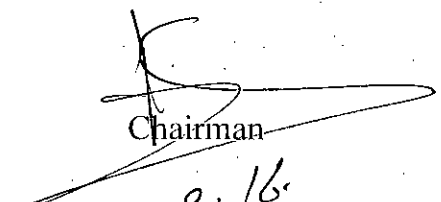


199/2016

01.09.2016

Counsel for the appellant submitted an application for withdrawal of the appeal. File has been requisitioned for today.

Dismissed as withdrawn. File be consigned to the record room.


Chairman

ANNOUNCED

01.09.2016

01.09.16

21.03.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was Serving as Assistant Director when subjected to inquiry on the allegations of using political influence for posting and removed from service vide impugned order dated 14.10.2015 where-against he preferred departmental appeal on 26.10.2015 which was not responded and hence the instant service appeal on 23.2.2016.

That the appellant was condemned unheard as no opportunity of hearing was extended to him and the inquiry was not conducted in the prescribed manners.

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/comments for 10.5.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

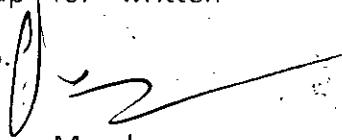
10.5.2016

Appellant with counsel and M/S. Khursheed Khan, SO and Hameedur Rahman A.D (itigation) alongwith Addl. AG for the respondents present. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 18.08.2016 before S.B.


Chairman

18.08.2016



Counsel for the appellant and Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. Request accepted. Another last opportunity granted. To come up for written reply/comments on 26.10.2016 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 199/2016


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04.03.2016	<p>The appeal of Mr. Aurang Zeb resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>21-3-16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Aurangzeb Ex-Assistant Director Basic Education Improvement Program received to-day i.e. on 23.02.2016 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Impugned order is illegible which may be replaced by legible/better one.
- 2- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 3- Annexures of the appeal may be attested.
- 4- Annexures of the appeal may be flagged.
- 5- Five more copies/sets of the appeal along with annexures i.e. complete in respect may also be submitted with the appeal.

No. 303 /S.T,

Dt. 23/2 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Asif Yousafzai Adv. Pesh.

Respected Sir ..

- 1- Removed
- 2- Removed
- 3- Removed
- 4- Removed
- 5- Removed



BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 199 /2016

Aurang Zeb

V/S

Govt: of KPK

INDEX

No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-04
2.	Copy of inquiry report	A	05-09
3.	Copy of show cause notice.	B	10
4.	Copy of reply to show cause	C	11-12
5.	Copy of letter for personal hearing	D	13
6.	Copy of removal order	E	14
7.	Copy of departmental appeal	F	15-17
8.	Copy of comments of department	G	18-19
9.	Wakalat Nama	-----	20

APPELLANT

THROUGH:



(M. ASIF YOUSAFZAI)



(TAIMUR ALI KHAN)

ADVOCATES, PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 199 /2016

Auranzeb Zeb Ex-Assistant Director,
Basic Education Improvement Programme,
Directorate of Elementary & Secondary Education,
KPK, Peshawar.

K.W.P. Province
Service Tribunal
Case No. 133
dated 23-2-2016

(Appellant)

VERSUS

1. Govt: of KPK through Chief Secretary KPK, Peshawar.
2. The Chief Secretary, KPK, Peshawar.
3. The Secretary (E&SE) KPK, Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 14.10.2015, WHEREBY THE
APPELLANT WAS REMOVED FROM SERVICE AND NOT TAKING
ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT
WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER
DATED 14.10.2015 MAY BE SET ASIDE BEING PASSED IN THE
VIOLATION OF LAW AND RULES. THE RESPONDENT DEPTT: MAY
PLEASE BE DIRECTED TO REINSTATE THE APPELLANT WITH ALL
BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY
WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE
THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to file
Albee
23/2/16

as-submitted to-day
and filed,

Registrar

9/3/16.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was serving as Assistant Director in the Basic Education Improvement Programme, Directorate E&SE, Peshawar and has more than 20 years of service at his credit.
2. That the inquiry was conducted against Mr. Muhammad Arif, Subject Specialist and Ms. Durre Shehwar SDEO(F) Peshawar. The appellant in that inquiry recorded his statement as witness but the inquiry officer also recommended one step demotion for the appellant. (Copy of inquiry report is attached as Annexure-A)
3. That on the basis of that inquiry, the appellant was also served with the show cause notice which was duly replied by the appellant in which he denied all the allegation therein. (Copies of show cause notice and reply are attached as Annexure-B&C)
4. That the appellant was called for personal hearing vide notification dated 3.7.2015, however the appellant was removed from service without conducting personal hearing of the appellant on vide order dated 14.10.2015. (Copies of notification dated 3.7.2015 and removal order are attached as Annexure-D&E)
5. That against the removal order, the appellant filed departmental appeal on dated 26.10.2015 which was not responded within the statutory period of ninety days. (Copy of departmental appeal is attached as Annexure-F)
6. That now the appellant has no other remedy but constrain to file the instant appeal on the following grounds amongst others.

GROUND:

- A) That the impugned order dated 14.10.2015 and not taking action on the departmental appeal of the appellant is against the law, rules, norms of justice and material on record. Therefore not maintainable and liable to be set aside.
- B) That the initial and actual under E&D Rules, 2011 was passed and processed against Mr. Muhammad Arif, Subject Specialist and Ms. Durre Shehwar, SDEO (Female) and the appellant statement in that inquiry proceeding was recorded as a witness and as such the inquiry in which the appellant's statement was recorded as a

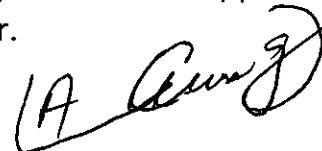
witness could not be based for imposing the penalty against the witness/appellant.

- C) That no charge sheet, statement of allegation issued to the appellant nor any regular inquiry has been conducted while imposing the major penalty upon the appellant. Even the competent authority has never passed any dispensing and regular inquiry under E&D Rules, 2011 which is mandatory and non observance of the said rules caused great miscarriage of justice to the appellant.
- D) That even the chance of personal hearing was not afforded to the appellant despite his request in his reply to the show cause notice, thus such attitude of the competent authority amounts to the condemnation unheard and as such resultant action and subsequent orders are nullity in the eyes of law, keeping in view various judgments of the superior courts in this respect.
- E) That the penalty is also amounting to discrimination because one of the witness namely Dr. Tariq and Mr. Muhammad Arif have already been exonerated in the said proceedings whereas the appellant has been penalized in share violation of law and E&D rules, 2011. It is also worth to mention here that the said case was also referred to the Anticorruption Department which has been filed by the Anticorruption Establishment being baseless one.
- F) That it is also worth to mention here that the actual culprits namely Ms. Durre Shehwar, SDEO (Female) has been left un-action and unpunished.
- G) That as there is case made out of misconduct and corruption against the appellant beyond the shadow of doubt, therefore, the penalty imposed the appellant is liable to be set aside.
- H) That on departmental appeal, the Chief Minister KPK, asked comments from the department and in the comments, the department recommended personal hearing of the appellant, however the competent authority did not bother to conduct personal hearing of the appellant and removed him from service in slipshod manner. (Copy of the comments of the department is attached as Annexure-G)
- I) That according to judgment of Supreme Court the departmental appeal of the appellant should be responded as reported in 2011 SCMR-01, but despite that no action was taken on the

departmental appeal of appellant which proves malafide on the part of respondent Deptt; .

- J) That the appellant has been condemned unheard and has not been treated according to law and rules.
- K) That the appellant seeks permission to provide other grounds and proof at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.



APPELLANT
Aurang Zeb

THROUGH:



(M. ASIF YOUSAFZAI)

&


(TAIMUR ALI KHAN)

ADVOCATES, PESHAWAR

OFFICE OF THE
DEPUTY COMMISSIONER,
DIR LOWER

5 A (5)

Registered.

No. 7148-50 /EA
Date 6 /06/2014

To

1. Mr. Aurang Zeb Assistant Director, Basic Education Improvement Programme (BEIP), Directorate of Elementary & Secondary Education Peshawar.
- ✓ 2. Mr. Muhammad Ayaz Assistant Director, Basic Education Improvement Programme (BEIP), Directorate of Elementary & Secondary Education Peshawar.
3. Dr. Muhammad Tariq, Manager Prime Minister Programme District Health Office, Shamansoor Jehangiri Road Sawabi.

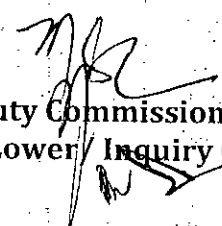
Subject:

INQUIRY AGAINST MR. MUHAMMAD ARIF S.S. GHSS HAZARKHAWANI & M.S DURRE SHEHWAR SEDO(F) PESHAWAR.

The undersigned has been appointed as Inquiry Officer to conduct inquiry against the above named accused officers into the charges, framed in the Charge Sheet as statement of allegations.

After hearing the accused officers on 5/6/2014, it has been observed that your attendances in the subject inquiry is essential.

You are therefore directed to attend this office on 17/6/2014 at 11:00 AM.


Deputy Commissioner,
Dir Lower/ Inquiry Officer.

No. 7151-53 /

Copy forwarded to:-

1. Mr. Muhammad Arif SS, GHSS Hazarkhawani.
2. M.S Durre Shehwar, SDEO (F) Peshawar.
3. Mr. Haq Nawaz Khan, Superintendent, Elementary & Secondary Education Department Peshawar.

They are directed to attend this office on 17/6/2014 at 11:00 AM for further proceedings.

ATTESTED



Deputy Commissioner,
Dir Lower/ Inquiry Officer.

①
⑥

**REPORT OF THE ENQUIRY AGAINST Mr. MUHAMMAD ARIF, SUBJECT
SPECIALIST AND Ms. DURRE SHEHWAR, SDEO (F), PESHAWAR**

Mr. Muhammad Arif, SS, was appointed as Superintendent in the BDS, 1st Professional Examination held at the Abbotabad International Medical college, Abbotabad w.e.f 21.3.2014 to 31.3.2014 (Flag-A). One, Mr. Tariq, approached Secretary Elementary & Secondary Education via email dated April 7, 2014; stating that Mr. Muhammad Arif demanded Rs. 150,000 as bribe for helping his son during the exam but he managed to handover Rs. 100,000 instead. In yet another email text, Dr. Tariq promised of providing relevant proof which he provided in the shape of audio recording of two phone calls made to Mr. Muhammad Arif and Ms. Durre Shehwar (Flag-B). Based on the information, Charge Sheets/Statement of Allegations were issued to Mr. Muhammad Arif, Ex- Subject Specialist GHSS Chamkani and Ms. Durre Shehwar, SDEO (F), Peshawar under Notification NO.SO(S/M) E&SED/4-17/2014/Muhammad Arif SS dated 14/5/2014 (Flag C) and the undersigned was appointed as inquiry officer to scrutinize conduct of the officers and submit report.

Issues before the undersigned were to ascertain as to whether Mr. Muhammad Arif performed duty as Superintendent in BDS 1st year examination in Abottabad International Medical College, Abottabad without prior approval/ permission of E & SE Department; he demanded Rs 150,000 as bribe for facilitating son of Mr. Tariq and received Rs 100,000 for the above purpose through Durre Shehwar, SDEO (F) as a broker or otherwise.

PROCEEDINGS:

Both the accused were directed to submit written defense and to appear for personal hearing on 5.6.2014 (Flag D). The accused officers submitted written replies to the allegations/Charges which are placed at (Flags E & F). The audio recordings were played before the accused officers and written statements were obtained from both of them regarding the conversation in the recordings. Both attested that the voices were theirs. The SDEO admitted the money transaction referred to in the recording but denied its relevance with the examination. Mr. Arif, on the other hand, states that Mr. Tariq was an unknown person for him and that he later on called Durre Shahwar for confirmation but she denied the transaction. Mr. Arif further states that he was tackling the issue of "blame for the examination hall" while driving his car. Therefore, he could not focus on the content of the phone call (flags G & H). Both the accused were asked certain questions; who denied all the charges being baseless and malafide (I & J).

The SDEO while commenting in-writing on the audio recording, admitted that Mr. Aurangzeb and Mr. Muhammad Ayaz (Both Ex Assistant District Education Officers) contacted her for extending help to their relative. Therefore, both the officers alongwith Dr. Muhammad Tariq, the Complainant, were asked to attend office of the undersigned on 17.6.2014 (Flag K). In his response to the Questionnaire, Mr. Aurangzeb (now AD) refused the voice in the recording to be his but admitted that he had requested Durre Shahwar to extend help to his relative. He further informed that his relative had failed again (Flag L). Mr. Muhammad Ayaz (Assistant Director, Basic Education Improvement Programme, Directorate of Elementary & Secondary Education) stated that he had just called her to help the relative of Mr. Aurangzeb (Flag M). Dr. Muhammad Tariq, strange enough, even refused his voice in the recording and payment to Durre Shahwar but he said his son had failed again. He disowned the complaint even (Flag N).

ATTESTED


2 (7)

Similarly, Mr. Arif, while giving assurance to the caller of his support rendered to the student (in the audio recording), named two other persons namely, Mr. Atif and Mr. Innam. Mr. Innam had requested for advancing help to the student while Mr. Atif was the outside "Helper". All this further prove the charges leveled against him.

Commenting on authorization for the exam duty, both the officers claimed that they had obtained proper permission as per past practice. Supporting his point, Mr. Muhammad Arif submitted Appointment Letter from the Deputy Controller of Khyber Medical University (as if he is the employee of the University) and a certificate from the Principal of his School (Flag O). It may be pointed out that KMU is an independent entity working and controlled by its statute with regulatory role of Higher Education Department and Health Department. The Elementary & Secondary Education Department, however, is a distinct Provincial Government Department which has not been taken on board before sending its employee for exam duty at a private medical college.

Ms. Durre Shahwar, on the other hand, has not been allowed even by the KMU. She presented only an application addressed to Director E & SE, with forwarding signature of the Dy. Director (Dev.), asking for the exam duty and, on the pretext, to see her son studying there. This is the document which led her to claim that she has been allowed for the duty. No formal permission of the Department was obtained for attending the dubious exam duty (Flag P).

The E & SE Department has not devised any Policy/ Guidelines for exam duty at a University/Private college. Some guidelines are, however, available in the shape of minutes of the meetings which provide a base for such duties at the BISEs- attached formations of the E & SE Department (Flag Q).

LIMITATION:

Mr. Arif, in the audio recording, named two persons namely, Mr. Innam and Mr. Atif who played important roles in the illegal deal. Mr. Innam, according to Mr. Arif, called him to extend help to the student and Mr. Atif helped in transmitting the cheating material to the student via his mobile phone. However, due to the limited time allotted for completing the instant inquiry, Mr. Innam and Mr. Atif could not be called for taking their statements. In the interest of justice, however, both the persons may be located with the help of Mr. Arif and Mr. Auragzeb and proceeded against under the relevant law.

FINDINGS:

No comments

No comments

1. Neither Mr. Muhammad Arif nor Ms. Durree Shahwar could produce any document which shows that prior approval of Elementary & Secondary Education Department was obtained for taking the exam duty at the private Medical College at Abbottabad.
2. Based on the audio recording, written statements and his response to the Questionnaire, Mr. Arif has extended the illegal help to the student in return of Rs. 100,000 as bribe. This is evident from his confessions in the audio recording regarding extending the required help and the trust in the co-accused, Ms. Durre Shehwar.

ATTESTED

[Handwritten signature]

No count
for moral support
I don't know Arif

No count

No count

I did not know
Mr. Arif -
assumptions

I have once
called Durr for
but the rest
of story is
based on
assumptions.

It is also based
on assumptions.
I have never
been threatened
by any person
having no involvement
in story.

3. Similarly, the charge leveled against ~~Ms. Durre Shahwar of being a broker~~ has been proved. Mr. Arif confirms that she had requested him for the help. Being interested, she went as an invigilator in the said exam even without taking the pain of getting formal permission of her administrative department. Moreover, she confirms, in the audio recording, that the amount has been paid to Mr. Arif. The counter argument she forwarded in writing, after hearing the audio recording, that the contents in the audio recording are not in the context of examination is baseless as she herself talks about the situation in the hall and complains about the behavior of Mr. Arif; assuring the caller that the student solved all the questions with courage. She rejoiced and thanked Aliah that the exam ended peacefully.

4. It is proved further, that Mr. Aurangzeb and Mr. Muhammad Ayaz (Assistant Directors in the Directorate of E & SE) requested Ms. Durre Shahwar for extending help to the student. This point is clear from the written statements of all the three. Moreover, Mr. Arif also admitted in the audio recording that Ms. Durre Shahwar and one Mr. Innam had requested him for helping the student.

5. During telephonic conversation allegedly with Dr. Tariq, Mr. Arif recognizes the student, recalls the way he was helped, comments upon the behavior of the person (Mr. Arif) who was tasked to help from outside through mobile phone and criticized disclosing of the secret by the Helper.

6. Mr. Arif and Ms. Durre Shahwar know each other well and have long and durable working relationship (10/12 years as stated by Mr. Arif in the audio recording). They trust each other and cannot afford to discontinue the mutually beneficial business of extracting money from exam duties. It is evident from the voice recording that although the amount (Rs. 100,000) had not been handed over to Mr. Arif till the call was made to him, allegedly by Dr. Tariq, but he did not allow the caller to discuss it with Ms. Durre Shahwar telling that he himself will discuss the matter with her at an appropriate occasion. Mr. Arif further told that if he felt that his son had been helped out in the exam then he needed not worry about the money; that he should consider that That money had been received to him.

7. Mr. Aurangzeb knew the working relationship between the accused, therefore, he tried to strike the deal between them and Dr. Tariq who is his relative. Knowing that his relative (the student) was not helped out; he tried to punish both by managing the call recordings although he refused the voice to be his. Had his relative been helped the way he desired, the scam would not have surfaced even.

8. Mr. Aurangzeb has been the active player and the side broker who managed the business and remained instrumental in the whole episode. Still, he managed to escape the departmental inquiry and tries to conceal his involvement by refusing to admit the voice in the recording to be his voice.

9. Dr. Muhammad Tariq disowned the complaint in his written statement mainly because of the fact that he along with Mr. Aurangzeb might have been threatened to be sued as the Doctor himself was equally involved in the illegal transaction like the other active players.

Arif student was depressed due to his failure in exam even and was reluctant to appear in supply exam. So I was forced to help him. being ill to make him less embarrassed to retire his distress

ATTESTED

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Recommendations:

- I. Mr. Muhammad Arif, Subject Specialist, and Ms. Durre Sahwar, SDEO (F), may be issued Show Cause Notices for imposing the major penalty of dismissal from service as specified under E & D Rules, 2011 as the charges have been proved against them beyond any doubt.
- II. Although there seemed close resemblance between his voice and the voice in the recording, Mr. Aurangzeb, Assistant Director, Basic Education Improvement Programme, Directorate of Elementary & Secondary Education, denied his voice in the audio recording. During the personal hearing, he took the plea that the modern technology has made it possible to manipulate the voices. It is, therefore, suggested that the matter may be inquired through an expert competent to decide whether the voice in the recordings is of Mr. Aurangzeb or otherwise. If it proves in affirmative then he may also be served with a show cause notice for removal from service. However, one step demotion is presently recommended for him on the basis of his proved involvement to the extent that he requested Ms. Durre Shahwar for extending the "help" to the student.
- III. Similarly, one step demotion is recommended for Mr. Muhammad Ayaz, Assistant Director, Basic Education Improvement Programme, Directorate of Elementary & Secondary Education, who too asked for the "help" on the dent of his official position.
- IV. Dr. Muhammad Tariq, Manager Prime Minister Programme, District Health Office, Swabi, the complainant, may be issued charge sheet/statement of allegations through Health Department for misconduct as he tried to purchase government officers for getting undue and illegal advantage.


(Muhammad Suhail Khan)

INQUIRY OFFICER/DEPUTY COMMISSIONER,
DIR LOWER.

ATTESTED


SHOW CAUSE NOTICE

B (10) ~~A~~

I, Amjad Ali Khan, Chief Secretary, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Aurangzeb, Assistant Director BS-17 Basic Education Improvement Programme, Directorate of E&SE as follows:-

- (i) that consequent upon the completion of inquiry conducted against Mr. Muhammad Arif, Subject Specialist and Ms. Durre Shehwar SDEO (Female) Peshawar by the inquiry officer for which you were also given opportunity of hearing; and
- (ii) on going through the findings and recommendations of the inquiry officer, the material on record and other connected papers including your defence before the inquiry officer.

I am satisfied that you have committed the following acts/omissions specified in rule-3 of the said rules:

- (a) Guilty of Misconduct
- (b) Guilty of Corruption

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of removal from service under rule 4 of the said rules.

3. You are, thereof, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5. A copy of the findings of the inquiry officer is enclosed.

Ali

(AMJAD ALI KHAN)
CHIEF SECRETARY, KHYBER PAKHTUNKHWA
COMPETENT AUTHORITY

Mr. Aurangzeb, Assistant Director BS-17 Basic Education Improvement Programme, Directorate of E&SE.

ATTESTED

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AMJAD ALI KHAN,
CHIEF SECRETARY, KHYBER PAKHTUNKHWA

A

To

The Chief Secretary
Khyber Pakhtunkhwa,
Peshawar.

Through: Proper Channel

Subject: REPLY TO SHOW CAUSE NOTICE DATED
10/09/2014.

Respected Sir,

Reference to show cause notice dated
10/09/2014 received on 12/09/2014.

It is submitted that in the inquiry conducted by
the Inquiry Officer against Mr. Muhammad Arif
Subject Specialist (S.S) and Mrs. Durre Shehwar
S.D.E.O (F) Peshawar, I have neither been involved in
the deal nor transaction of money nor any kind of
corruption in the matter.

The undersigned has no connection what so ever
in the issue which was investigated by the enquiry
officer against Mst. Dur-e-Shahwar and Muhammad
Arif.

I am absolutely unaware of the events and any
deal between the father of the student and the above
cited accused officers. The inquiry report is based on

ATTESTED

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presumptions which cannot be made a base for any kind of punishment.

As I am not involved in any act of misconduct and also not indulged myself in any corrupt practice, therefore, the show cause notice may please be withdrawn and I may kindly be exonerated of all charges leveled against me.

I want to be heard in person for which an opportunity may kindly be given to me

Best regards.

Dated: 17/09/2014

AURANG ZEB
Ex-Assistant Director
Basic Education Improvement Programme,
Directorate of Elementary &
Secondary Education Khyber Pakhtunkhwa
Peshawar

ATTESTED

AURANG ZEB
Ex-Assistant Director
Basic Education Improvement Programme,
Directorate of Elementary &
Secondary Education Khyber Pakhtunkhwa
Peshawar

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

D
13

No. SO(S/M) E&SED/4-17/2014/M. Arif and others
Dated Peshawar the July 03, 2015

To

- i. Mr. Muhammad Arif,
Subject Specialist BS-17 Economics
GHSS Hazar Khawani Peshawar.
- ii. Ms. Durre Shehwar,
Sub Divisional Education Officer (Female)
Peshawar.
- iii. Mr. Aurangzeb, Assistant Director (BS-17),
Basic Education Improvement Programme,
Directorate of E&SE.
- iv. Mr. Muhammad Ayaz, Assistant Director (BS-17),
Basic Education Improvement Programme,
Directorate of E&SE.

Subject: - **PERSONAL HEARING IN REPLY TO SHOW CAUSE NOTICE IN DISCIPLINARY ACTION AGAINST MR. MUHAMMAD ARIF SS ECONOMICS BS-17 GHSS HAZAR KHAWANI AND OTHERS PESHAWAR.**

1. I am directed to refer to the subject noted above and to state that it has been intimated by the staff of Chief Secretary Khyber Pakhtunkhwa, that the Chief Secretary has granted a chance of personal hearing to you on 08-07-2015 at 1000 hours in his office.

2. You are hereby directed to ensure your presence during the personal hearing with the Chief Secretary Khyber Pakhtunkhwa Peshawar on the above mentioned date, time and venue.

(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)

Endst: Even No. & Date:

- Copy of the above is forwarded to the:-
- i. Director, E&SE Khyber Pakhtunkhwa Peshawar.
 - ii. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
 - iii. PS to Secretary E&SE Department Khyber Pakhtunkhwa.

D (M)
6/7

SECTION OFFICER (SCHOOLS/MALE)

PA to Director

191
6/7/15

2351
6/7

25/7/15

ATTESTED

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

E
14
D

Dated Peshawar the October 14, 2015

NOTIFICATION

SCHOOLS/M)E&SED/4-17/2014/M. Arif SS & Dure Shehwar SDEO (F) Peshawar:

Whereas Mr. Aurangzeb, Assistant Director BS-17, Basic Education Improvement Programme, Directorate of E&SE (now Headmaster BS-17 GMS Kagawala Peshawar) was proceeded against under the Khyber Pakhtunkhwa Govt. Servants (Efficiency & ~~Disciplinary~~ Rules, 2011 for the charges of misconduct & corruption as pointed out by Mr. Sohail Khan, ~~EG (BS-18)~~ Deputy Commissioner Dir Lower) inquiry officer who conducted formal inquiry against Mr. Muhammad Arif, Subject Specialist Economics BS-17 GHSS Hazar Khawani District Peshawar) for the ~~charges~~ leveled against him in accordance with the rules:

AND WHEREAS the Inquiry officer after having examined the charges, evidence on record and explanation of the accused officer has submitted the report.

AND WHEREAS a show cause notice was served upon Mr. Aurangzeb, Assistant Director BS-17, Basic Education Improvement Programme, Directorate of E&SE (now Headmaster BS-17 GMS Kagawala Peshawar) under Rule-5(i)(a) read with Rule-7(a) of the rules which was conveyed to the accused on 10-09-2014, in pursuance of the above inquiry.

AND WHEREAS the Competent Authority (Chief Secretary, Khyber Pakhtunkhwa) having considered the charges and evidence on record, inquiry report, explanation of the accused officer in response to the Show Cause Notice and personal hearing granted to him by Chief Secretary Khyber Pakhtunkhwa on 07-07-2015 at 1000 hours, is of the view that the charges against the accused officer have been proved.

NOW, THEREFORE, in exercise of the powers conferred under section 14 of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011, the Competent Authority (Chief Secretary, Khyber Pakhtunkhwa) is pleased to impose major penalty of "Removal from service" upon Mr. Aurangzeb, Assistant Director BS-17, Basic Education Improvement Programme, Directorate of E&SE (now Headmaster BS-17 GMS Kagawala Peshawar) with immediate effect.


SECRETARY ✓

Ends: of Even No. & Date:

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male), Peshawar.
4. Mr. Aurangzeb, Headmaster BS-17 GMS Kagawala Peshawar.
5. PS to Chief Secretary Khyber Pakhtunkhwa Peshawar.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
7. PA to Additional Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Office order file.

ATTESTED



(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)

A



F

15

To,

The Chief Minister,
(Appellate Authority),
Khyber Pakhtunkhwa,
Peshawar.

Through: Proper Channel.

Subject: **Representation against the Notification dated 14.10.2015
whereby the appellant has been removed from Service.**

Respected Sir,

Most profoundly it is submitted that while the appellant was serving as Assistant Director (BPS-17) in Basic Education Improvement Programme, he was served with a show cause notice (**Annexure-A**) wherein it was alleged that:

- I. Consequent upon the completion of enquiry conducted against Mr. Muhammad Arif, Subject Specialist and Ms Durre Shahwar, SDEO (Female) Peshawar by inquiry officer for which you were also given opportunity of hearing; and
 - II. On going through the findings and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the inquiry officer. The Competent Authority tentatively decided the penalty of removal from service for the appellant under the Rule-4 of the E&D Rules, 2011.
- 1) That the appellant submitted his detailed reply to the show cause notice and denied all the allegations in-toto and also requested for personal hearing (**Annexure-B**). The Competent Authority called the appellant for personal hearing on 08/07/2015 at 10:00 AM (**Annexure-C**) but in spite of that, the Competent Authority not affording the chance of personal hearing, has imposed the penalty of removal from service vide order dated 14/10/2015 (**Annexure-D**).


1046
A. to Director E&D
Peshawar
26/10/15

- 2) That the said order is liable to be set aside on the following grounds amongst the others.

ATTESTED

GROUND:

- A. That the initially and actually inquiry proceedings order under E&D Rules, was passed and processed against Mr. Muhammad Arif, Subject Specialist and Ms. Durre Shahwar, SDEO (Female) and the appellant's statement was recorded as a witness and as such the inquiry in which the appellant's statement was recorded as a witness could not be based for imposing the penalty against the witness/ appellant.
- B. That no Charge Sheet, Statement of Allegation issued to the appellant nor has any regular inquiry been conducted while imposing the major penalty upon the appellant. Even the Competent Authority has never passed any dispensing with regular inquiry under E&D Rules, 2011 which is mandatory and non observance of the said rules caused great miscarriage of justice to the appellant.
- C. That even the chance of personal hearing was not afforded to the appellant despite his request in the reply to the show cause notice, thus such attitude of the Competent Authority amount to the condemnation unheard and as such resultant action and subsequent orders are nullity in the eyes of law, keeping in view various judgments of the superior courts in this respect.
- D. That the penalty is also amount to discrimination because one of the witness namely Dr Muhammad Tariq BPS-18 of Health Deptt, has already been exonerated in the said proceedings vide Notification Dated 12th August 2015 (**Annexure-E**) whereas the appellant has been penalized in share violation of law and E&D Rules, 2011.
- E. That it is also worth to mention here that the said case was also referred to the Anticorruption Department which has been filed by the Anticorruption Establishment being a baseless one.
- F. That it is also to mention here that the actual accused namely Ms. Durre Shahwar, SDEO (Female) has been left un-action and unpunished.
- G. That the authority has also not passed any order in black and white nor any reasons recorded to disagree with the recommendations of the inquiry officer. Thus the whole action is based upon malafide and illegal exercise of power.

ATTESTED


H. That there is case made out of misconduct and corruption against the appellant beyond the shadow of doubt, therefore, the penalty imposed on the appellant is liable to be set aside.

Therefore, it is humbly requested that on acceptance of this Departmental Representation, the impugned penalty order dated 14/10/2015 may be set aside and the appellant may be reinstated in to service with all back and consequential benefits.

Encls: 7 ages

Dated: 26th October, 2015


26/10/2015

AURANG ZEB

Ex- Assistant Director

Basic Education Improvement Programme
Directorate of Elementary & Secondary Education
Khyber Pakhtunkhwa
Peshawar.

ATTESTED


9 (18)

SUBJECT FOR CHIEF MINISTER

Subject: - APPEALS IN DISCIPLINARY ACTION AGAINST MR. MUHAMMAD ARIF SUBJECT SPECIALIST ECONOMICS GHSS HAZAR KHAWANI PESHAWAR AND OTHERS.

Dr. Muhammad Tariq had lodged a complaint against Mr. Muhammad Arif, Subject Specialist Economics GHSS Chamkani Peshawar, via Email forwarded to the Secretary E&SE Department. In his Email, the Complainant alleged that Mr. Muhammad Arif, has been performing duty as Superintendent in BDS supplementary Examination in Abbottabad International Medical College without prior approval/ permission of the Department. The said Subject Specialist demanded Rs.1,50000/- as bribe to facilitate son of the complainant, who was appearing in BDS 1st year Examination in the said college. However, the complainant stated that, he managed Rs.100000/- for the said Subject Specialist (F/A).

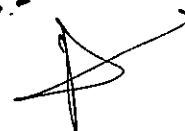
2. The Chief Secretary/ Competent Authority appointed Mr. Sohail Khan, PAS (BS-18) Deputy Commissioner Dir Lower as inquiry officer to conduct formal inquiry against Mr. Muhammad Arif, Ex-Subject Specialist Economics (BS-17) GHSS Chamkani District Peshawar (now SS Economics BS-17 GHSS Hazar Khawani District Peshawar) for the charges mentioned in the charge sheet and statement of allegations vide notification dated 14-05-2014 (F/B).

3. The inquiry officer concluded that the charges against Mr. Muhammad Arif have been proved. Similarly, the charge leveled against Ms. Durre Shehwar of being a broker has also been proved. It was also proved that M/S. Aurangzeb and Muhammad Ayaz (Assistant Directors in the Directorate of E&SE) requested Ms. Durre Shehwar for extending help to the student. The inquiry officer recommended penalties to the said officers.

4. Keeping in view the recommendations of inquiry officer the Chief Secretary/ Competent Authority imposed penalties on the following officer/ officials as mentioned against each vide notification dated 14-10-2015 (F/C).

S#	Name & Designation of officer(s)	Penalty Imposed
1.	Mr. Muhammad Arif, Ex-Subject Specialist Economics BS-17 GHSS Hazar Khawani District Peshawar.	Dismissal from Service
2.	Mr. Aurang Zeb, Ex-Assistant Director, Basic Education Improvement Programme, Directorate of E & SE.	Removal from Service
3	Mr. Ayaz Khan, Ex-Assistant Director, Basic Education Improvement Programme, Directorate of E & SE.	Removal from Service

ATTESTED



~~19~~ 19

5. The above mentioned accused officer/ officials have now submitted appeals received through Chief Minister's Secretariat (F/D, E & F) wherein Mr. Muhammad Arif at Sr. No.1 of Para-4 has pleaded that the Anti Corruption Establishment Khyber Pakhtunkhwa in its final report had recommended to file the case and categorically declared the complaint as fake and fabricated one. He has stated that no heed was given to his reply to the show cause notice and he was straight away dismissed from service. The remaining two accused at Sr.No.2 & 3 of Para-4 above have pleaded innocence on the plea that the competent authority called them for personal hearing on 08-07-2015 at 10:00 am but they were not afforded the opportunity of personal hearing and major penalty of removal from service was imposed on them vide notification dated 14-10-2015.

6. This Department is of the view that the appeals of the above accused officer/ officials are mere repetition of their statements recorded before the inquiry officer hence does not agree with their stances and proposes that their appeals may be rejected having no valid grounds. However they may be given an opportunity of personal hearing by the appellate authority.

7. The Chief Minister/ appellate authority is requested to approve the proposal contained in Para-6 above.

ATTESTED


VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar

Aurang Zeb

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Govt. of KPK

(Respondent)
(Defendant)

I/We Aurang Zeb

Do hereby appoint and constitute **M.Asif Yousafzai, 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

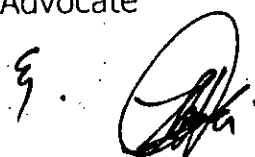


(CLIENT)

ACCEPTED



M. ASIF YOUSAFZAI
Advocate

9. 

TAIMUR ALI KHAN
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

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

Appeal No. 199 /2016

Aurangzeb

V/S

Govt: of KPK.

**APPLICATION FOR WITHDRAWAL
OF THE INSTANT APPEAL.**

RESPECTFULLY SHEWETH:

1. That the appellant has filed the instant appeal against the order dated 14.10.2015, whereby the appellant was removed from service and the next date is fixed as 26.10.2016 in the appeal.
2. That the appellant was reinstated by the department during the pendency of appeal, hence the instant appeal become infructuous, therefore the appellant wants to withdraw the instant appeal.
3. That as the instant appeal become infructuous, it will be in the interest of justice to withdraw the instant appeal to meet the ends of justice.

It is, therefore, most humbly prayed that on acceptance of this application, the instant appeal may kindly be requisitioned for today and may be dismissed as withdrawn.

*Put up with
read of
01.09.16.*

Appellant

THROUGH:

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)

ADVOCATE PESHAWAR.

AFFIDAVIT:

It is affirmed and declared that the contents of the above application are true and correct to the best of my knowledge and belief.

[Signature]
01.09.16.

[Signature]

REGISTERED



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshawar the June 14, 2016

NOTIFICATION

NO.SO(S/M)E&SED/4-17/2014/M. Arif SS & Dure Shehwar SDEO (F) Peshawar:

Whereas Mr. Aurangzeb, Headmaster BS-17 GMS Kagawala Peshawar was proceeded against under the Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules, 2011 for the charges of misconduct & corruption as pointed out by Mr. Sohail Khan, PAS (BS-18) Deputy Commissioner Dir Lower) inquiry officer who conducted formal Inquiry against Mr. Muhammad Arif, Subject Specialist Economics BS-17 GHSS Hazar Khawani District Peshawar for the charges leveled against him in accordance with the rules.

2. AND WHEREAS the Inquiry officer after having examined the charges, evidence on record and explanation of the accused officer has submitted the report.

3. AND WHEREAS a show cause notice was served upon Mr. Aurangzeb, Headmaster BS-17 GMS Kagawala Peshawar under Rule-5(i)(a) read with Rule-7(a) of the rules ibid which was conveyed to the accused on 10-09-2014, in pursuance of the above inquiry.

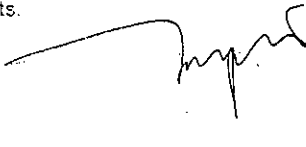
4. AND WHEREAS the Competent Authority (Chief Secretary, Khyber Pakhtunkhwa) after having considered the charges and evidence on record, inquiry report, explanation of the accused officer in response to the Show Cause Notice and personal hearing granted to him by Chief Secretary Khyber Pakhtunkhwa on 07-07-2015 at 1000 hours, concluded that the charges against the accused officer have been proved.

5. NOW, THEREFORE, in exercise of the powers conferred under section 14 of Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules, 2011, the Competent Authority (Chief Secretary, Khyber Pakhtunkhwa) is pleased to impose major penalty of "Removal from service" upon Mr. Aurangzeb, Headmaster BS-17 GMS Kagawala Peshawar vide this Department notification of even number dated 14-10-2015.

6. AND WHEREAS, Mr. Aurangzeb, preferred an appeal to the Chief Minister/appellate authority under Rule-17 of the Rules ibid against this Department notification of even number dated 14-10-2015.

7. AND WHEREAS, The Secretary Labour Department afforded him an opportunity of personal hearing on behalf of the Chief Minister/appellate authority on 16-05-2016 and recommended exoneration of Mr. Aurangzeb, Headmaster BS-17 GMS, Kagawala Peshawar).

8. NOW THEREFORE, in exercise of the powers conferred under Rule-17 of Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules, 2011, the Chief Minister/appellate authority is pleased to exonerate Mr. Aurangzeb, Headmaster BS-17 GMS Kagawala Peshawar from the charges levelled against him and to re-instate him into service w.e.f 14-10-2015 with all back benefits.

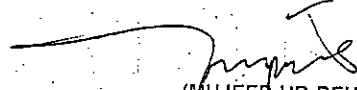

Secretary
P. No. 17

SECRETARY

Endst: of Even No. & Date:

Copy forwarded to the :-

- 1- Accountant General, Khyber Pakhtunkhwa, Peshawar.
- ✓ 2- Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3- District Education Officer (Male), Peshawar.
- 4- Mr. Aurangzeb, Headmaster BS-17 GMS Kagawala Peshawar.
- 5- PS to Chief Secretary Khyber Pakhtunkhwa Peshawar.
- 6- PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
- 7- PA to Additional Secretary, E&SE Department, Khyber Pakhtunkhwa.
- 8- Office order file.



(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)