ 15 ستمبر 2012ء 27 شوال 1433ھ

شیراز 353

Annexure - "B"

نوٹس برائے غیر حاضری

آپ مسٹر بہادر شیری ٹی (CT) گورنمنٹ مڈل سکول کالا کھنڈ ضلع ہریپور کسی اطلاع کے مورے 07-02-2012 سے اپنی ڈیوٹی سے غیر حاضر ہیں آپ کو اس سے پہلے بھی گھر کے پتے پر مورے 21-07-2012 بذریعہ نوٹس بحوالہ نمبر 7224 کو اطلاع کیا گیا تھا مگر تا حال آپ اپنی ڈیوٹی سے غیر حاضر ہیں لہذا آپ کو آخری بار بذریعہ نوٹس اخبار مطلع کیا جاتا ہے کہ اس نوٹس کے ملتے ہی 15 دنوں کے اندر اندر فی الفور سکول میں حاضر ہو کر زبردستی کو تحریری طور پر غیر حاضری کی وجہ بیان کریں ورنہ آپ کے خلاف قانونی کارروائی عمل میں لاتے ہوئے آپ کو نوٹری سے برخاست کر دیا جائے گا۔

ایگزیکٹو ڈسٹرکٹ آفیسر

ایڈمنسٹری ایٹو سیکنڈری ایجوکیشن ہریپور

INF(AD) 384

¹¹⁹7A. **Revision:**-The authority may, in the case of any order passed by the authorised officer, call for and examine the record of any case and may, after making such further inquiry or investigation, if necessary, either personally or through an officer, pass such order as he may deem appropriate;

Provided that in cases where the authorised officer has exonerated an accused and the authority decides to impose a penalty on him or where the penalty imposed by the authorised officer is decided to be increased, the authority shall not impose any penalty or increase the penalty, unless an opportunity is given to the person concerned to show cause as to why such a penalty should not be imposed or, as the case may be, be increased.

8. Rule 5 not to apply in certain cases:-Nothing in rule 5 shall apply to a case:-

- (a) where the accused is dismissed or removed from service or reduced in rank, on the grounds of conduct which has led to a sentence of fine or of imprisonment; or
- (b) where the authority competent to dismiss or remove a person from service, or to reduce a person in rank, is satisfied that, for reasons to be recorded in writing by that authority, it is not reasonably practicable to give the accused an opportunity of showing cause.

¹²⁰8. A A Procedure in case of willful absence:- Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government Servant, a notice shall be issued by the authorised officer through "registered acknowledgement" due cover on his home address directing him to resume duty forthwith. If the same is received back as undelivered or no response is received from the absentee within the stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision will be taken against him. On expiry of the stipulated period given in the notice, the authorised officer shall recommend his case to the authority for imposition of major penalty of removal from service.

9. Procedure of inquiry against officers lent to other Provincial Government or the Federation:-(1) Where the services of Government servants to whom these rules apply are lent to the Federation or to any other Provincial Government or to a local or other authority, in this rule referred to as the borrowing authority, the borrowing authority shall have the powers of the authority for the purpose of placing him under suspension or requiring him to proceed on leave and of initiating proceedings against him under these rules;

Provided that the borrowing authority shall forthwith inform the authority which has lent his services, hereinafter in this rule referred to as to lending authority, of the circumstances leading to the order of his suspension or the commencement of the proceedings, as the case may be.

¹¹⁹ Rule 7A inserted vide S&GAD Notification No.SOR.II(S&GAD)3-4/78, dated 4.5.1983.

¹²⁰ Rule 8A inserted by Notification No. SOR-II(S&GAD)5(29)/95 Vol.II, dated 14.09.99.



Office of the Executive District Officer
Elementary & Secondary Education Haripur
PH No. 0995-610178, 610268

Termination Order

Mr. Bahdar Sher CT, GMS Kala Katha Haripur, who is involved in case FIR No.17 dated 07.01.2012 U/S 324/109/148/149 7ATA PS City District Haripur and absconder/absent from duty w.e.f 07.01.2012, absent notice was sent on his home address for resumption of duties vide this office Endst: No.7224 dated 21.07.2012, and final show cause notice for resumption of duties published in Daily Sarhad News and Daily Pine Abbottabad dated 15-09-2012, but he failed to resume his duties under Article A-8 E&D rules 1973, he is hereby removed from his service w.e.f 07-01-2012 in the interest of public service.

Note: - He is not entitled for any benefit by the Department.

Executive District Officer
Elementary & Secondary Education
Haripur

Endst: No. 12214-18

Dated: 17/11/2012

Cc:

- 1- The Director Elementary & Secondary Education Khyber Pakhtunkhawa Peshawar.
- 2- The District Coordination Officer Haripur.
- 3- The Senior District Accounts Officer Haripur.
- 4- The Headmaster GMS Kala Katha Haripur.
- 5- Mr. Bahdar Sher Ex-CT, GMS Kala Katha House No.66 Sector No.1 Village & P.O KTS Haripur.
- 6- Office record file.

Executive District Officer
Elementary & Secondary Education
Haripur

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL No.1551/2013

BAHADAR SHER KHAN

VS

EDU: DEPTT:

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO THE REPLY SUBMITTED BY THE RESPONDENTS

R/SHEWETH:

All the preliminary objections raised by the respondents are incorrect and baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

- 1- Incorrect and not replied accordingly. That the appellant was charged under pre-planned FIR dated 07-01-2012 by the then setting Provincial Government MPA Mr. Gohar Nawaz Khan.
- 2- Incorrect and not replied accordingly. That the appellant was absented himself due to influence of the complainant as the complainant was the MPA of the then setting Provincial Government and to save his life as there were threats from the complainant. That during appellant's absence he was removed from service vide order dated 17-11-2012 with out conducting regular inquiry.
- 3- Incorrect and not replied accordingly. That when the Provincial Government was dissolved the appellant gave arrest to the local police and after arrest Bail application was moved and was accepted by the Hon' able Session Judge-I Haripur, vide order/judgment dated 10-07-2013.
- 4- Incorrect and not replied accordingly. That Departmental appeal of the appellant was not replied by the respondent Department till now.
- 5- Incorrect and not replied accordingly hence denied.

GROUND:

(A to E):

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are

incorrect, baseless and not in accordance with law and Rules hence denied. That the impugned order dated 17-11-2012 issued by the respondents are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside. That no charge sheet no show cause notice and chance of personnel hearing/defense has been given to the appellant. That no regular inquiry has been conducted against the appellant which is as per Supreme Court judgments is necessary in punitive actions against civil servants. That the punishment has been awarded by the respondent Department to the appellant under a wrong law.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted in favor of the appellant.

APPELLANT

BAHADER SHER

THROUGH:

NOOR MOHAMMAD KHATTAK

&

SYED IMDAD HUSSAIN

ADVOCATES