


11<sup>th</sup> April, 2023 /

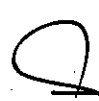
Mr. Basser Ahmed Shah, Advocate for the appellant present.

Mr. Fazal Shah Mohmand, Additional Advocate General alongwith

Mr. Muhammad Zahid Khan, SDEO for the respondents present.

2. Former made a request for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on on 01.06.2023 before D.B. Parcha Peshi given to the parties.


  
(Muhammad Akbar Khan)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

1<sup>st</sup> June, 2023

1. Mr. Mir Zaman Safi, Advocate present and submitted Wakalat Nama in favor of appellant. Mr. Fazal Shah Mohmand, Additional Advocate General alongwith Mr. Hussain Ali, ADEO for respondents present.

2. Being not prepared, learned counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 13.09.2023 before D.B. P.P given to the parties.

  
(Salah-Ud-Din)  
Member (J)

  
(Kalim Arshad Khan)  
Chairman


\*Mutazem Shah\*

SCANNED  
KPST  
Peshawar

4<sup>th</sup> Nov. 2022

Lawyers are on strike today.

To come up for arguments on 03.01.2023 before the D.B. Office is directed to notify the next date on the notice board as well as the website of the Tribunal.

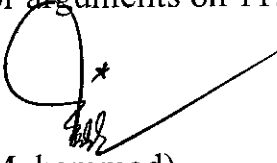
  
(Fareeha Paul)  
Member(E)


  
(Kalim Arshad Khan)  
Chairman

03.01.2023

Clerk of learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 11.04.2023 before the D.B.

  
(Mian Muhammad)  
Member (E)

  
(Salah-Ud-Din)  
Member (J)


SCANNED  
KFST  
Peshawar


13.05.2022

Junior to counsel for appellant present.

Muhammad Rasheed learned Deputy District Attorney for respondents present.

Former sought adjournment on the ground that learned senior counsel is busy before august Supreme Court of Pakistan. Adjourned. To come up for arguments on 06.07.2022 before D.B.

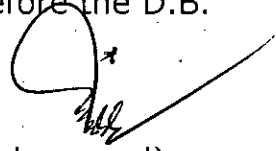
  
(Fareeha Paul)  
Member(E)

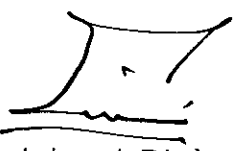
  
(Rozina Rehman)  
Member (J)

06.07.2022

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 13.10.2022 before the D.B.


  
(Mian Muhammad)  
Member (E)

  
(Salah-ud-Din)  
Member (J)

13<sup>th</sup> Oct., 2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. Addl. Advocate General for the respondents present.

Counsel for the appellant seeks adjournment in order to further prepare the brief. Last opportunity is granted. To come up for arguments on 04.11.2022 before the D.B.

  
(Fareeha Paul)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

Stipulated period passed reply not submitted.

16.08.2021


Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.

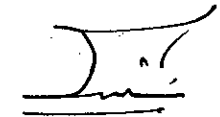
  
Chairman

11.11.2021

Mr. Fazal Shah Mohmand, Advocate, for the appellant present. Mr. Hussain Ali, Litigation Officer alongwith Mr. Javed Ali, Assistant Advocate General for the respondents present.

Reply/comments on behalf of respondents submitted, which is placed on file and copy of the same is handed over to learned counsel for the appellant. Adjourned. To come up for rejoinder, if any, as well as arguments on 03.02.2022 before the D.B.

  
(Atiq-Ur-Rehman Wazir)  
Member (E)

  
(Salah-Ud-Din)  
Member (J)

03.02.2022

The Tribunal is non-functional, therefore, the case is adjourned to 13.05.2022 before D.B for the same.

  
Reader


515/2019

29.06.2021

Counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days of the receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 11.11.2021 before the D.B.

Appellant Deposited  
Security & Process Fee

  
2/7/21

  
Chairman

23.09.2020

Counsel for the appellant present.

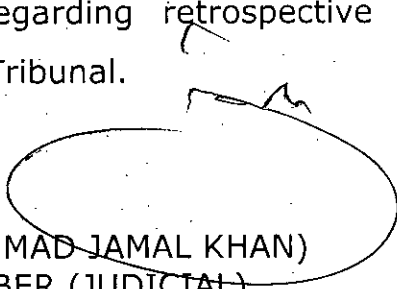
On the last date of hearing instant matter was adjourned to avail the outcome of cases pending before the Larger Bench and having similar nature. The Larger Bench has not yet concluded the proceedings before it, therefore, instant matter is adjourned to 02.12.2020 before S.B.

  
Chairman

02.12.2020

Counsel for appellant is present.

Learned counsel requests for adjournment to a date after the decision of proposition regarding retrospective punishment by a Larger Bench of this Tribunal.  
Adjourned to 17.02.2021 before S.B.

  
(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

17.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 29.06.2021.

  
Reader

515/2019

22.01.2020

Junior to counsel for the appellant present.

Requests for adjournment due to general strike of the Bar. Adjourned to 21.02.2020 in order to avail the outcome of case(s) pending before the Larger Bench regarding retrospective punishment.

  
Chairman

21.02.2020

Junior to counsel for the appellant present and seeks adjournment as senior learned counsel is not available. Adjourn. To come up for preliminary hearing on 07.04.2020 before S.B.

  
Member


07.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 01.07.2020 for the same. To come up for the same as before S.B.

  
Reader

01.07.2020

Junior counsel for appellant present and seeks adjournment. Adjourned to 23.09.2020 before S.B in order to avail the outcome of cases pending before the Larger Bench of this Tribunal, regarding retrospective punishment.

  
Member (J)

08.07.2019

Mr. Muhammad Maaz Madni, Advocate on behalf of learned counsel for the appellant present.

Learned senior counsel for the appellant is reported to be engaged before the Apex Court today, therefore, adjournment is requested.

Adjourned to 29.08.2019 before S.B.

29.08.2019

Mr. Adnan Khan Special Attorney for the Appellant present.

Requests for adjournment as learned counsel for appellant is indisposed today.

Adjourned to 14.10.2019 before S.B.

14.10.2019

Counsel for the appellant present.

The appeal ~~may be~~ involved proposition regarding retrospective operation of penalty and a Larger Bench of this Tribunal has been constituted to look into the proposition in other cases.

Instant matter is, therefore, adjourned to 25.11.2019 in order to avail the outcome of proceedings of Larger Bench.

Chairman

25.11.2019

Junior to counsel for the appellant present.

Requests for adjournment on account of general strike of the Bar. Adjourned to 22.01.2020 before S.B.

Chairman



Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 515/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/04/2019	<p>The appeal of Mr. Habib Khan resubmitted today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR → 14/19</p>
2-	23/04/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/05/19</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
23.05.2019		<p>Sharif Khan brother of the appellant on behalf of appellant present. The present service appeal appears to be hopelessly time barred/incompetent. Learned counsel for the appellant not available. Adjournment requested. Adjourn. To come up for preliminary hearing on 08.07.2019 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> Member</p>


**SCANNED**  
**KPST**  
**Peshawar**

The appeal of Mr. Habib Khan Certified Teacher son of Afreen Khan r/o sair Charbagh District Swat received today i.e. on 17.04.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Affidavit may be got attested by the Oath Commissioner.
- 2- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.

No. 768 /S.T,

Dt. 17/04 /2019.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Fazal Shah Mohmand Adv. Pesh.

div , Resubmitted after requisite completion,  
however no charge sheet and show cause  
notice was issued nor any enquiry was held  
against the appellant, so the appeal may  
please be placed before the honorable  
Tribunal.



Adv

22-4-19

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 515 /2019

Habib Khan.....Appellant

**V E R S U S**

DEO and others.....Respondents

**I N D E X**

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-4
2.	Application for condonation of delay with affidavit		5
3.	Copy of Notification dated 10-08-2011	A	6
4.	Copy of Departmental Appeal dated 17-12-2018	B	7-8
5.	Wakalat Nama		9-13

Dated:-13-04-2019.

Through Appellant

  
Fazal Shah Mohmand  
Advocate, Peshawar

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841  
Email:- fazalshahmohmand@gmail.com

- / -

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

Service Appeal No \_\_\_\_\_/2019

Habib Khan Ex Certified Teacher (BPS-14) S/O Afreen Khan R/O  
Sair Charbagh District Swat.....**Appellant**

**V E R S U S**

1. District Education Officer (Male) Swat.
2. Director Elementary and Secondary Education, Govt. of KPK Peshawar.
3. Secretary, Elementary and Secondary Education, Govt. of KPK Peshawar. ....**Respondents**

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974  
AGAINST THE ORDER DATED 10-08-2011 PASSED BY  
RESPONDENT NO 1 WHEREBY THE APPELLANT HAS BEEN  
REMOVED FROM SERVICE AND AGAINST WHICH  
DEPARTMENTAL APPEAL OF THE APPELLANT DATED 17-  
12-2018 HAS NOT BEEN RESPONDED SO FAR DESPITE THE  
LAPSE OF MORE THAN THE STATUTORY PERIOD OF  
NINETY DAYS.**

**PRAYER:-**

On acceptance of this appeal the impugned Order dated 10-08-2011 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

**Respectfully Submitted:-**

1. That the appellant was appointed as SV Teacher (BPS-09) on 30-09-1989, remained posted to various Schools and since then he performed his duties with honesty and full devotion with spotless service career.
2. That the post of the appellant was later on named as Certified Teacher herein after referred to as C.T. and was upgraded to BPS-14.
3. That due to domestic problems, the appellant requested for leave and he was accordingly granted two years leave i.e with effect from 01-04-2008 to 31-03-2010.
4. That the appellant belongs to Charbagh District Swat which was the hub of terrorists those days, and the Govt. servants were particularly at their target. It is pertinent to mention here that

- 2 -

during those days many Govt. servants were killed by terrorists and others including the appellant were threatened that if they performed duties with the Govt. they will be targeted.

5. That in the circumstances, the appellant was forced to leave the area and shift at safe place. However in the meanwhile the appellant along with two others while posted to Govt. High School Shawa Swat, was removed from service by the District Education Officer Swat vide Notification dated 10-08-2011 from the date of absence. **(Copy of Notification is enclosed as Annexure A).**
6. That the appellant preferred departmental appeal before respondent No 2 vide diary No 253 dated 17-12-2018 which is still pending and has not been decided despite the lapse of more than the statutory period of ninety days. **(Copy of Departmental Appeal is enclosed as Annexure B).**
7. That the impugned order dated 10-08-2011 of respondent No 1 is against the law, facts and principles of justice on grounds inter alia as follows:-


#### **GROUND S:-**

- A. That the impugned order is illegal and void ab-initio.
- B. That the impugned order is void being passed with retrospective effect, respondent No 1 was never vested with such power.
- C. That no proper proceedings were taken. No proceedings as required under the law and rules were ever taken against the appellant.
- D. That no Charge Sheet and Show Cause Notice was communicated to the appellant.
- E. That no inquiry has been conducted, as the appellant was never associated with the same.
- F. That even otherwise the absence from duty was not willful and deliberate rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- G. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules.

- H. That there is no omission or commission on part of the appellant as it has been established that the appellant was illegally removed from service.
- I. That ex parte action has been taken against the appellant and he has been condemned unheard in violation of the principles of natural justice.
- J. That the appellant has about 22 years of service with unblemished service record.
- K. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

**It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.**

**Dated:-13-04-2019.**

Appellant  
Through   
**Fazal Shah Mohmand  
Advocate, Peshawar**

-4-

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

Service Appeal No \_\_\_\_\_/2019

Habib Khan.....Appellant

**V E R S U S**

DEO and others.....Respondents

**A F F I D A V I T**

I, Sharif Khan S/O Afreen Khan R/O Sair Charbagh Tehsil and District Swat, (Special Attorney), do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by



**Fazal Shah Mehmood  
Advocate Peshawar**

**DEPONENT**

-5-

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

Service Appeal No \_\_\_\_\_/2019

Habib Khan.....Appellant

**V E R S U S**

DEO and others.....Respondents


**Application for the condonation of delay if any.**

**Respectfully submitted:-**

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That the impugned order being void ab-initio, illegal and time factor becomes irrelevant in such cases.
4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit rather on technicalities.

**It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.**

**Dated:-13-04-2019.**

**Appellant**  
Through   
**Fazal Shah Mohmand**  
**Advocate, Peshawar**

**A F F I D A V I T**

I, Sharif Khan S/O Afreen Khan R/O Sair Charbagh Tehsil and District Swat, (Special Attorney), do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

**DEPONENT**



NO. VERIFICATION

Whereas you the following teachers (M&F) willfully remained absent from their duties from the date mentioned against their name.

S. No	Name of official	School	Date of absence
1	Mst. Kalsoom Akhtar D/o Amir Aman Khan CT	GGMS: Kuza Bandai Swat	05.03.2011
2	Mst. Nowsheen D/o Hamayoon CT	GGMS: Taghma Swat	21.01.2010
3	Mr. Habib Khan S/o Afareen Khan	GHS: Shawar Swat	01.04.2010

Whereas they have been directed time and again by the authority to resume their duties but no response were received from their ends.

Whereas an enquiry was conducted against them and they were found absent on the day & date of enquiry.

Whereas their absence was published in The Daily Azadi (Swat/ Islamabad) Shamal Swat and Awasaf dated 17.07.2011 to resume their duty and explain their absence within Fifteen days of the publication of the notice, but they have failed.

This action on their part tantamount to misconduct service in discipline and negligence of duty for which they are liable to disciplinary action as enunciated the under Rules-3[1] [d] read with rules-3[b] [1] of Khyber Pukhtun Khwa civil servant efficiency and discipline ordinance 2000, which may entail to a major penalty [dismissal from service].

And now therefore, the undersigned being competent authority in exercise of the power conferred upon me section 3 of the Government Khyber Pukhtun Khwa Removal from service (Special Power) Ordinance 2000 is hereby imposed as major penalty "Removal From Service" on the above named officials from the date of their absence.

EXECUTIVE DISTRICT OFFICER  
ELEMENTARY AND SECONDARY  
EDUCATION SWAT.

dated 10/08/2011

Endst. No. 1200-8/ Nowsheen/CT

Copy of the above is forwarded to:

1. The District Coordination Officer Swat.
2. The District Accounts officer Swat.
3. The Budget & Accounts Officer Swat with the remarks to recover the amount from Mst. Nowsheen CT for her absence period and deposit in to government treasury through challan.
4. The Principal GHS: Shawar.
5. The Headmistress GGMS: Taghma Swat with the remarks to recover the amount from Mst. Nowsheen CT for her absence period and deposit in to government treasury through challan.
6. The Headmistress GGMS: Kuza Bandai Swat.
7. The official concerned.
8. PA to the EDO local office.

EXECUTIVE DISTRICT OFFICER  
ELEMENTARY AND SECONDARY  
EDUCATION SWAT

*(Handwritten signature)*

7- B

**BEFORE THE DIRECTOR ELEMENTARY AND SECONDARY EDUCATION**

**KPK PESHAWAR.**

SUBJECT:- **APPEAL AGAINST THE NOTIFICATION/ORDER DATED 10-08-2011, OF DISTRICT EDUCATION OFFICER SWAT, WHEREBY THE APPELLANT HAS BEEN AWARDED THE PENALTY OF REMOVAL FROM SERVICE FROM THE DATE OF ABSENCE.**

**Respectfully Submitted:-**

1. That the appellant was appointed as SV Teacher (BPS-09) on 30-09-1989, remained posted to various Schools and since then he performed his duties with honesty and full devotion with spotless service career.
2. That the post of the appellant was later on named as Certified Teacher herein after referred to as C.T. and was upgraded to BPS-14.
3. That due to domestic problems, the appellant requested for leave and he was accordingly granted two years leave i.e with effect from 01-04-2008 to 31-03-2010, and the appellant performed his duties for some time thereafter.
4. That the appellant belongs to Charbagh District Swat which was the hub of terrorists those days, and the Govt. servants were particularly at their target. It is pertinent to mention here that during those days many Govt. servants were killed by terrorists and others including the appellant were threatened that if they performed duties with the Govt. they will be targeted.
5. That in the circumstances, the appellant was forced to leave the area and shift at safe place. However in the meanwhile the appellant along with two others while posted to Govt. High School Shawar Swat, was removed from service by the District Education Officer Swat vide Notification dated 10-08-2011 from the date of absence. **(Copy of Notification is enclosed as Annexure A).**
6. That the impugned Notification/Order dated 10-08-2011, to the extent of the appellant, is against the law, facts and principles of justice on grounds inter-alia as follows:-

*Attested  
in PK*

253  
17/12/18

**GROUND:-**

-8-

- A. That the impugned Notification/order is illegal and void ab initio.
- B. That mandatory provisions of law have been violated while taking action against the appellant.
- C. That no proceedings as per law enunciated in case of absence were taken, nor any notice was sent to the appellant as required under the law.
- D. That the absence from duty was not willful and deliberates rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- E. That almost all the employees terminated during militancy in the area have been reinstated by the department besides their appeals have been accepted by the Service Tribunal KPK, and the appellant as such deserve the same treatment and should not be discriminated.
- F. That even his two other colleagues removed vide the same order have been reinstated while the appellant is treated differently.
- G. That the order of removal has been passed with retrospective effect which order as per the Judgment reported as SCMR 1985 page 1178 is void and no limitation runs against such order.
- H. That the appellant did nothing that could amount to misconduct.
- I. That the appellant was not afforded the opportunity of personal hearing.
- J. That the appellant has about 22 years of service with unblemished service record.

**It is therefore prayed that on acceptance of this appeal, the impugned Notification/Order dated 10-08-2011, may kindly be set aside and the increments may kindly be ordered to be reinstated in service with all back benefits.**

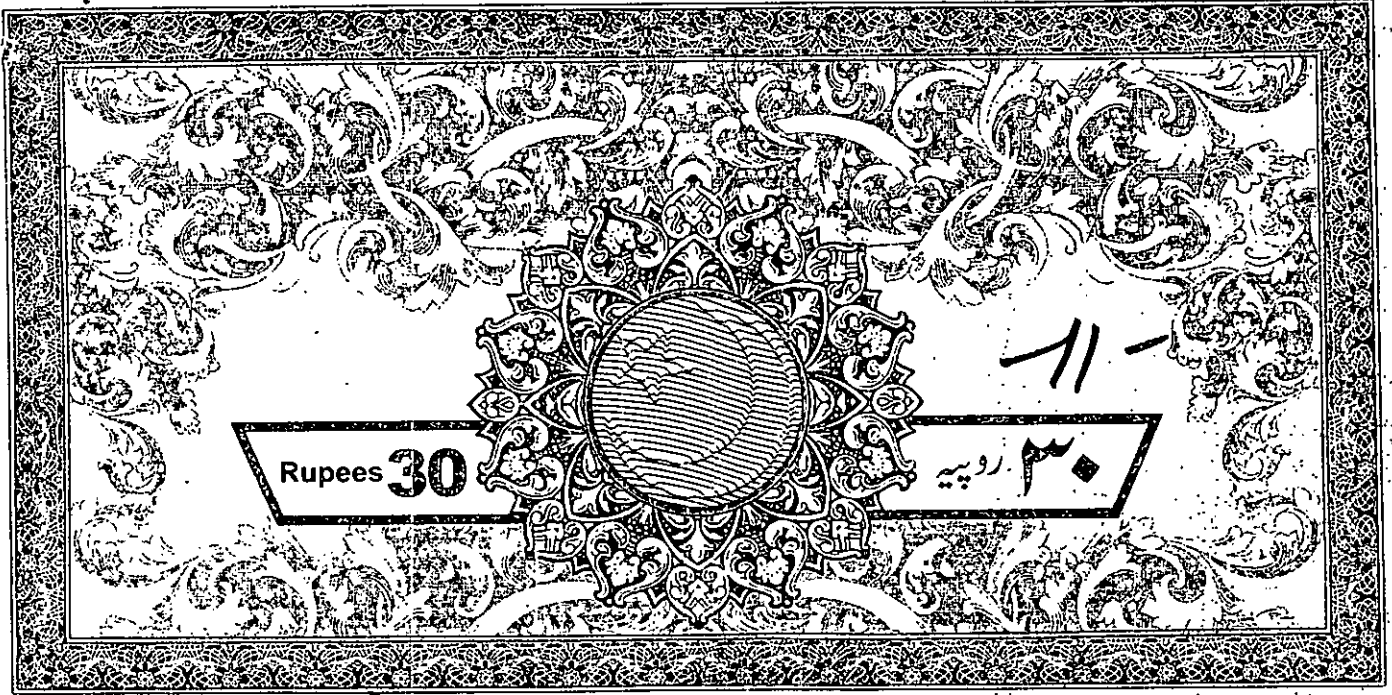
**Dated:-17-12-2018.**

*H.Khan*  
**Habib Khan Ex Certified Teacher  
(BPS-14) S/O Afreen Khan R/O  
Sair Charbagh District Swat.**

*Attested  
[Signature]*







بعدالت جناب سرس ٹریبونل

خیبر پختونخواہ پشاور

﴿مختیار نامہ خاص بابت پیروی مقدمہ﴾

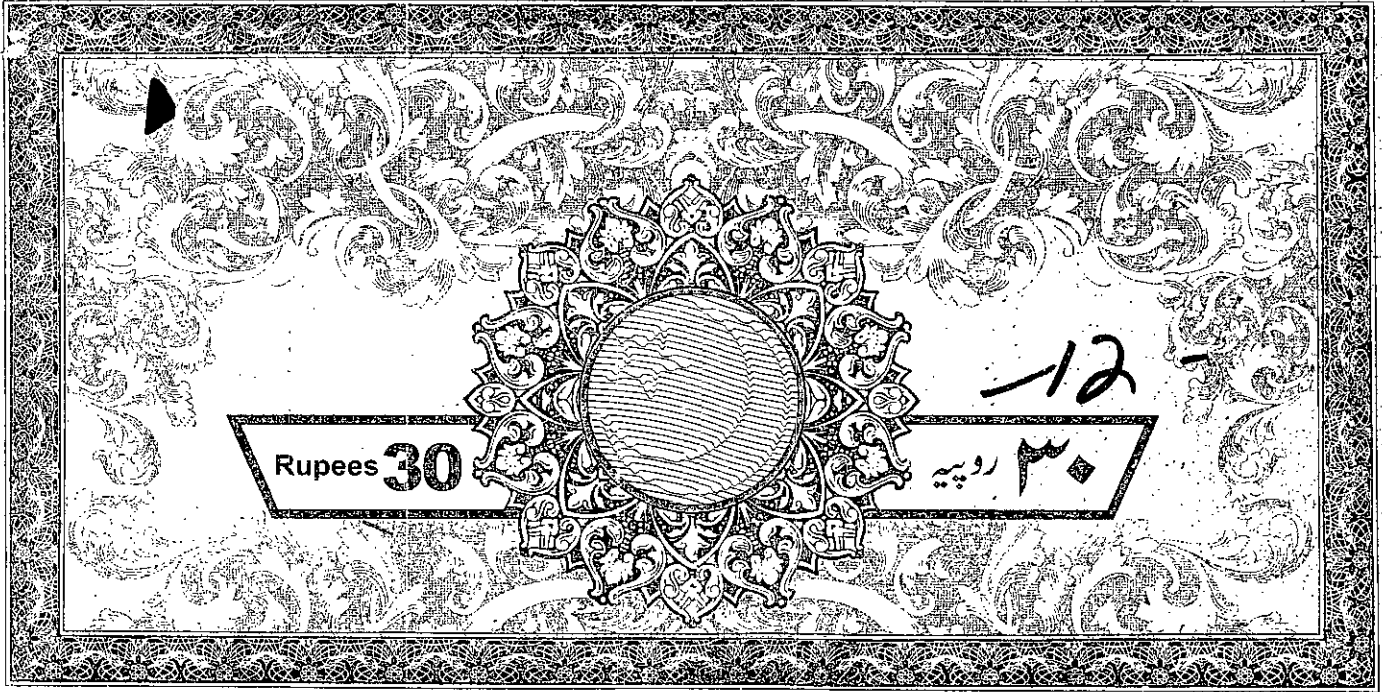
گورنمنٹ وغیرہ

بنام

حبیب خان

بمعنوان :-

برائے شمولیت



بعدالت جناب سروس ٹریبونل

خیبر پختونخواہ پشاور

﴿مختیار نامہ خاص بابت پیروی مقدمہ﴾

گورنمنٹ وغیرہ

بنام

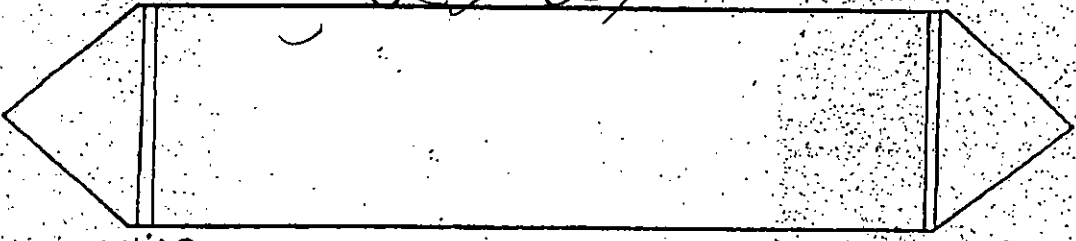
حبیب خان

بعنوان:-

برائے شمولیت



# بعدالت سروس ریزرویشن



2. منجانب

حسب خان بنام سید کاؤنٹر

---	مورخہ
---	مقدمہ
---	دعویٰ
---	جرم

## باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بہ لاء میں اپنی طرف سے واسطے پیروی و جواب دہی دکل کارروائی متعلقہ  
آن مقام کے لیے فصل 20 کے تحت

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور  
 بسورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی  
 نیز دائر 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 یا اپنے بجائے تقرر کا اختیار  
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساتھ  
 پرواخت منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانا التوائے مقدمہ کے سبب سے ہوگا۔  
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
 مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند ہے۔

سرف خاں (صاحب راجہ)

الرقوم  
20  
واحد

کے لئے منظور ہے۔

بمقام



**BEFORE THE KHYBER PAKTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 515/2019

Habib Khan Ex-Certified Teacher (BPS-14) s/o Afreen Khan r/o Sair Charbagh District Swat.

.....Appellant


**Versus**

1. District Education officer (Male) Swat.
2. Director Elementary and Secondary Education Khyber Pakhtun Khwa Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Peshawar.

.....Respondents.

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

①

**BEFORE THE KHYBER PAKTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 515/2019

Habib Khan Ex-Certified Teacher (BPS-14) s/o Afreen Khan r/o Sair Charbagh District Swat.

.....Appellant

**Versus**

1. District Education officer (Male) Swat.
2. Director Elementary and Secondary Education Khyber Pakhtun Khwa Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Peshawar.

.....Respondents.

**Parawise Joint 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/miss joinder of necessary parties.
6. That the instant service appeal is against the prevailing law and rules.
7. That the appellant has filled this instant Service Appeal on malafide motives.
8. That the instant Appeal of the Appellant is **badly time barred**.
9. That the instant service appeal is not maintainable in the present form, and above in the present circumstances of the issue.
10. That the appellant has estopped by his own conduct.
11. That the appellant has concealed the material facts from this honorable tribunal.

**FACTS**

1. That the Para No.1 pertains to record, hence, no comments.
2. That the Para No.2 pertains to record, hence, no comments.
3. That the Para No.3 is correct to the extent of grant of leave, the rest of the para is incorrect and denied. In fact, the Appellant concealed the material facts from the department as well as this Honorable Tribunal. The Appellant applied for leave w.e.f 01-04-2008 to 31-03-2010 for the purpose of domestic works. But he went abroad dated 03-04-2008 without taking leave Ex-Pakistan. (**Application and Travel History annexed as annexure A & B**)

2

4. That the Para No.4 is correct to the extent that due to insurgency in the area, the government institutions were closed in the middle of 2009. In 2010-11, the situation of the area was normalized and all the institutions were opened and the government servants were serving as per their routine services. Therefore, the stance of the Appellant about the threats to the government servants in 2010-11 is incorrect and baseless.
5. That the Para No.5 is incorrect and denied. As stated in the para No. 3 above, the Appellant went abroad on 03-04-2008 and returned to Pakistan on 23-11-2010. His leave was expired on 31-03-2010. While he submitted another application dated 11-03-2010 without signature to the office of the EDO E&SE Department Swat for extension of his leave. Another application dated 10-11-2010 duly signed by the Appellant was also submitted by the Appellant for extension of leave while the Appellant was even not present in the country at that time. It is pertinent to mention here that the Appellant was out of the country then how can he submit application for extension of leave by himself. His application for extension in leave was not accepted and he was directed to join his duty on expiry of the sanctioned leave. On the directions of the EDO E&SE Department Swat the Head Master GHS Shawar sent notices to the Appellant to resume his duty vide Notices dated 07-07-2010, 23-08-2010 and 27-09-2010 but he failed to resume his duty. Therefore, the EDO E&SE Department Swat issued absenteeism notice/publications in the **Daily Awsaf** along with others dated 17-07-2011 but the Appellant still failed to resume his duty. Hence, the Appellant was removed from service vide Notification dated 10-08-2011 after observing all codal formalities. It is further stated that the Appellant went abroad on 17-02-2011 and came back on 01-03-2013 to Pakistan. Similarly on numerous occasions he went abroad which is clear from Travel History already attached. **(Applications, Letter of rejection of leave, Notices and Publication annexed as Annexures C, D, E, F, G and H)**
6. That the Para No.6 is correct to the extent of departmental appeal. The rest of the para is incorrect and denied. The appeal of the Appellant is badly time bared. The Appellant should have filed his appeal within the stipulated time if he was aggrieved of his removal from service order.
7. That the Para No. 7 is incorrect and denied. The Appellant willfully remained absent for a long time and has been removed from service after observing all codal formalities. Thus, the instant Service Appeal of the Appellant is bereft of any merit, hence, liable to be dismissed inter-alia following grounds.

#### GROUNDS

- A. That the Para No. A is incorrect and not admitted. The impugned order is not illegal, unlawful and ab-initio.
- B. That the Para No. B is incorrect and denied. The Appellant has been removed from service from the date of his absence after the notice issued in the daily Azadi Swat/Islamabad, daily Shamal Swat and daily Awsaf

3

Swat dated 17-07-2011 as mentioned in the foregoing paras in the facts above.

- C. That the Para No. C is incorrect and denied. Proper proceedings under the law and rule and law were taken against the Appellant.
- D. That the para No. D is the repetition of the above paras, hence, no comments.
- E. That the para No. E is irrelevant to the present issue, the evidences against the Appellant were sufficient for imposing major penalty of removal from service. Therefore, there was no need of enquiry.
- F. That the para No. F is incorrect and denied. Detail reply of this para has already been given in para No. 5 of the facts above.
- G. That the para No. G is incorrect and denied. The Appellant has been treated in accordance with law and rules.
- H. That the para No. H is incorrect and denied. The Appellant has been removed from service after observing all codal formalities.
- I. That the para No. I is incorrect and denied. Notices were issued to the Appellant time and again.
- J. That the para No. J is irrelevant, hence, no comments.
- K. That the para No. k is legal, however, the respondents also seek permission of this honorable Tribunal 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.

  
DISTRICT EDUCATION OFFICER (M)  
SWAT AT GULKADA

  
DIRECTOR,  
ELEMENTARY AND SECONDARY  
EDUCATION KHYBER PAKHTUNKHWA

  
SECRETARY,  
ELEMENTARY AND SECONDARY  
EDUCATION DEPTT PESHAWAR

9

**BEFORE THE KHYBER PAKTUNKHWA SERVICE TRIBUNAL CAMP COURT**

Service Appeal No. 515/2019

Habib Khan Ex-Certified Teacher (BPS-14) s/o Afreen Khan r/o Sair Charbagh  
District Swat.

.....Appellant

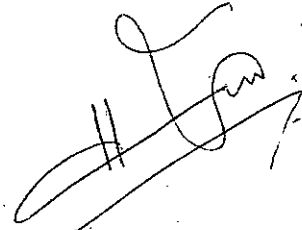
**Versus**

Provincial Govt. of Khyber Pakhtunkhwa & others

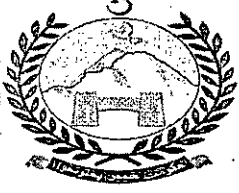
..... Respondents

**AFFIDAVIT**

I, Hussain Ali Litigation Officer, 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.



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



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)  
DISTRICT SWAT

Email: [emisswat@gmail.com](mailto:emisswat@gmail.com),

Phone No. 09469240228

### AUTHORITY LETTER

Mr. Hussain Ali Litigation Officer, office of the undersigned is hereby authorized to submit comments in *Service Appeal No. 515/2019* case titled *Habib Khan Vs Govt of KPK and others* and attend Khyber Pakhtunkhwa Service Tribunal Peshawar on behalf of respondents.

  
DISTRICT EDUCATION OFFICER (M)  
SWAT AT GULKADA

Annexure 'A'

(6)

مختار جناب ایگزیکٹو ڈسٹرکٹ انسپکٹر جنرل (ذرائع) ضلع شوہر  
درساہت: ہیڈ اسٹریٹ، جناب گورنمنٹ ہائی سکول شوہر  
عنوان: درخواست برآمد رخصت (۲ سالہ)  
جناب عالی!

گزارش ہے کہ میں بحیثیت C.T مدرس گورنمنٹ  
ہائی سکول شوہر میں فرائض سرانجام دے رہا  
ہوں۔

گھنٹہ وار مصروفیات کی وجہ سے مورخہ 4.08-11

تا 31 مارچ 2018ء (۲ سالہ)

چھٹی لینا چاہتا ہوں۔

اس لیے اہل آبی صاحبان

مہربانی کر کے مذکورہ چھٹی کے احکامات صادر فرمائیں  
تو عین فواز میں ہوگی۔

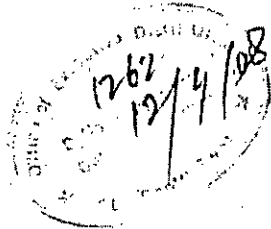
لریضہ - N.C

15602-0326842-9

Chirib Khan C.T P.No:- 0006577

گورنمنٹ ہائی سکول شوہر

Forwarded in original to the Respected EDO S/L Swat  
for favourable consideration and necessary action please.



Head m  
Goen H  
Shawar



FEDERAL INVESTIGATION AGENCY  
**INTEGRATED BORDER MANAGEMENT SYSTEM**  
 FIAHQ G - 9/4 PESHAWAR MOR, ISLAMABAD  
 Fax No: 051-9262376, Tel No: 051-9107219  
**R-11 (TRAVEL HISTORY)**

Annexure 'B'



**TRAVEL HISTORY FOUND ON:** 1560203268429  
 Required By: District Education Officer (M) Swat at Gulkada Swat  
 Letter Number: 9268  
 Department: EDUCATION  
 Request Date: 04-Sep-2021  
 Diary No: 5190 & 20-09-2021  
 Query Date: 21-Sep-2021

**TRAVELER'S CNIC/NIC**  
 1560203268429

**PERSONAL INFORMATION:**  
 NAME: HABIB KHAN  
 BIRTH DATE: 02-JUN-1963  
 FATHER/HUSBAND NAME: AFRIN KHAN  
 NATIONALITY: Pakistan



**TRAVEL DETAILS:**

S.NO	TRAVEL DATE	FLIGHT NO	TRAVEL STATUS	PASSPORT NO	SITE NAME	DESTINATION
1	3-Apr-08 3:37:20	QR-319	Departing	XL4108421	JINNAH INTERNATIONAL AIRPORT	DOHA
2	23-Nov-10 00:58	PK-730	Arrived	XL4108422	JINNAH INTERNATIONAL AIRPORT	RIVADE
3	17-Feb-11 18:38:38	TG-507-DEP	Departing	XL4108421	JINNAH INTERNATIONAL AIRPORT	MASCUT
4	17-Feb-11 18:38:38	TG-507-ARR	Arrived	XL4108421	JINNAH INTERNATIONAL AIRPORT KARACHI	KARACHI
5	30-Apr-13 5:39:36	GF751	departing	XL4108422	JINNAH INTERNATIONAL AIRPORT KARACHI	ARE - UNITED ARAB EMIRATES
6	14-Oct-16 2:01:26	QR803	Arrived	XL4108422	JINNAH INTERNATIONAL AIRPORT KARACHI	KARACHI
7	31-Jan-16 7:39:08	QR811	departing	XL4108422	JINNAH INTERNATIONAL AIRPORT KARACHI	SAU - SAUDI ARABIA
8	10-Sep-19 20:39:33	GF751	Arrived	XL4108422	JINNAH INTERNATIONAL AIRPORT KARACHI	KARACHI
9	3-Jan-19 20:15:06	GF753	departing	XL4108422	JINNAH INTERNATIONAL AIRPORT KARACHI	SAU - SAUDI ARABIA

**NOT FOR COURT USE**





9

Annexure "C"

بخدمت جناب ایگزیکٹو ڈسٹرکٹ آفسیئر ایڈمنسٹری اینڈ سیکرٹری ایجوکیشن ضلع سوات

عنوان: درخواست بہرہ ایک سال چھٹی میں توسیع

جناب عالی!

گزارش ہے کہ میں بچپ سٹی ٹی مدرسہ کلمہ تعلیم میں فرائض انجام دے رہا ہوں۔

یہ کہ مورخہ یکم اپریل 2008ء تا 31 مارچ 2010ء (دو سال) چھٹی لی تھی۔

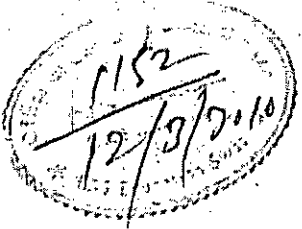
یہ کہ میں مزید یکم اپریل 2010ء سے 31 مارچ 2011ء

تک مزید ایک سال چھٹی لینا چاہتا ہوں اسلئے

اگر آپ صاحبان مہربانی کر کے مذکورہ پیریزڈ کیلئے چھٹی کی منظوری دے دیں تو عین نوازش ہوگی۔

لیضہ  
چیب خان  
C.T

گورنمنٹ ہائی سکول سوات



Signature and Recommendation

DPD. 01/03/2010  
15/10

بخدمت جناب ایگزیکٹو ڈسٹرک آفیسر صاحب ایلمنٹری اینڈ سیکنڈری ایجوکیشن سیدو شریف سوات

عنوان: درخواست برآمد منظوری/توسیع رخصت استحقاقیہ ایک سال از 01-04-2010 تا 31-03-2011

H.M. GHS Sharan  
Kindly submit  
the case as per  
rules 1/10/10.

جناب عالی:

مودبانہ گزارش بحضور کی جاتی ہے کہ میں گورنمنٹ ہائی سکول شور میں بحیثیت سی. ٹی استاد اپنی ڈیوٹی سرانجام دے رہا ہوں اور میں نے دو سال کی رخصت استحقاقیہ لی تھی جو کہ 31-03-2010 کو ختم ہو چکی ہے اور اب مجھے ایک سال کی مزید رخصت استحقاقیہ کی اشد ضرورت ہے۔ اسلئے اگر اب صاحبان مہربانی کر کے مجھے ایک سال کی رخصت استحقاقیہ از 01-04-2010 تا 31-03-2011 دینے کے احکامات صادر فرمائے جائیں تو تا حیات دعا گوں رہوں گا۔

جناب عالی!

العارض 2010

درخواست گزار کا چھٹی 13 مارچ کو رقم یو جی پی تھی۔

1252  
15/11/2010  
ایکا تابعدار

H. M. GHS  
حیب خان (سی. ٹی استاد)

پتھام گورنمنٹ ہائی سکول شور

اور پھر یکم اپریل 2010 سے منبر چھٹی لینے درخواست  
کی جو مندرستہ یو جی پی تھی اور سکول ہذا کو درخواست گزار سے  
سکول میں جاری لینے کیلئے لیا گیا تھا۔ پھر وہ دفعہ ایک نوٹوں واقعہ پر  
رسکو سکول میں حاضر دینے کیلئے لیا گیا تھا لیکن وہ حاضر نہ ہوسکا  
اب آئیڈ بار پھر درخواست چھٹی لینے پیش فرماتے ہیں۔

Head Master  
Govt. High School  
Shawar, Distt: Swat

23  
Answer "D" (11)

**OFFICE OF THE EXECUTIVE DISTRICT OFFICER  
ELEMENTARY AND SECONDARY  
EDUCATION SWAT**

No. 5226 / Habib Khan/CT Dated 29/3/2010

To

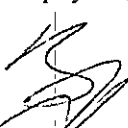
Mr. Habib Khan S/O Afareen Khan CT  
Village Seer PO Charbagh Swat

Subject: EXTENSION IN LEAVE WITHOUT PAY.

Memo:

Reference your application dated NIL on the subject cited, received in this office on 12.03.2010.

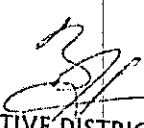
You are directed to join your duty on the expiry of long leave as there is no valid reason for extension of leave.

  
EXECUTIVE DISTRICT OFFICER  
ELEMENTARY AND SECONDARY  
EDUCATION SWAT

Endst No. 5221

Copy of the above is forwarded to :-

PA to the EDO local office.

  
EXECUTIVE DISTRICT OFFICER  
ELEMENTARY AND SECONDARY  
EDUCATION SWAT

OFFICE OF THE HEAD MASTER GOVERNMENT HIGH SCHOOL SHAWAR DISTT:SWAT.

NO 9461

Dated 07/07 /2010.

TO

Mr.Habib Khan CT  
Govt:High School  
Shawar Distt:Swat.

*H.R. Khan*  
*Amman 'E'*  
*Shawar*  
*(1)*  
*(12)*

Subject. EXPIRY OF LEAVE IN R/O HABIB KHAN CT GHS:SHAWAR.

Memo: It is hereby stated for your information vide Executive District Officer elementary & secondary Edu:Swat, letter No.12696/P.No.305 Habib Khan /CT dated 18/6/2010, your application for extension in leave W.e.f.1/4/2010 to 31/3/2011 has been rejected and you are directed to attend the school duty immediately, because your leave has already been expired on 31/3/2010. Otherwise ex-parte decision will be taken against you.

*[Signature]*  
Head master, 7/7/10  
Govt High School,  
Shawar, Distt:Swat

Copy forwarded for information to:  
The Executive District Officer elem:& Sec:Edu:Swat.

*[Signature]*  
Head master, 7/7/10  
Govt High School,  
Shawar, Distt:Swat

*3942*  
*13/7/2010*

~~Amir Khan~~

13

OFFICE OF THE EXECUTIVE DISTRICT OFFICER  
ELEMENTARY AND SECONDARY  
EDUCATION SWAT

No. 12686 F. No. 305/Habib Khan/CT

Dated: 18/6/2010

To

The Headmaster,  
CHS- Shawar Swat.

Subject: EXTENSION IN LEAVE WITHOUT PAY

Memo:

It is submitted that Mr. Habib Khan CT of your school proceeded on leave without pay for the period from 01.04.2008 to 31.03.2010 vide DCO sanction No. 6609-10 dated 19.06.2008.

On the expiry of leave he applied for extension in his leave for further period from 01.04.2010 to 31.03.2011, which was rejected and he was directed to resume duty but he was not present and this office letter undelivered.

You are therefore directed to ask him on his home address under registered cover to resume duty under intimation to this office.

*H.K. 17/6/10*  
EXECUTIVE DISTRICT OFFICER  
ELEMENTARY AND SECONDARY  
EDUCATION SWAT

OFFICE OF THE HEAD MASTER GOVERNMENT HIGH SCHOOL SHAWAR DISTT:SWAT.

Anndwe

(14)

NO: 948/1

Dated <sup>23</sup> 29/8/2010

TO

Mr.Habib Khan CT  
Govt:High school  
Shawar,Distt:Swat.

Subject. EXPIRY OF LEAVE IN R/O HABIB KHAN CT GHS;SHAWAR.

Memo: It is hereby stated for your information vide Executive District Officer elementary & secondary Edu:Swat, letter No.16352/Habib Khan CT dated 3/8/2010, your application for extension in leave W.e.f.1/4/2010 to 31/3/2011 has been rejected and you are once again directed to attend the school duty immediately, because your leave has already been expired on 31/3/2010. Otherwise action will be taken against you under E & D rules, 1973.

Copy forwarded for information to:-  
The Executive Distt:Officer E&S Edu:Swat.

Head Master <sup>23/8/10</sup>  
Govt:High school  
shawar Distt:Swat.

Head Master <sup>23/8/10</sup>  
Govt:High school  
Shawar, Distt:Swat.

Annexure "F"

(15)

OFFICE OF THE EXECUTIVE DISTRICT OFFICER  
ELEMENTARY AND SECONDARY  
EDUCATION SWAT

No. 16352 / Habib Khan/CT

dated 3/8 /2010

To

The Headmaster,  
GHS: Shawar Swat.

Subject: EXPIRY OF LEAVE IN R/O HABIB KHAN CT GHS: SHAWAR

Memo:

Reference your letter No. 946 dated 07.07.2010, on the subject cited above.

You are directed to direct the teacher on his home address under registered to resume his duty immediately. If he failed another call notice after seven days be issued under intimation to this office.

*2/8 2/8/10*  
EXECUTIVE DISTRICT OFFICER  
ELEMENTARY AND SECONDARY  
EDUCATION SWAT



Amexme "G" 16

REMAINDER III

OFFICE OF THE HEAD MASTER GOVT:HIGH SCHOOL SHAWAR DISTT:SWAT.

No. 954/1

Dated 27/9/2010.

To Mr.Habib Khan CT  
GHS:Shawar,Swat.  
Village Seer,P:O  
Charbagh Swat.

Handwritten signature and initials

Subject. EXPIRY OF LEAVE IN R/O HABIB KHAN CT GHS:SHAWAR SWAT.

Memo: It is hereby stated for your information vide Executive Distt: Officer elementary and secondary Edu:Swat, letter No.19412/Habib Khan CT dated 20.9.2010,your application for extension in leave W.e.f 1/4/2010 to 31/3/2011 has been rejected and you are once again directed to attend the School duty immediately,because your leave has already been expired on 31/3/2010.Otherwise action will be taken against you under the existing rules.

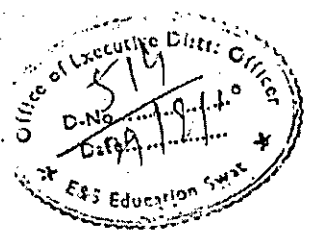
Head Master,  
Govt:High School  
Shawar,Distt:Swat.

Endst:No. 955 / Dated 27/9 /2010.

Copy forwarded for information to:-

- 1.The Executive Distt:Officer E&S Edu:Swat.
- 2.The Office record.

Head Master,  
Govt:High School  
Shawar,Distt:Swat.



OFFICE OF THE EXECUTIVE DISTRICT OFFICER  
ELEMENTARY AND SECONDARY  
EDUCATION SWAT

No/ 19412 /Habib Khan/CT

Dated 20/9/ /2010

To

The Headmaster,  
GHS: Shawar Swat.

Subject:

EXPIRY OF LEAVE IN R/O HABIB KHAN CT

Memo:

Reference your letter No. 948 dated 23.08.2010.

You are directed to issue THIRD call notice to Mr. Habib khan CT of your school to resume his duty immediately, failing which action will be taken against him under the existing rules.

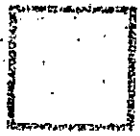
*Dr*  
EXECUTIVE DISTRICT OFFICER  
ELEMENTARY AND SECONDARY  
EDUCATION SWAT  
*19/9/2010*

**STATE OF TEXAS**

**COMMISSIONERS OF THE GENERAL LAND OFFICE**

A. B. ...

Tract	Acres	Section	Block	Subdivision	Notes
1	10	1	1	1	
2	10	1	1	1	
3	10	1	1	1	
4	10	1	1	1	
5	10	1	1	1	
6	10	1	1	1	
7	10	1	1	1	
8	10	1	1	1	
9	10	1	1	1	
10	10	1	1	1	



Annexment H' (18)

وہابیہ سے 3 Removed in 2009

DA - 2016

DA + SA time barred

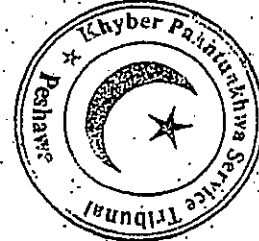
Both accepted on 7-12-17

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
CAMP COURT SWAT

Service Appeal No. 957/2016

Date of Institution... 04.08.2016

Date of decision... 07.12.2017



Shoukat Ali son of Muhammad Shafiq, R/O Kokari, Mingora Swat Ex-Constable  
No. 4741, FRP Platoon No. 83, P.S Mingora Swat: ... (Appellant)

Versus

1. Superintendent of Police, FRP Malakand Region, Malakand and two others.  
(Respondents)

ARBAB SAIFUL KAMAL,  
Advocate

For appellant.

MR. KABIRULLAH KHATTAK,  
Addl. Advocate General

For respondents.

MR. NIAZ MUHAMMAD KHAN,  
MR. MUHAMMAD HAMID MUGHAL,

CHAIRMAN  
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - This judgment shall also  
disposed of other connected appeals No. 697/2016 Muhammad Said, No.  
958/2016 Fazal Yaseen, No. 959/2016 Afzal Khan, and No. 961/2016 Umar Ali  
as in all the appeals common questions of law and facts are involved.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The appellant Shaukat Ali, Umar Ali and Afzal Khan were removed  
from service on 28.08.2016, the appellant Fazal Yaseen was removed from

**ATTESTED**

  
EXAMINER

service on 02.02.2009 and the appellant Muhammad Saeed was removed from service on 21.09.2009. The appellants then filed departmental appeals belatedly which were rejected then the appellant also approached this Tribunal belatedly not within the stipulated time.

### ARGUMENTS

4. The learned counsel for the appellants argued that the very orders of removal from service are void because all these orders have been given retrospective effect. That in view of judgment reported as 1985-SCMR-1178 no limitation shall run against void order.

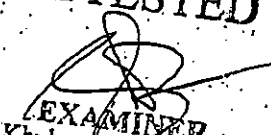
5. On the other hand the learned Addl. Advocate General argued that the departmental appeals are hopelessly time barred. That the revision within the meaning of Rule 11 -A of Khyber Pakhtunkhwa Police Rules, 1975 could not enlarge the period of limitation. That all the codal formalities were fulfilled by the department.

### CONCLUSION

6. Regardless of other merits of the case it is an admitted position that all these orders have been given retrospective effect and in view of so many judgments delivered by this Tribunal on the basis of judgment reported in 1985-SCMR-1178 the retrospective order is a void order and no limitation shall run against void order.

7. Since no limitation runs against a void order, any successive appeals or revision would not curtail the rights of the appellants qua the limitation or in other

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal

respect. Presuming that all other elements of due processes have been complied with, the void order cannot be sustained on this score alone.

8. As a sequel to the above discussion, the present appeals are accepted and the appellants are reinstated in service. The department is however, at liberty to hold denovo proceedings in accordance with law within a period of ninety days. The intervening period shall be subject to the final outcome of the denovo proceedings. Parties are left to bear their own costs. File be consigned to the record room.

Announced self - Niaz Muhammad Khan,  
07-12-2017 Chairman  
Camp Court Swat

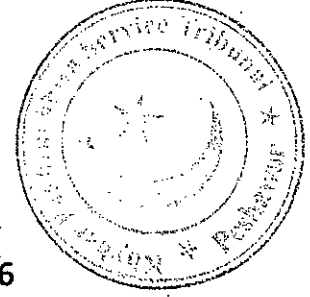
self - M. Hamid Mughal,  
Member

Certified to be true copy  
07-12-2017  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 13-12-17  
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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

Service Appeal No. 562/2016



Date of Institution. ... 16.05.2016

Date of Decision. ... 02.03.2018

Rahim-ud-Din son of Syed Rehman, R/O Ajo Talash, Tehsil Timergara,  
District Dir Lower. ... (Appellant)

**VERSUS**

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar anmd two  
others. ... (Respondents)

Mr. Sajjad Ahmad Khan, Advocate  
Mr. Muhammad Asif Yousafzai, Advocate.  
Arbab Saiful Kamal, Advocate ... For appellants.

Mr. Usman Ghani, District Attorney and  
Mr. Muhammad Jan, Deputy District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... Chairman.  
MR. MUHAMMAD HAMID MUGHAL, ... Member.  
MR. MUHAMMAD AMIN KHAN KUNDI, ... Member.  
MR. AHMAD HASSAN, ... Member.  
MR. GUL ZEB KHAN, ... Member.

**JUDGMENT**

**NIAZ MUHAMMAD KHAN, CHAIRMAN-**

The following appeals are also clubbed with this appeal for decision of  
common issue explained below:-

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**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

1. Appeal No. 1259/2011 Fazal Malik
2. Appeal No. 1994/2011, Mst. Zaitoon Bibi,
3. Appeal No. 1183/2014, Zafeerullah Khan,
4. Appeal No. 1186/2014, Muhammad Bashir,
5. Appeal No. 103/2015, Muhammad Raza.

### FACTS.

1. In a number of appeals this tribunal (DB) delivered judgment as to void status of retrospective order of major punishment of removal/dismissal/compulsory retirement (for brevity "termination").

The mother ruling relied upon was *Noor Muhammad v The member Election Commission and others* (1985 SCMR 1178). One of such judgment of this tribunal is entitled "*Muhammad Ismail v Deputy Inspector General and another*" bearing Service Appeal # 463 OF 2012 decided on 22-11-2017. Another Judgment of this Tribunal is entitled "*Arif Khan v Inspector General of Police and three others*" bearing # 1213/2015 decided on 18-12-2017. In almost all these judgments of this tribunal it was decided that retrospective order being void could not be modified to give the same prospective effect under section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. It was also decided that retrospective order being void order would not attract any limitation. All the present members of this Tribunal had delivered the same judgments. But during hearing of this appeal it was brought to the notice of the DB comprising of the Chairman and one Learned

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

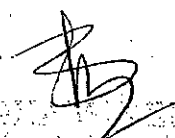


member that another bench (DB) of this tribunal had delivered a contrary opinion qua the modification of retrospective part of void order in service appeal No. 984/2013 entitled "*Muhammad Ayaz Vs. Government of Khyber Pakhtunkhwa through Secretary, E&SE, Peshawar and others*" decided on 14-11-2017. Going through this judgment it appeared that both the learned members of the bench had already delivered the former opinion in first two mentioned appeals above and now they have delivered contrary opinion while sitting not in larger bench and without discussing their earlier judgments. Perhaps the Learned members were not apprised of the earlier judgments neither the same judgments were pressed into service nor discussed. The bench (DB) hearing the present appeal could not decide the issue due to two contrary views of this tribunal. It was therefore, considered necessary to constitute a larger bench to decide the issue.

#### ARGUMENTS.

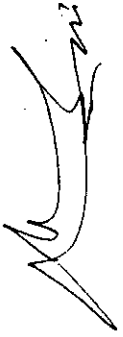
2. All the lawyers for different appellants defended the first opinion while the DDA supported the second opinion. In favor of first opinion the judgments referred to in conclusion part were relied upon. In favour of second opinion the DDA relied upon judgments discussed also in conclusion part.

ATTESTED

  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

### CONCLUSION.

3. This Tribunal is now to decide three questions. The first one is whether the retrospective order of termination in any form is a void order? And if so can void order be modified to make it operative prospectively? The third and final question would be that if prospective part of the order is held to be legal one after modification then whether limitation would be attracted to the legal portion of the order?
4. In the first opinion of this Tribunal as to void status of retrospective order and non modification of such order the reliance was placed only on the judgment reported as 1985 SCMR 1178 entitled "*Noor Muhammad v The member Election Commission and others*". This judgment declares retrospective order as void order. The other judgments relied upon by the lawyers for appellants also are based mainly on this mother judgment therefore, there is no need to discuss those judgments. But nothing is there in *Noor Muhammad* judgment as to modification of such void order and whether the order could be modified to make it prospective and legal. This tribunal is first to discuss *Noor Muhammad* case. In this case the issue before the august Supreme Court was not of a service matter but of disqualification of a candidate for elections who was in service and was terminated retrospectively. This Tribunal while delivering first opinion was not assisted anymore and it was opined that void order



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Signature  
 Director  
 Service Tribunal  
 Faisalabad

could not be rectified. The second opinion of this tribunal as to rectification of void order is also not based on any supportive rulings or law. The august Supreme Court in the same judgment had referred to a judgment of Lahore High Court (PLD 1953 L 295). This judgment was delivered in a service matter declaring such retrospective order as void. Another judgment delivered in service matter by august Supreme court also held the same view [2002 PLC(C.S) 1027] relying mainly on mother judgment of 1985. A judgment of FST [ 2007 PLC (C.S) 5] has declared such retrospective order as void *ab initio* and the whole proceedings were declared to be nullity for being retrospective. But in all these judgments the question of separation of prospective part of the order is not discussed. A judgment referred to by the august Supreme Court in mother judgment is PLD 1964 Dacca 647 entitled "*Dr Muhammad Abdul Latif v The Province of East Pakistan and others*" which has touched this aspect of the issue though not decided conclusively. In this judgment the worthy High Court referred to some judgments from Indian Jurisdiction and held that such retrospective order could be legal to the extent of prospectivity and needed not be bad in toto. But their lordships did not reach a definite conclusion and in para 9 of the judgment while discussing different judgments from Indian jurisdiction left the discussion uncompleted by holding that the counsel for the appellant requested that his client would be satisfied if declaration was given to the effect that the order

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of dismissal covering the period prior to the order was bad. Their lordships wrote that they did not enter into detailed discussion of the aforesaid question and held for the purpose of the appeal that an order of dismissal of the nature might be supported to the extent it was found valid and need not be declared bad in toto. But in this judgment reliance was placed on judgments from Indian Jurisdiction. Now we are to see whether position in India qua the present law in this part of our country (Khyber Pakhtunkhwa particularly) is the same and whether after the judgment of *Dr Muhammad Abdul Latif* above any change in legal scenario emerged in Pakistan and for that matter this Province.

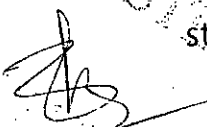
5. In order to appreciate this judgment and its relevance and applicability we would have to discuss position in India on the subject. This issue was raised and discussed in India in many cases including *Sudhir Ranjan Halder v State of West Bengal* referred to in *Dr Muhammad Abdul Latif* case above. The Kerala High Court has now finally decided this issue in a case entitled "*State of Kerala v A.P Janardhanan*" in WA # 2773 of 2007 decided on 29-03-2008 (<https://.indiankanoon/doc>). This judgment has traced the history of rulings on the subject and has finally decided that in India such retrospective order is not a void order for the reason that no legal precedent or law was available in India where under such order could be declared void. That in some Indian service laws express authority

TESTED

was given to executive to pass such retrospective orders ( Para 12 to 14 of the judgment). It was then finally held that in those cases where no express authority was given to executive to pass retrospective order of removal then that order would be illegal and not void and that prospective part can be separated from retrospective part and can be effective prospectively. The opinion in *Dr Muhammad Abdul Latif* case based on Indian jurisdiction had no relevance in Pakistan because at the time when this judgment was delivered we had a judgment of worthy Lahore High Court (PLD 1953 L 295) which had declared such retrospective order as void order. It was perhaps in this context that their lordships in *Dr Muhammad Abdul Latif* case did not deliver binding and conclusive judgment to be followed as ratio and left the matter undecided by giving just passing remarks which would be treated merely as *obiter*. And now in Pakistan two judgments of august Supreme Court referred to above have declared such order as void order. The first question is decided in positive.

6. Now this tribunal is to see whether a retrospective void order in this area can be modified and prospective portion be separated as effective and legal. This would need discussion and application of mind as we have failed to lay hand on any judgment which prohibited such severance. The first conclusion as drawn by this tribunal and the FST in case reported in [2007 PLC (C.S) 5 ] was based only on the status of void order. It was understood that since void order was a

ATTESTED



nullity hence could not be rectified. One other judgment on the same point is 1993 PLC (C.S) 308 of FST, entitled *Abbas Ali v The Executive Engineer and others*. We have also failed to lay hand on any judgment of superior courts which allows such rectification of void orders (Indian judgments and *Dr Muhammad Abdul Latif* judgment allow such severance but as discussed above in India such order is only illegal and not void. In *Dr Muhammad Abdul Latif* case the order was held illegal and not void on Indian pattern ). We are now to come out of this imbroglio by applying juristic sense and prevalent rules of interpretation on the subject.

7. The assistance and help can be sought from jurisprudence of *vires* of laws. We know that Courts while declaring any law as *ultra vires* have a tool and technique to save valid portion of *ultra vires* laws. This is called rule of reading down and severance. This leads us to conclusion that if any law is declared *ultra vires* then legal portion if separable can be saved and need not be held to be *ultra vires* in toto due to its being solely in conjunction with bad law. Though this tool is available in saving statutes but on the same analogy it can be used in executive orders. Similarly if any legal portion of an executive order is separable then there seems no hurdle in not saving the same. Secondly the retrospective order is not held to void *ab initio* by august Supreme Court but only void. Only FST [2007 PLC(C.S)5] has declared it as such but without any reference to any form of jurisprudence. The

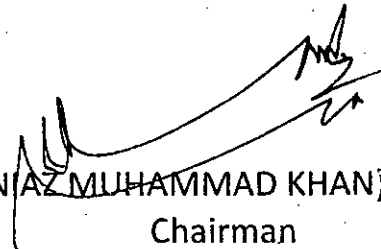
difference is that the former is invalid right from the foundation and cannot be corrected. But the latter is not invalid from the start but has been made invalid subsequently. In retrospective order the foundation is valid and whole proceedings are valid and only in the final order the termination is made retrospective. This tribunal is therefore, of the view that question no 2 as framed is decided in positively holding that such order can be modified.,


8. Coming to the third question this tribunal is of the view that since the retrospective order is held to be a void order no limitation would be attracted to challenge the same. If limitation is applied then how the tribunal would rectify the same as rectification would be made only after declaring the appeals to be within time. The tribunal cannot rectify any such order without assuming jurisdiction and no jurisdiction can be assumed without bringing the appeal within time.

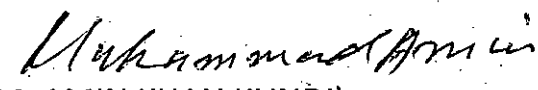
9. In the last this tribunal deems it appropriate to discuss one judgments of Punjab Service Tribunal on subject. This is in case entitled "*Ihsanul Haq Chaudhery v The Deputy Commissioner*". (1988 PLC (C.S) 511). According to this judgment the error of retrospectivity can be modified. This opinion is based not on any ruling but on wordings used in *Noor Muhammad's* case. In *Noor Muhammad* case the Court observed that order would not operate retrospectively but prospectively. From this observation the Punjab Service Tribunal held that such retrospective order was not void and could be rectified. But

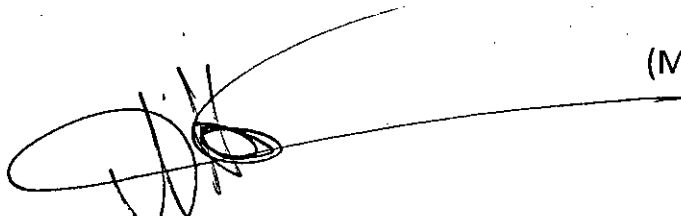
this tribunal with due deference is not inclined to accept the conclusion of the Punjab Service Tribunal about void status of the retrospective order as the august Supreme Court in Noor Muhammad's case has categorically held such order as void order. The Supreme Court did not discuss the rectification in this judgment. However the effect from prospective date as observed by august Supreme Court would strengthen our above conclusion that the prospective part can be severed and protected despite the nature of the order as void.

**ANNOUNCED**  
02.03.2018

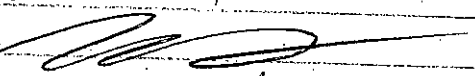
  
(NIAZ MUHAMMAD KHAN).  
Chairman

  
(M. HAMID MUGHAL)  
Member


  
(M. AMIN KHAN KUNDI).  
Member

  
(AHMAD HASSAN)  
Member

  
(GUL ZEB KHAN)  
Member

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(Approved for reporting)

Certified to be true copy  
  
 Kinross & Co. Pvt. Ltd.  
 Service Tribunal,  
 Peshawar



2  
✓  
Void no procedure adopted

To,

1. Provincial Police Officer,  
KPK, Peshawar.
2. Deputy Inspector General of Police  
Malakand Division, Malakand
3. District police officer Swat

Subject:- COMPLIANCE OF JUDGMENT DATED.02.05.2016 IN  
LETTER AND SPIRIT.

Respectfully Sheweth:-

Please comply with judgment  
dated.02.05.2016 of the Hon'ble Tribunal passed in Appeal  
No.27/2013 in letter and Spirit and Obligated. Certified copy  
attached.

Moreover, my arrival report for assumption of  
the charge be also accepted.

Muhammad Tajuddin  
S/o Shah Nazar Khan  
R/o Kas Kalam Swat,  
Ex.C. No.117, Pesh Inam  
DG House, Malakand.

Dated.14.05.2016

BEFORE KPK SERVICE TRIBUNAL PESHAWAR



S.A No. 27 /2013

Dr. W. B. Bano  
Secretary  
No. 59  
dated 04-01-13

Taj Uddin S/o Shah Nazar Khan,  
R/o Kas Kalam, Ex. Constable No.117,  
Pesh Imam, DIG House, Malakand ..... Appellant

Versus

1. Provincial Police Officer, KPK,  
Peshawar.
2. Deputy Inspector General, Malakand  
Division, Malakand.
3. District Police Officer, Swat..... Respondents

⊕<=>⊕<=>⊕<=>⊕<=>⊕

APPEAL AGAINST OFFICE ORDER  
NO.3507 DATED 27.11.2012 OF  
R.NO.1 WHEREBY REVISION  
PETITION AGAINST ORDER  
NO.1032/E, DATED 18.02.2012 OF  
R.NO.2 WAS REJECTED AS R.NO.2  
HAD REJECTED DEPARTMENTAL  
APPEAL AGAINST O.B. NO.48,  
DATED 11.03.2010 ON 18.02.2012  
OF R.NO.3.

⊕<=>⊕<=>⊕<=>⊕<=>⊕

4/1/2013

ATTESTED

Respected Sheweth,

1. That appellant was appointed as Constable on 16.03.2009.  
He was performing his duties with R.No.2 as Pesh Imam  
also in his house.

Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
2	3



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
CAMP COURT SWAT.

APPEAL NO.27/2013

(Taj-ud-Din-vs-Provincial Police Officer, KPK, Peshawar and others etc).

02.05.2016

JUDGMENT

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN: Appellant

with counsel and Mr. Imranullah, Inspector (legal) alongwith Mr. Muhammad Zubair, Senior Government Pleader for respondents present.

Tajud Din son of Shah Nazar, hereinafter referred to as the appellant, has preferred the instant appeal against the original order dated 11.03.2010 followed by order passed on departmental appeal dated 18.02.2012 and order passed in review petition dated 27.11.2012.

Brief facts of the case are that the appellant was serving as Constable when discharged from service with immediate effect due to his links with terrorists/miscreants organization.

Perusal of the record would suggest that the first original order was passed on 11.3.2010 while the appellant was handed over to Pak Army on 10.3.2010 i.e. one day earlier than passing the impugned order. According to the latter

Commanding Headquarter 37 Division appellant was investigated by the Pak Army personnel and declared clear by the concerned authority. Apart from the said certificate appellant was not proceeded against departmentally as neither any charge-sheet nor any statement of allegations was served on him nor enquiry was conducted and hence the appellant was condemned unheard and the impugned order is a void order finding no support from any legal provision of service law.

For the above mentioned reasons the appeal is accepted and as a consequence thereof appellant is reinstated in service with back benefits. The respondents may, in case of need, proceed against the appellant afresh and in such eventuality proceedings shall be completed within a period of two months. Parties are however left to bear their own costs. File be consigned to the record room.

Announced:  
02.05.2016

Sd/- M. Azim Khan Afzidi,  
Chairman  
Sd/- Abdul Latif,  
Member

Certified to be true copy

EMANUEL R  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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