

July, 2023

SCANNED  
KPST  
Peshawar

1. Clerk to counsel for the appellant present. Mr. Asad Ali Khan,  
Assistant Advocate General for the respondents present.
2. Lawyers are on strike. Therefore, case is adjourned. To come  
up for arguments on 30.10.2023 before the D.B. P.P given to the parties.



(Rashida Bano)  
Member (J)




(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah\*

5<sup>th</sup> Oct, 2022

None for the appellant present. Mr. Kabirullah Khattak, addl: AG for respondents present.

SCANNED  
KPST  
Peshawar

Written reply/comments on behalf of the respondents have not submitted despite last chance, therefore, their right for submission of written reply is struck off. To come up for arguments on 17.01.2023 before D.B. 


(Kalim Arshad Khan)  
Chairman

17.01.2023

Lawyers are on strike.

SCANNED  
KPST  
Peshawar

To come up for arguments on 01.05.2023 before D.B. Office is directed to notify the next date on the notice board as well as website of the Tribunal.

  
(Fareeha Paul)  
Member (E)

  
(Rozina Rehman)  
Member (J)

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

1<sup>st</sup> May has been declared as public holiday on account of Labour Day, therefore, the case is adjourned. To come up for the same on 04.07.2023.

  
Reader

8-7-22

Due to Public Holiday the case is  
adjourned to come up for the same as  
before SB on 18-8-2022

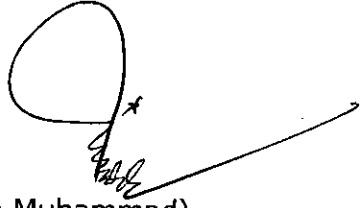
*4*  
Reader

18.08.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Asif, Assistant for the respondents present.

Reply/comments on behalf of respondents not submitted. Representative of the respondents requested for time to submit reply/comments. Adjourned by way of last chance. To come up for reply/comments on 05.10.2022 before S.B.

SCANNED  
KPST  
Peshawar

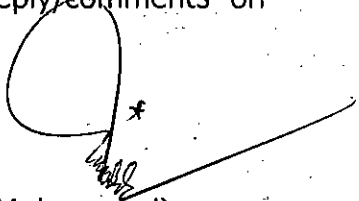
  
(Mian Muhammad)  
Member (E)

24.11.2021

Counsel for the appellant present. Preliminary arguments have been heard.

The instant service appeal has been filed under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 16.02.2018 claimed to have been communicated to the appellant on 28.02.2018 whereby the major penalty of removal from service was awarded to the appellant. His departmental appeal submitted to the appellate authority, was not responded within the stipulated statutory period, hence, the instant service appeal filed on 10.07.2018. Moreover, learned counsel for the appellant contended that no regular enquiry has been conducted against the appellant in the prescribed statutory manner before imposing the major penalty of removal from service which is not maintainable under the legal and constitutional safeguard/guarantees available to the appellant.

The appeal is admitted to regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for submission of reply/comments. To come up for reply/comments on 27.01.2022 before S.B.

  
(Mian Muhammad)  
Member(E)

27.01.2022

Learned counsel for the appellant present and submitted application for extension of time to deposit security and process fee. Application is allowed and he is directed to deposit security and process fee within 03 working days. Thereafter notices be issued to respondents for submission of reply/comments. To come up for reply/comments before the S.B on 29.03.222.

Rs-500/-  
Appellant Deposited  
Security & Process Fee  
Atte: *Affiah*  
13/4/22

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

27.01.2021


Nemo for the appellant at the moment i.e 03:05 P.M. Mr. Kabirullah Khattak, Additional Advocate General, for the respondents is present.

Since the appellant has not forth come, he be noticed alongwith his respective counsel for 05.05.2021. File to come up for further proceedings before S.B.

(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

05.05.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 24.08.2021 for the same as before.

  
Reader.

24.08.2021

Nemo for the appellant. Previous date was changed on Reader Note, therefore, notice for prosecution of the appeal be issued to the appellant as well as his counsel and to come up for preliminary hearing before the S.B on 24.11.2021.

  
(SALAH-UD-DIN)  
MEMBER (J)

09.09.2020

Counsel for the petitioner and Addl. AG present.

Instant application is with the prayer for restoration of Appeal No. 72/2019, dismissed for non-prosecution on 19.07.2019.

It is, interalia, provided in the application that the appellant remained unrepresented on the relevant date due to illness of his counsel.

The application has been brought within the time prescribed for the purpose and contained cogent reason for restoration of the appeal. It is, therefore, allowed and Appeal No. 72/2019 is restored to its original number but on payment of cost of Rs. 1000/-.


To come up for preliminary hearing before S.B on 11.11.2020.

  
Chairman

11.11.2020

Nemo for the appellant.

Since the Members of the High Court as well as of the District Bar Associations, Peshawar, are observing strike today, therefore, learned counsel for appellant is not available today. Adjourned to 27.01.2021 on which date to come up for further proceedings before S.B.

  
(Muhammad Jamal Khan)  
Member (Judicial)

12.03.2020

Nemo for the petitioner. Mr. Kabir Ullah Khattak learned Additional Advocate General present and submitted reply. Adjourn. To come up for further proceedings on 23.04.2020 before S.B. Petitioner be put to notice for the date fixed:



Member

23.04.2020

Due to public holiday on account of COVID-19, the case to come up for the same on 30.07.2020 before S.B.



Reader

30.07.2020

Junior to counsel for the petitioner and Addl. AG alongwith Arshad Khan, ADO for the respondents.

Former seeks adjournment due to engagement of learned senior counsel before the Honourable High Court in many cases today. To come up for arguments on restoration application on 09.09.2020 before S.B.



Chairman

29.10.2019

Junior to counsel for the petitioner present.

Requests for adjournment due to non-availability of learned senior counsel. Adjourned to 11.12.2019 before S.B.

Chairman 

11.12.2019

Junior to counsel for the petitioner present.

Requests for adjournment due to general strike of the Bar today. Adjourned to 21.01.2020 before S.B.

Chairman 

21.01.2020

Junior to counsel for the petitioner present.

Requests for adjournment due to general strike of the Bar. Adjourned to 05.03.2020 before S.B.

Chairman 

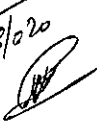
05.03.2020

Counsel for the petitioner present. Notice be issued to learned Additional AG for reply and arguments on restoration application for 12.03.2020 before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

Received

6/3/20




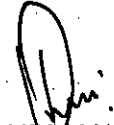
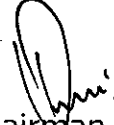


Form-A

FORM OF ORDER SHEET

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

Appeal's Restoration Application No. 295 /2019

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	31.07.2019	<p>The application for restoration of appeal No.72/2019 submitted by Mr. Yasir Saleem Advocate, may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 31/7/19</p>
2	20/08/19	<p>This restoration application is entrusted to S. Bench to be put up there on <u>13/09/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
13.09.2019		<p>Notice be issued to petitioner/counsel for 29.10.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p>

26.03.2019

Learned counsel for the appellant present and seeks adjournment. Adjourn. To come up for preliminary hearing on 25.04.2019 before S.B.



Member

25.04.2019

None present on behalf of the appellant. Notice be issued to appellant and his counsel for attendance and preliminary hearing for 14.06.2019 before S.B.



(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

14.06.2019

Junior to counsel for the appellant present.

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, instant matter is adjourned to 19.07.2019 for preliminary hearing before S.B.



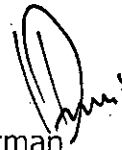
Chairman

19.07.2019

Nemo for appellant.

It is already 12.00 P.M on Friday and the case has been called several times. Despite, no one is in attendance on behalf of the appellant.

Dismissed for non-prosecution. File be consigned to the record room.






Chairman

Announced:  
19.07.2019

Form- A  
FORM OF ORDER SHEET

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

Case No. 72/2019


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15.1.2019	<p>The present appeal was received on 10.07.2018 which was returned to the counsel for the appellant for completion and resubmission within 15 days. Today i.e. on 15.1.2019 he resubmitted the same late by 172 days. The same may be entered in the institution register and put up to the Worthy Chairman for appropriate order please.</p> <p style="text-align: right;">   REGISTRAR 15/1/19 </p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>13-2-19</u></p> <p style="text-align: right;">   CHAIRMAN </p>
2	16-1-19	
13.02.2019		<p>Learned counsel for the appellant present. Perusal of the office order dated 15.02.2019 would show that the present case file was returned to the learned counsel for the appellant for completion and resubmission within 15 days however the same was resubmitted late by 172 days. Learned counsel for the appellant seeks adjournment. Adjourn. To come up preliminary hearing on 26.03.2019 before S.B.</p> <p style="text-align: right;">   Member </p>

The appeal of Mr. Daud Khan Ex-Naib Qasid office of the DEO male Nowshera received today i.e. on 10.07.2018 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Affidavit may be got attested by the Oath Commissioner.
- 2- Annexure-A of the appeal is illegible which may be replaced by legible/better one.
- 3- Departmental appeal having no date be dated.

No. 1386 /S.T.

Dt. 11/07 /2018.

  
REGISTRAR 11/7/18  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Yasir Saleem Adv. Pesh.

*Resubmitted Serial no1 objection cealer.  
Serial No2 Better copy attach  
Serial no3 objection departmental  
appeal provided all ready place  
on file.  
Please put up the court.*

*Yasir Saleem*

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

Appeal No. 72 /2018

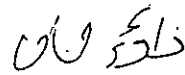
Daud Khan, Ex-Naib Qasid/ Beheshti, office of the DEO  
Male Nowshera R/O Village Tohid Abad Saifan Chowk  
Village Kaga Wala Badbher  
Peshawar..... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa, through Secretary  
Elementary and Secondary Education Department Peshawar.  
.....(Respondents)

**INDEX**

<b>S. No</b>	<b>Description of documents</b>	<b>Annexure</b>	<b>Page No</b>
1	Memo of appeal and Affidavit		1-5
2	Copies of appointment letter dated 03.09.1992 and Service Book are attached as Annexure A & B	A & B	7-10
3	Copy of pay slip is attached as Annexure C	C	11
4	Copy of application for transfer is attached as Annexure D	D	12
5	Copy of arrival report is attached as Annexure E	E	13
6	Copy of departmental appeal is attached as Annexure F	F	14-16
7	Copy of Order and Judgment dated 27.03.2017 is attached as Annexure G	G	17-19
8	Copies of absent notice dated 25.11.2017 and reply 08.12.2017 are attached as Annexure H & I	H & I	20-22
9	Copy of order dated 16.02.2018 is attached as Annexure J	J	23
10	Copy of the departmental appeal	K	24-26
13	Vakalatnama		27



Appellant

Through

**YASIR SALEEM**

  
**JAWAD-UR-REHMAN**

Advocates, Peshawar

1

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

Appeal No. \_\_\_\_\_/2018

**Daud Khan**, Ex-Naib Qasid/ Beheshti, office of the DEO  
Male Nowshera R/O Village Tohid Abad Saifan Chowk  
Village Kaga Wala Badbher Peshawar

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Elementary and Secondary Education Department Peshawar.
2. The Director Elementary and Secondary Education Department Peshawar.
3. District Education Officer (M) Nowshera

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 16.02.2018, communicated to the appellant on 28.02.2018, whereby the appellant has been awarded the major Punishment of Removal from Service, against which his departmental appeal dated 19.03.2018 has not been responded within the statutory period of 90 days.

Prayer in Appeal: -

On acceptance of this appeal the impugned order dated 16.02.2018, may kindly be set aside and the appellant may be re-instated into service with all back benefits and wages of service.

Respectfully sheweth ,

The appellant humbly submit as under.

1. That the appellant was initially appointed as Behashti /Naib Qasid in the year 1992. He was also medically examined and when found fit, was handed over charge of his post and started performing his duties. It is pertinent to mentioned that the service book of the appellant was also prepared for the purpose of pay and pension. *(Copies of appointment letter dated 03.09.1992 and Service Book are attached as Annexure A & B)*
2. That ever since of his appointment the appellant performed his duties as assigned with zeal and devotion and there was no complaint what so ever regarding his performance.
3. That the appellant continuously received salary of his post till September 2009. *(Copy of pay slip is attached as Annexure C)*
4. That while serving in the said capacity, the appellant due to his domestic problems in the year 2009, he duly applied for inter district transfer from Nowshera to Peshawar, his application for application was duly processed, in the meantime he got seriously ill and therefore could not join his duty. *(Copy of application for transfer is attached as Annexure D)*
5. That thereafter, the appellant when regained health in the year 2010, he duly went to join his duties, however he was not allowed to join. *(Copy of arrival report is attached as Annexure E)*
6. That the appellant continuously approached the department for allowing him to join his duties and for the release of his salaries, however neither his salaries were released nor was he adjusted to join his duties. *(Copy of departmental appeal is attached as Annexure F)*
7. That the appellant was constrained to filed Service Appeal No. 905/2015 before this honorable tribunal. The service appeal was disposed off and decided vide order and judgment dated 27/03/2017 with the direction to the Respondents to probe in to the matter according with the law and there after appropriate order be passed within a period of three months from the date communication of judgment. *(Copy of Order and Judgment*

*dated 27.03.2017 is attached as Annexure G).*

8. That the department issued absence notice dated 25/11/2017 communicated to the appellant on 05/12/2017. He duly replied to the absence notice and explained his position and refuted the allegation leveled against me. *(Copies of absent notice dated 25.11.2017 and reply 08.12.2017 are attached as Annexure H & I)*
9. That without considering reply, the appellant has been illegally imposed the major penalty of Removal from Service vide order dated 16/02/2018 communicated to him on 28/02/2018. *(Copy of order dated 16.02.2018 is attached as Annexure J)*
10. That aggrieved from the order dated 16.02.2018, the appellant submitted his departmental appeal on 15.03.2018, and however, the same has not been responded despite the lapse of statutory period. *(Copy of the departmental appeal is attached as Annexure K).*
11. That the order awarding penalty is illegal, un-lawful and liable to be strucked down inter-alia on the following grounds.

#### **GROUND OF SERVICE APPEAL**

- A. That the appellant has not been treated in accordance with law hence his rights secured and guaranteed under the law are badly violated.
- B. That no procedure has been followed before his removal from service. The appellant has never been served any charge sheet and statement of allegations nor any regular inquiry has been conducted thus the impugned order is defective in the eyes of law.
- C. That the appellant has not been provided proper opportunity of personal hearing before awarding him the penalty hence the appellant has been condemned unheard.
- D. That no charge sheet/ statement of allegations and show cause as prescribed under the law and rules has ever been served upon him hence the appellant has not been provided fair opportunity to



defend has self against the charges leveled. The impugned order is thus passed in violation of the principles of natural justice.

E. That the impugned Order has been passed against the appellant without holding a regular inquiry which is violative to the principle / law and dictum declared by the august Supreme Court of Pakistan in its various judgments reported as:-

- i. 2002 - SCMR - 57*
- ii. 2001 - SCMR - 1566*
- iii. 2000 - SCMR - 1321*
- iv. 1994 - PLC (CS) - 1717 (FST)*

As such the impugned Order was passed in violation of the principle / law and dictum laid down by the august Supreme Court of Pakistan.

F. That in the year 2009, the appellant duly applied for inters district transfer from Nowshera to Peshawar which was duly processed. In the meantime the appellant got seriously ill and could not join his duties. However the appellant has informed the department about his illness and applied also for medical leave.

G. That after gaining health in April 2010, after gaining health the appellant duly reported for duty however the appellant was neither adjusted nor my salaries, where-after the appellant filed his service appeal. The appellant has been pursuing my remedy from the last 8 years for no fault on his part.


H. That vide order dated 27/03/2017, the department was directed by this honorable tribunal to conduct and conclude the proceeding against the undersigned within a period of three months. However the department took almost one year in concluding proceedings, therefore the impugned order is illegal and liable to be set-aside on this ground alone.

I. That the appellant has never committed any act or omission which could be termed as misconduct, on a bonafide mistake such harsh penalty of removal from service could not be imposed.

J. That the undersigned belong to a poor family, I am having a large family dependent upon me, and moreover I have no source of income these days due to the penalty.

1. That the appellant seeks the permission of this Honorable Tribunal to rely on additional ground at the hearing of this appeal.

*It is, therefore, humbly prayed that on the acceptance of this service Appeal the Order dated 16.02.2018, may kindly be set aside and the appellant may be reinstated into service with all back benefits.*

  
Appellant

Through

**YASIR SALEEM**

  
**JAWAD-UR-REHMAN**  
Advocates, Peshawar

**AFFIDAVIT**

I, *Daud Khan, Ex-Naib Qasid/ Beheshti, office of the DEO Male Nowshera R/O Village Tohid Abad Saifan Chowk Village Kaga Wala Baddher Peshawar*, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal as well as accompanied application for condonation of delay are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

*Deponent*

DAWOOD KHAN 310 Barani Road

Now in Kalm...

...the date of taking over...

Charge reports should be sent to this office.

DA/DA is allowed below first appointment.

Joining time is allowed what is absolutely necessary for...

The appointment is purely temp basis and subject to the termination at any time/notice. In case he wishes to leave the...

He should be produced his Health and age certificate from the concerned Civil Surgeon/MS within 15 days after the issue of this order as required under rule (2.10) 3.4.

If on the candidate fails to take over charge within 15 days from the date of issue of this order, his appointment shall stand cancelled automatically.

He should also submit all his personal documents...

The service rules and service rules shall be subject to the provisions in accordance with the rules to be passed by the...

He should produce photocopies of his relevant documents, Office Order, Health certificate, Identity Card, domicile etc at the time of taking over charge.

He will be dealt with under the 220 rules if he violates Govt. Rules and Regs. 2709.

(Mohammad Saman Khan)  
Sd/-, Director, Succession Officer (I)

2431-... 3/9/2022

D.A. (Now)

*[Signature]*

3/9/22

879/2

(B)

ANNEXURE CB

Entries in this page should be renewed or re-attested at least every five years, and the date of renewal should be dated.

Name: Mr. Daud Khan 7

Race: Afghan

Residence: Mohalca Area Ray  
Andai Shahr Peshawar city

Father's name and residence: Mr. Fazle Baziq  
As above

Date of birth by Christian era as nearly as can be ascertained: 30-05-1971  
30<sup>th</sup> May 1971 and Seventy One

Exact height by measurement: 5-6

Personal marks for identification: A Scar on the fore head

Left hand thumb and finger impression of (non-gazetted) officer

Little Finger: Ring Finger

Middle Finger: Fore Finger

Thumb

Signature of Government servant: [Handwritten Signature]

Signature and designation of the Head of the Office or other Attesting Officer: Sub [Handwritten Signature]  
(Date) [Handwritten Date]

8  
 (10)

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, date of substantiation or appointment, or if substantive, whether vacant, and date of appointment under Act 371 of 1930	Pay in arrears	Additional pay for officiating	Other emolument falling under the term 'pay'	Date of appointment	Signature of Government servant
N/Basil NSR Court	off/r	B/S No 1	920/-			26-12-92	
NSR	-Do-		920/- P.M.			1-10-93	
-Do-	-Do-		946/- P.M.			1-12-93	
(Revised B/S No: 1245-35-1770)							
NSR	-Do-		1280/- P.M.			1-6-94	
-Do-	-Do-		1315/- P.M.			1-12-94	
-Do-	-Do-		1350/- P.M.			1-12-95	
			1385/- P.M.			1-12-96	
			1420/- P.M.			1-12-97	
			1455/- P.M.			1-12-98	
-do-	-do-		1490/- P.M.			1-12-99	

Signature of  
 Government  
 servant

Signature of  
 officiating  
 Government  
 servant

9	10	11	12	13	14	15	
Signature and address of the authorizing officer (including address of the Government)	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other authorizing Officer	Nature and duration of leave taken	Allocation of period of leave in months for upto four months for which leave shall be debatable to another Government Period Government to which debatable	Signature of the head of the office or other authorizing Officer	Reference to any record of punishment or award or reward or praise of the Government servant
S/D.A. Poonj	30/7/93	Pr. y.	S/D.A. Poonj	Approved against	1/8. Post		
S/D.A. Poonj	30/11/93	A/D	S/D.A. Poonj	Transfer to	S.D.E.O. (M) Nowshera		
S/D.A. Poonj	30/5/94	Scale	S/D.A. Poonj	Transfer to	Post no. 2431 dt. 30.7.92		
S/D.A. Poonj	30/11/94	A/D	S/D.A. Poonj	Service verified w/c	30.9.92 to 30.9.93		
S/D.A. Poonj	30/11/95	A/D	S/D.A. Poonj	from register and other record of this office.			
D.E.O. (Secy)	30/11/96	A/Ine	D.E.O. (Secy)				Service verified w/c 9.1.93 to 31-12-93 from register and other record of this office.
D.E.O. (Secy)	30/11/97	A/Ine	D.E.O. (Secy)				
D.E.O. (M) Secy Nowshera	30/11/99	A/D	D.E.O. (M) Secy Nowshera				Service verified w/c 7.1.94 to 31-12-96 from register and other record of this office.
D.E.O. (M) Secy Nowshera	30/11/99	A/D	D.E.O. (M) Secy Nowshera				Service verified w/c 7.1.97 to 31-12-98 from register and other record of this office.

10

025

9	10	11	12	13 Leave		14	15
Signature and title of the head of the office or other appointing officer in Sections 4 to 8	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Nature and duration of leave taken	Allocation of period of leave on average pay up to four months in which leave actually is deductible to another Government	Signature of the head of the office or other approving officer	Reference to any records, minutes, or other papers of the Government
					Period: Government to which deductible -		
					SERVICES 11/21/98		
					to 31-12-99 From 11/21/98		
					or other record of the Office		

Signed by: [Signature] [Name]

GOVERNMENT OF PAKISTAN  
ACCOUNTANT GENERAL (M.A.P.)  
Nowshera

(B)

ANNEXURE

4428 DISTRICT  
PAY ROLL SYSTEM  
Pers. H: 00139067 Buckle:  
Name: DAUD KHAN  
Dsg: BEHISHTI  
NIC No: 99994029189  
GPF Interest Applied  
1908 Adhoc Relief 2009 (01-16)

P Sec: 001 Month: August 2009  
NR6079 -D. O. SECONDARY (M) NSR  
Min: Education Schools  
NTN:  
GPF H: EDUNR001000  
Old H: 99994029189

DEPT CODE: NR6079 -7

1908 Adhoc Relief 2009 (01-16)	887.00
Gross Pay and Allowances	8,330.00
DEDUCTIONS	
GPF Balance 25,762.00	Subrc:
Total Deductions	268.00
NET AMOUNT PAYABLE	8,062.00

QUANTUM OF SERVICE: 16 Years 11 Months 017 Days  
D.O.B: 10/10/1972

LFP Quota:  
NBP, SADDAR BAZAR NOSADDAR BAZAR NOWS  
7105-0



12  
(14)

ANNEXURE D E

APPLICATION FORM FOR INTERNAL PROMOTION

1- Name of the Teacher/Applicant & District of Domicile: DAUD KHAN Peshawar

2- Designation/Post held with BPS: BESHTI BPS 2

3- Date of 1<sup>st</sup> Appointment: 1993

4- Date of Taking over Charge (District of present post): 1993

5- Name of Present School of Posting: GMS KANA KHEL NOWSHERA

6- Name of School where posting is required (List three options): DIST: Peshawar

7- Reason for Transfer: Very far from my house

8- G.P. Fund No.: EDUNR001000 old (004029189)

9- Personal No.: 00139067

10- Numbers of C/Leave (Availed): —

11- Signature of Pri/HM/HT: —

12- Signature of A.D.O in case of Primary Teacher: —

I solemnly declare that all above information's from S.No.1 to 12 are correct and nothing has been concealed.

Signature  
Name of Applicant  
N.I.C No.

DAUD KHAN  
DAUD KHAN  
17301-3679502-3

Certificate by the relieving EDO E&SE

Certified that I have no objection to the transfer of Mr/Ms: DAUD KHAN  
From \_\_\_\_\_ to \_\_\_\_\_

The following arrangement will be made by me for filling up the post of \_\_\_\_\_  
in case of transfer of Mr/Ms: NA

It is certified that:

- i) The Study/Education of the students of the school will not suffer with proposed transfer.
- ii) The applicant is regular employee and not contract (Mention) period NA

Signature: \_\_\_\_\_  
Name of EDO: \_\_\_\_\_  
**District officer (Male) Elem. & Secy. Edu**

Endst. No. \_\_\_\_\_ / Dated \_\_\_\_\_

POST-AVAILABILITY CERTIFICATE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY & SECONDARY EDUCATION WHERE POST IS PROPOSED.

I have no objection to the transfer of Mr/Ms: DAUD KHAN, Behshly  
of against a vacant post of Behshly (Name of School) R.R.O.S of District Peshawar

I have also examined his/her relevant documents and found correct. It is also certified that no N.O.C. has been issued to any other person against this post.

Name of EDO: E&SE Jamil U. Raza Signature: \_\_\_\_\_  
Endst. No. \_\_\_\_\_ / Dated \_\_\_\_\_ Stamp \_\_\_\_\_

Note: The following documents (duly attested) should be provided:

- 1- Service Book, Photo State
- 2- 1<sup>st</sup> appointment order (Original OR attested photo state copy by EDO E&SE)
- 3- Domicile, (4) Previous transfer order (if any) (5) SSC, intermediate, P.C., C.T., B.S.S. etc.

AFINE MURK  
کتابخانه ملی افغانستان - افغانستان اسلامبول

Do (M)

صودا نه تراوشن با بهرین کتابخانه ملی افغانستان  
عنه تراوشن را به کتابخانه ملی افغانستان

ایضا من سکرین من طهری کتابخانه ملی افغانستان  
کتابخانه ملی افغانستان  
کتابخانه ملی افغانستان

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کتابخانه ملی افغانستان

کتابخانه ملی افغانستان

346  
23/4/51

174  
16  
ANNEXURE G

To

The District Education Officer ( Male),  
Nowshera.

Subject: *Departmental Appeal for the release of salary of the applicant w.e.f September, 2009 and for proper adjustment of the appellant against post of Behshti / Naib Qasid.*

Prayer in appeal

*On acceptance of this appeal the salary of the appellant may please be released w.e.f September 2009, and he may be adjusted against the post of Behashti/ Naib Qasid.*

Respected Sir,

I very humbly submit the following few lines for your kind and sympathetic consideration:

1. That I was initially appointed as Behashti / Naib Qasid in the year 1992. I was also medically examined and when found fit I was handed over charge of my post and started performing my duties. It is pertinent to mentioned that my service book was also prepared for the purpose of pay and pension.
2. That ever since my appointment I had performed my duties as assigned with zeal and devotion and there was no complaint what so ever regarding my performance.
3. That the appellant continuously received salary of his post till September 2009.
4. That while serving in the said capacity, the undersigned due to his domestic problems in the year 2009, I duly applied for inter district transfer from Nowshera to Peshawar, my application for application was duly processed, in the meantime the applicant also got seriously ill and therefore could not join his duty.
5. That thereafter, the appellant when regained health in the year 2010, I duly went to join my duties, however I was not allowed to join.

215  
—  
(17)

6. That I continuously approached the department for allowing him to join my duties and for the release of my salaries, however neither my salaries have been released nor I have been adjusted to join my duties.
7. That I pray for the acceptance of my appeal inter alia on the following grounds:

GROUND OF DEPARTMENTAL APPEAL

- A. That I have not been treated in accordance with law, hence my rights secured and guaranteed under the law are badly violated.
- B. That I have never been proceeded against, nor any charge sheet or show cause notice has ever been served against me, moreover my services have not been terminated thus I am entitled for the release of my salary and adjustment.
- C. That withholding of salary amounts to punishment albeit without any Charge Sheet or Show Cause Notice the salary of the applicant has been withheld since September 2009.
- D. That I have been denied of my livelihood, which amounts to violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1974.
- E. That my absence from duties was not willful but was due to my illness, however after gaining health I continuously visited the office for allowing me to join my duties, but I was not allowed to join my duties thus I have been illegally and without any justification kept away from my duties.
- F. That since my services have not been terminated, therefore I am on the strength of the department, thus being civil servant I am entitled to be adjusted against the post against which I had served for more than 20 years and also for the release of my salary illegally withheld.
- G. That I was appointed by the competent authority, I duly took over charge of my post and performed my duties for more than 20 years as such and have received salaries against my post thus valuable rights have been created in my favour the same cannot be undone or snatched away from me illegally.
- H. That I continuously approached the department for allowing me to join my duties and for my proper adjustment, however I have been kept away illegally from my duties for no fault on my behalf thus I am entitled for the release of my salary for the intervening period.



- I. That the undersigned belong to a poor family, I am having a large family dependent upon me, moreover I have no other source of income, due to the withholding of his salary my whole family is thus suffering.

*It is, therefore, humbly prayed that on acceptance of this appeal the salary of the appellant may please be released w.e.f September 2009, and he may be adjusted against the post of Behashti / Naib Qasid.*

*Yours Obediently,*

*Daood Khan*

DAWOOD KHAN

S/o FAZLI RAZIQ

Beheshti

Office of DEO (Male)

Nowshera.

R/o Muhallah Toheed Abad

Saifan Choak Village Kaga

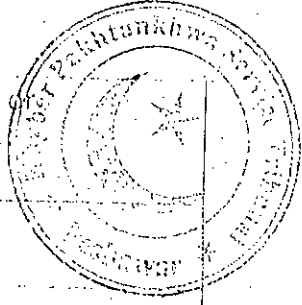
Wala, P.O Badaher, Tehsil

and District Peshawar.

Dated:

*17/04/2015*

(4)



Sl. No Date of order/ proceedings

Order or other proceedings with signature of Judge or Magistrate

1 2

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 905/2015

Daud Khan Versus Government of Khyber Pakhtunkhwa through Secretary, E&SE, Peshawar etc.

JUDGMENT

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-

27.03.2017

Counsel for the appellant (Mr. Yasir Saleem, Advocate) and Mr. Muhammad Jan, Government Pleader alongwith Hameedur Rahman, AD and Inayatullah Rahman, ADO for respondents present. Fresh Wakalatnama submitted by learned counsel for the appellant.

2. Daud Khan hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 seeking directions for release of his salary w.e.f. September, 2009 and onwards beside his adjustment against a regular post.

3. Brief facts of the case of the appellant are that the appellant was appointed as Naib Qasid in the year 1992 in the office of DEO (Male), Nowshera. While serving so he submitted an application for his transfer from District Nowshera to District Peshawar which application was not allowed. As per allegations of the appellant, he there-after fell ill and after gaining health

**ATTESTED**  
  
CHAIRMAN  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

applied for resuming his duty vide application dated 23.04.2010 but he was not adjusted despite frequent visits and requests constraining him to finally preferred departmental appeal on 17.04.2015 which was not answered and hence the instant service appeal on 29.07.2015.

4. Learned counsel for the appellant has argued that the appellant is still a regular civil servant and that despite his availability to serve as required under the law the respondents are neither assigning him any duty nor paying him the salary. That no orders whatsoever regarding his termination from service etc. were ever passed and as such the appellant is entitled to claim the same and adjustment against his post.

5. Learned Government Pleader has argued that the appeal is not within time as the appellant has slept over his rights for about 5 years and as such the appeal is liable to dismissal on the ground of time limitation. Regarding any departmental action against the appellant learned Government Pleader argued that no action whatsoever in black and white is available on record.

6. We have heard arguments of learned counsel for the parties and perused the record.

7. It is not disputed before us that the appellant was appointed as Naib Qasid in the year 1992 in the office of DEO (Male) Nowshera and has served as civil servant. The respondents has not taken any action whatsoever regarding the alleged willful absence or any other act or conduct of the appellant requiring

ATTESTED

*[Signature]*  
 Peshawar



19

departmental action. In such state of affairs we deem it appropriate to observe and hold that the appellant is still a regular civil servant and that he is entitled to be treated in accordance with law. So far as allegations of willful absence or failure to perform duty are concerned, the same cannot be used as a tool for depriving the appellant from service or its benefits. Moreover the appellant is still a regular civil servant and as such his grievances are that of recurring nature and therefore not hit by time limitation as observed in cases reported as 2005-PLC(CS) 1439 and 2002-PLC(C.S) 1388.

8. For the above mentioned reasons we accept the present appeal and direct that the respondents shall proceed against the appellant for alleged willful absence or any act of the appellant warranting departmental action in accordance with law and thereafter pass orders deemed appropriate. The claim of the appellant for salary and adjustment against the post of Naib Qasid shall be subject to outcome of the departmental enquiry which shall be conducted and concluded within a period of 3 months from the date of communication of this judgment. Parties are left to bear their own costs. File be consigned to the record.

*Sd/- M. Azim Khan Afridi*  
Chairman

*Sd/- M. Azim Khan*  
Member

ANNOUNCED  
27.03.2017

Certified  
true copy

*[Signature]*  
Secretary  
Government of Punjab  
Lahore





20  
11/2017  
H  
از دفتر ڈسٹرکٹ ایجوکیشن آفیسر مردانہ ضلع نوشہرہ

نمبر 88-87 تاریخ 25-11-2017

## نوٹس غیر حاضری

مسٹر داؤد خان نائب قاصد/بہشتی گورنمنٹ مٹل سکول کنہ خیل، سکنہ توحید آباد، سیفین چوک کنگہ  
ولہ بڈہ بیر پشاور آپ مورخہ 05/10/2009 سے اپنی ڈیوٹی سے بغیر کسی پیشگی اطلاع کے مسلسل غیر  
حاضر ہو۔ آپ کو آپ کے گھر کے پتہ پر مورخہ 18/07/2017 کو ایک خط/نوٹس بیجا گیا لیکن آپ کی  
طرف سے کوئی جواب موصول نہیں ہوا۔ لہذا آپ کو اس نوٹس کے ذریعے آخری بار مطلع کیا جاتا ہے  
کہ آپ اپنی ڈیوٹی پر حاضر ہو کر اپنی غیر حاضری کی معقول وجہ بتائیں بصورت دیگر آپ کے خلاف  
قانونی کارروائی عمل میں لائی جائے گی۔ جو آخر کار آپ کی ملازمت سے برخاستگی پر منتج ہو گی۔

فیاض حسین  
ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ)  
ضلع نوشہرہ

11/2017

To,

The District Education Officer (M)  
nowshera,

Subject: REPLY TO THE ABSENT NOTICE DATED 25.11.2017  
COMMUNICATED TO THE APPELLANT ON 05.12.2017

Respected Sir,

In reply to the subject absent notice communicated to me on 05.12.2017, I very humbly submitted my reply as under:

1. That the undersigned was initially appointed as Beheshti/naib Qasid in the year 1992 and started performing my duties and received my salaries upto 2009.
2. It is submitted that in the year 2009, I applied for inter district transfer from Nowshera to Peshawar, which was duly processed. In the mean time I got seriously ill and could not join my duties. However I duly informed about my illness and also applied for medical leave.
3. That after gaining health in April 2010, I went to join my duties. However neither I was allowed to join my duties nor my salaries were released to me.
4. That ever since April 2010 till 2015, I continuously approached the department for allowing me to join my duties, however I was not allowed, although on each occasion I was verbally assured that I will be adjusted and my salaries will be released soon.
5. That being disappointed from the department's verbal assurance I filed my departmental appeal on 15.04.2015 followed by service appeal No. 905/2015 for my release of salaries from September 2009 till date and also for my adjustment in service. My appeal was allowed by the Honorable Services Tribunal vide order and judgment dated 27.03.2017 in the following terms;

*"for the above reasons we accept the present appeal and direct that the respondents shall proceed against the appellant for the alleged willful absence or any act of the appellant warranting departmental action in accordance with law and there after pass order deemed appropriate. The claim of the appellant for salary*

*concluded within a period of three months from the date of  
communiation of this judgment.*

(copy is attached herewith)

6. That even after the order and judgment dated 27.03.2017 of the Honorable Tribunal, I approached so many times to the department to join duties, but on each occasion I was not allowed.
7. That I am still ready to serve the department if I am allowed.
8. That I have never committed any act or omission which could be termed as misconduct, the charges leveled against me are incorrect and baseless.
9. That I have at my credit a spotless service career at my credit, during my entire service I have always performed my duties to the best of my abilities and in accordance with law and rules.

Keeping in view the above submissions, it is very humbly prayed that the I may be adjusted <sup>in duties</sup> and my salaries may kindly be released.

Your's sincerely,

*(Signature)*

(Daud Khan)

Naib Qasid

R/O Village

Touheedabad Saifan Chowk

Village Kagawala Baddher

Peshawar

Dated: 08.12.2017

23

Approved J

OG, SLS

OFFICE OF THE  
DISTRICT EDUCATION OFFICER (MALE)  
NOWSHERA



(Office Phone#0923-9220228, Fax#0923-9220228)

Notification

1. Where As, Mr. Dawood Khan (N/Q) GMS Kana khel was proceeded under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules-2011, on the charges of will full absenteeism w.e.f. 5/10/2009 from School Duty as reported by the enquiry officer's in their enquiry report.
2. And whereas, Letter was served upon Mr. Dawood Khan (N/Q) GMS Kana khel Nowshera on 18-07-2017 by the enquiry officer's to appear before the Enquiry committee.
3. And whereas, Mr. Dawood Khan (N/Q) GMS Kana khel Nowshera badly failed to appear before the enquiry committee on 24/7/2017 and remained absent.
4. And whereas, absence notice was issued to Mr. Dawood Khan (N/Q) vide DEO (M) office Letter No. 87-88 dated 25-11-2017, and a subsequent Show cause notice vide No.2003-07 Dated 15-01-2018 on his home address for appearance before the District Education Officer (M) Nowshera and for submission of reply of the showcase notice.
5. And whereas, Mr. Dawood Khan (N/Q) GMS Kana khel Nowshera badly failed to satisfy the competent authority against the allegation levelled against him in his show cause reply.
6. And whereas, the authority having considered the charges, evidence on the record and giving the opportunity of personal hearing to the accused official, is of the view that the charges leveled against him have been proved.
7. Now, Therefore, in exercise of the powers conferred by the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, rule 4 (b (iii)), the Competent Authority is pleased to impose the Major Penalty of Removal From Service upon Mr. Dawood Khan (N/Q) GMS Kana khel Nowshera.

(Fayyaz Hussain)  
District Education Officer (M)  
Nowshera

Endst No: 13294-98 /DEO (M)/NSR/Disc Act/ Mr. Dawood Khan (N/Q) Dated 16/02/2018

Copy for information to the:-

1. Director (E&S) Education Govt. of Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Nowshera.
3. District Accounts Officer Nowshera.
4. Head Master GMS kana Khel.
5. District Monitoring Officer (DMO) Nowshera.
6. Mr. Dawood Khan (N/Q) GMS Kana khel Nowshera R/O Village Touheed Abad Saifan Chowk Kaga Wala Badber Peshawar.
7. Office Copy

(Competent Authority) 16/2/2018  
District Education Officer  
Nowshera

24

A. H. Khan K

To, D.E.O.M, Nowshera نوشهري  
Director, Elementary & Secondary Education,  
Khyber Pakhtunkhwa, Peshawar.

Subject: *Departmental Appeal against the order dated 16.02.2018 communicated to the undersigned on 28.02.2018 while which the major penalty removal from service has been imposed against the appellant*

Prayer in appeal

*On acceptance of this Departmental appeal the order dated 16/02/2018 may kindly be set-aside and the undersigned may kindly be reinstated in service with all back benefits.*

Respected Sir,

I very humbly submit the following few lines for your kind and sympathetic consideration:

1. That I was initially appointed as Behashti / Naib Qasid in the year 1992. I was also medically examined and when found fit I was handed over charge of my post and started performing my duties. It is pertinent to mention that my service book was also prepared for the purpose of pay and pension.
2. That ever since my appointment I had performed my duties as assigned with zeal and devotion and there was no complaint whatsoever regarding my performance.
3. That the appellant continuously received salary of his post till September 2009.
4. That while serving in the said capacity, the undersigned due to his domestic problems in the year 2009, I duly applied for inter district transfer from Nowshera to Peshawar, my application for application was duly processed, in the meantime the applicant also got seriously ill and therefore could not join his duty.
5. That thereafter, the appellant when regained health in the year 2010, I duly went to join my duties, however I was not allowed to join.
6. That I continuously approached the department for allowing him to join my duties and for the release of my salaries, however

neither my salaries have been released nor have I been adjusted to join my duties.

7. That I also filed service appeal no 905/2015 before this honorable tribunal the service appeal was disposed off and decided wide order and judgment dated 27/03/2017 with the direction to the respondents to probe in to the matter according with the law and there after appropriate order be passed within a period of three months from the date communication of judgment.
8. That the department issued absence notice dated 25/11/2017 communicated to me on 05/12/2017. I duly replied to the absence notice and explained my position and refuted the allegation leveled against me.
9. That without considering reply, I have been illegally imposed the major penalty of removal from service wide order dated 16/02/2018 communicated to me on 28/02/2018.
10. That I pray for the acceptance of my appeal inter alia on the following grounds:

*GROUND OF DEPARTMENTAL APPEAL*

- A. That I have not been treated in accordance with law hence my rights secured and guaranteed under the law are badly violated.
- B. That no procedure has been followed before my removal from service. I have never been served any charge sheet and statement of allegations nor any regular inquiry has been conducted thus the impugned order is defective in the eyes of law.
- C. That I have not been provided proper opportunity of personal hearing before awarding me the penalty hence I have been condemned unheard.
- D. That no charge sheet/ statement of allegations and show cause as prescribed under the law and rules has ever been served upon me hence I have not been provided fair opportunity to defend my self against the charges leveled. The impugned order is thus passed in violation of the principles of natural justice.
- E. That the impugned Order has been passed against the appellant without holding a regular inquiry which is violative to the principle / law and dictum declared by the august Supreme Court of Pakistan in its various judgments reported as:-
  - i. 2002 - SCMR - 57
  - ii. 2001 - SCMR - 1566
  - iii. 2000 - SCMR - 1321
  - iv. 1994 - PLC (CS) - 1717 (FST)

As such the impugned Order was passed in violation of the principle / law and dictum laid down by the august Supreme Court of Pakistan.

- F. That it is submitted that in the year 2009, I duly applied for inter district transfer from Nowshera to Peshawar which was duly processed. In the mean time I got seriously ill and could not join my duties. However I informed the department about my illness and applied also for medical leave.
- G. That after gaining health in April 2010, after gaining health I duly reported for duty however I was neither adjusted nor my salaries, where-after I filed my service appeal. I have been pursuing my remedy from the last 8 years for no fault on my part.
- H. That vide order dated 27/03/2017 the department was directed by this honorable tribunal to conduct and conclude the proceeding against the undersigned within a period of three months. However the department took almost one year in concluding proceedings, therefore the impugned order is illegal and liable to be set-aside on this ground alone.
- I. That I have never committed any act or omission which could be termed as misconduct, on a bonafide mistake such harsh penalty of dismissal from service could not be imposed.
- J. That the undersigned belong to a poor family, I am having a large family dependent upon me, moreover I have no other source of income, due to the withholding of his salary my whole family is thus suffering.

*It is, therefore, humbly prayed that on acceptance of this Departmental appeal the order dated 16/02/2018 may kindly be set-aside and the undersigned may kindly be reinstated in service with all back benefits.*

Yours Obediently,

*06/5/18*

DAWGOD KHAN

S/o FAZLI RAZIQ

Ex-Eeheshti/ Naib Qasid Office of DEO (Male) Nowshera.  
R/c Muhallah Toheed Abad Saifan Chokh Vill.

**Before the learned Khyber Pakhtunkhwa, Service Tribunal, Peshawar.**

S. A No. 72/2019  
Daud Khan

Restoration Application No. 295/2019  
Vs  
Government of KPK

**Subject:- REPLY FOR APPLICATION FOR RESTORATION.**

Respectfully Sheweth,

**Preliminary objections:-**

1. That the petitioner has no cause of action or locus standi.
2. That the petitioner has not come to this tribunal with clean hands
3. That the petitioner is badly time barred.
4. That the appellant has no cause of action to submit such application.

**Factual :-**

1. No comments.
2. Correct to the extent of dismissal of the appeal as neither appellant nor did his counsel was present on dated 19-07-2019.
3. Incorrect however reply on the grounds are as under.
  - a. Incorrect neither petitioner nor did counsel was present even no medical cause list has been annexed in support of claim of the petitioner.
  - b. Incorrect
  - c. Incorrect as for para "A"

**PRAYERS**

It is, therefore, requested that the petitioner may kindly be dismissed with cost.

**Date:** 12-03-2020



(KABIRULLAH KHATTAK)  
ADDITIONAL ADVOCATE GENERAL  
KHYBER PAKHTIUNKHWA, SERVICE TRIBUNAL  
PESHAWAR.



POWER OF ATTORNEY

In the Court of

*Mr. Saad Faruk Rizvi*  
*David Chew*

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

VERSUS

*Govt of KPK cat One*

} Defendant  
} Respondent  
} Accused

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_

Fixed for \_\_\_\_\_

I/We, the undersigned, do hereby nominate and appoint

**YASIR SALEEM ADVOCATE, HIGH COURT**

\_\_\_\_\_ my true and lawful attorney, for me in my name and on my behalf to appear at \_\_\_\_\_ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions, An appeal, statements, accounts, exhibits, Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc. and to apply for and issue summons and other writs or subpoenas and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorize hereby conferred on the Advocate wherever he may think fit to do so. any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power of attorney of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed, in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at \_\_\_\_\_ the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_

Executant/Executants \_\_\_\_\_  
Accepted subject to the terms regarding fee \_\_\_\_\_

**YASIR SALEEM**

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW  
CONSULTANT

Pl-3 & 4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt

*UBB*

BEFORE THE KHYBER PAKHTUNKHAWA SERVICE

TRIBUNAL PESHAWAR

Service Appeal NO. 72/2019

Daud Khan

VS

Secretary E&SE & Others

INDEX

S.No	Documents	Annexure	Page No
1.	Para wise Comments	_____	01-05
2.	Affidavit	_____	06
3	Copy of enquiry report	A	07-8
3	copy of absentee notice	B	09
4	Copy of show cause notice	C	10
5	Copy of removal order	D	11

Deponent

  
District Education Officer (M)  
Nowshera

**TRIBUNAL PESHAWAR**

Service Appeal NO. 72/2019

**Daud Khan**

**VS**

**Secretary E&SE & Others**

**Para wise Comments On Behalf Of Respondents:**

**Respectfully Sheweth:**

Respondents humbly submit as under.

**Preliminary objections:**

- 1) That appellant has been duly removed from service according to the findings of enquiry conducted in compliance of court directions in appellant's previous SA No.905/2015 judgment dated 27-03-2017.  
(Judgment already attached with appeal as Annexure G).
- 2) That the appellant has no cause of action/locus standi to file the instant appeal.
- 3) That no departmental appeal has been filed by the appellant.
- 4) That the appellant is estopped by his own conduct to file the instant appeal.
- 5) That the instant appeal is not maintainable in its present form.

6) That the appellatant is concealing material facts from this  
Hon,ble court

2

**REPLY ON FACTS:-**

- 1) Para -01 pertains to record.
- 2) Para -02 pertains to record.
- 3) Para -03 pertains to the record.
- 4) Para-04 is incorrect, appellatant remained willful absent from his duties w.e.f 5/10/2009 without any application or approval from the authority and never joined back his duty. The illness is pretended and concocted just to cover up his prolong willful absence as in the factious arrival application annexed by the appellatant as annexure 'E' no such reason of illness has been mentioned there in by the appellatant.
- 5) Para-05 is incorrect hence denied appellatant never fell ill as it reveals from the mentioned factious arrival report annexed just to show his elsewhere presence but in fact appellatant remained absent for several years.
- 6) Para-06 is incorrect the departmental appeal as shown filed in 2015 is factious and time barred.
- 7) Para 07 is correct with the explanation that the Hon'ble Court has directed the respondents to proceed against the appellatant for alleged willful absence hence in compliance of the said judgment an enquiry was conducted according

to whose findings appellant was found willful absent from his duty w.e.f 05/10/2009 and did not join again, then an absentee notice and a subsequent show cause notice was also served to the appellant but the appellant badly failed to satisfy the competent authority so finally penalty of removal from service was duly imposed upon the appellant vide notification dated 16/02/2018.

(copies of enquiry report, absentee notice, show cause notice and removal order are annexed as A,B,C, and D)

- 8) Para 08 already replied above in para 7.
- 9) Incorrect as explained above, the reply to the absence notice was not satisfactory, the appellant remained absent from 2009 the annexed factious arrival report of 2010 and later on factious departmental appeal of 2015 are prepared just to cover up his lacunas as admittedly there is no medical certificate or leave application on record. Furthermore it's falsehood is evident from the factious arrival application as it is silent about his illness.
- 10) Para 10 is incorrect as no such departmental appeal has been filed.
- 11) Para 11 is incorrect as explained above.

### REPLY ON GROUNDS:

A) Ground -A is incorrect. As appellant was willful absent from his duty for several years without any application hence removed from service according to law and rules.

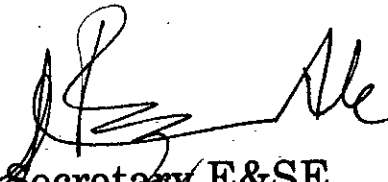
- B) Ground -B is incorrect, as enquiry has been conducted but appellant failed to appear before the committee similarly absentee notice and show cause notice was also served but appellant failed to satisfy the competent authority.
- C) Ground -C is incorrect, as proper opportunity of personal hearing and self defense was provided to appellant but he failed to avail it.
- D) Ground -D is incorrect as explained above.
- E) Ground -E is incorrect, as explained above.
- F) Ground -F is incorrect and false appellant has not submitted any medical certificate nor applied for any leave. Its falsehood is also evident from the factious arrival application as annexed by appellant as annexure 'E'.
- G) Ground -G is incorrect, as explained above.
- H) Ground -H is incorrect, as explained above.
- I) Ground -I is incorrect appellant was willfully absent from his duty for years without any application or permission or any cogent/valid reason with evidence, similarly no departmental appeal has been filed hence duly removed.
- J) Incorrect. Appellant remained willfully absent, impliedly leaving the job by gainfully working abroad or somewhere else for years and then after 6/7 years engaged himself in vexatious litigation with the department to regain his job.

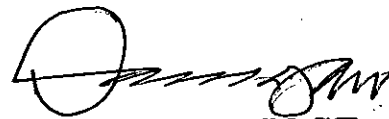
K) Respondents may also be permitted to raise other grounds during the arguments.

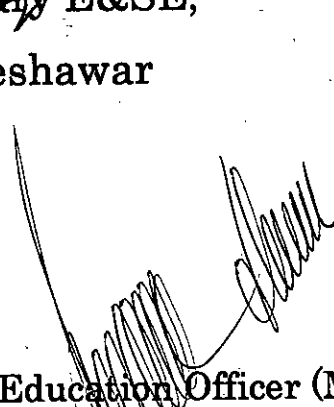

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*It is therefore most humbly prayed that the instant appeal being vexatious, erroneous and meritless may kindly be dismissed.*

**RESPONDANTS:**

  
1. The Secretary E&SE,  
KPK, Peshawar

  
2. The Director E&SE,  
KPK, Peshawar

  
3. The District Education Officer (M)  
Nowshera  


BEFORE THE KHYBER PAKHTUNKHAWA SERVICE

6

TRIBUNAL PESHAWAR

Service Appeal NO. 72/2019

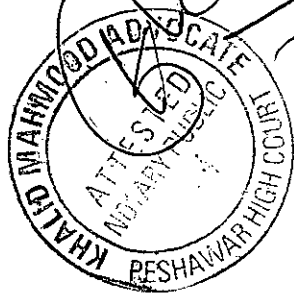
Daud Khan

VS

Secretary E&SE & Others

AFFIDAVITE

I, Irfan ul Haq Litigation Officer BPS-17, office of The District Education Officer (M) Nowshera, do solemnly affirm and declare on oath that the contents of Par wise comments on behalf of respondents are true and correct to the best of my knowledge and nothing has been concealed from this Honourable Tribunal.



22/12/22  
District Education Officer (M)  
Nowshera

Deponent



Annexure - 'A'

(7)

The District Education Officer (M),  
Elementary & Secondary Education,  
District Nowshera.

Subject:

INQUIRY REPORT AGAINST MR. DAWOOD KHAN (N/Q)/BEHESHTI GMS  
KANA KHEL (NSR).

**Background of the Case:** The subject N/Q, without any order/ leave application, remained willfully absent from his duties w.e.f 5/10/2009. His salary was stopped on the intimation letter of the Head Master. He filed an appeal in the service tribunal Peshawar for the release of his salary and reinstatement.

On 27/3 /2017, the service tribunal accepted his appeal and directed the competent authority to conduct a departmental inquiry. Consequently, the DEO(M) Nowshera nominated Mr. Sartaj Khan, Principal GHSS Jallozai (NSR) and Mr. Umar Farooq, Principal GHS Pabbi to probe into the matter and submit recommendations. (Annex-A)

**Proceedings:**

After receiving the nomination letter, we, the inquiry officers, went to the DEO office NSR to collect the relevant record from the office.

- As the case pertain to 2009/2010, according to the office bearer, most of the record of that time had been destroyed by the flood in 2010.
- As the summer vacation are on and staff members are not available in the school. However, the Cell No. of the Head Master of the school, Mr. Nisarullah was traced. On contact, he told that he was in Sindh for Tableegh and did not know Mr. Dawood Khan.
- A registered letter was delivered to Mr. Dawood Khan on his home address as mentioned in his appeal to appear before the inquiry committee. (Annex-B)
- He (Dawood Khan) did not respond to the letter.
- At last on 15.7.2017. We, the inquiry committee, went to GMS Kana Khel (NSR)
- There, we met Mr. Khalid Muhammad CT, incharge of the school, and asked for record of Mr. Dawood Khan.
- A written statement of Mr. Khalid Muhammad CT was obtained. (Annex-C)
- An inquiry order No. 408-10 dated: 14-01-2010, against the subject official had been issued with signature of the then DEO Mr. Hasanat Gul wherein Mr. Tajamul Shah, Principal GHSS Manki Shareef (NSR) had been nominated as inquiry officer.
- It is worth mentioning that neither the said order was verified by the office nor any report submitted by the inquiry officer.
- On contact, Mr. Tajamul Shah categorically denied his appointment as inquiry officer and also denied he had ever conducted such an inquiry.
- The signatory of the mentioned order, Mr. Hasanat Gul also refused that the signature was his and deemed it a fake/bogus.

Findings:

Dairy No 4737 dt 23/8/2017  
OIO The DEO (M) NSR

8

After we had done with the details of the whole case, analyzing the statements and record, it was found that:-

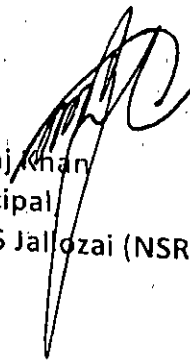
- Mr. Dawood Khan was appointed in 1992 and remained active in the Deptt: till October 2009.
- He remained completely absent after October, 2009.
- He was delivered a registered letter to appear and defend his claim before the inquiry committee but he did not comply.
- From the available record at the school and at the office, neither there was found any application for leave nor a medical report for that matter.
- The office record shows no proof of his been there to get himself reinstated.
- The Head Master concerned had informed the office in time but the authorities especially the then DEO (designated now as DDEO) did not fulfill his responsibilities.
- The fake inquiry order also shows the mala-fide intentions of the appellant.
- It was also revealed by an authentic source that he had been serving/working abroad.
- He is trying to use the weak point of the Deptt: for his advantage which has fallen short of taking timely action against the appellant.


**Recommendations:**

Keeping in view the findings of the inquiry, it is recommended that:-

- A show-cause notice may be issued to him through a Daily and the same be delivered on his home address.
- The Deptt: may write a letter to the Immigration Office Peshawar and Islamabad to check whether he is in Pakistan or abroad.
- If he presents himself to the notice and submit a satisfactory report then the leave period may be considered as L.W.P and he may be reinstated, if he does fails to do so then his service may be terminated as per E & D rules 2011.

Inquiry Committee,

  
Sartaj Khan  
Principal  
GHSS Jalozai (NSR)

  
Umar Farooq,  
Principal,  
GHS Pabbi (NSR)



Annexure - B

از دفتر ڈسٹرکٹ ایجوکیشن آفیسر مردانہ ضلع نوشہرہ  
نمبر 27-28 تاریخ 25-11-2017

(9)

## نوٹس غیر حاضری

مسٹر داؤد خان نائب قاصد/بہشتی گورنمنٹ مڈل سکول کنہ خیل، سکھ توجید آباد، سیفین چوک کگہ  
ولہ بڈہ بیر پشاور آپ مورخہ 05/10/2009 سے اپنی ڈیوٹی سے بغیر کسی پیشگی اطلاع کے مسلسل غیر  
حاضر ہو۔ آپ کو آپ کے گھر کے پتہ پر مورخہ 18/07/2017 کو ایک خط/نوٹس بیجا گیا لیکن آپ کی  
طرف سے کوئی جواب موصول نہیں ہوا۔ لہذا آپ کو اس نوٹس کے ذریعے آخری بار مطلع کیا جاتا ہے  
کہ آپ اپنی ڈیوٹی پر حاضر ہو کر اپنی غیر حاضری کی معقول وجہ بتائیں بصورت دیگر آپ کے خلاف  
قانونی کارروائی عمل میں لانی جائے گی۔ جو آخر کار آپ کی ملازمت سے برخاستگی پر منتج ہو گی۔

فیاض حسین

ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ)  
ضلع نوشہرہ

25-11-17

Annexure - C

10



**OFFICE OF THE  
DISTRICT EDUCATION OFFICER (MALE)  
NOWSHERA**

(Office Phone#0923-9220228, Fax#0923-9220228)

No. \_\_\_\_\_ Dated \_\_\_\_\_ / \_\_\_\_\_ /2018

**SHOW CAUSE NOTICE**

I, Mr. Fayyaz Hussain District Education Officer (M) Nowshera, under the Khyber Pakhtunkhwa Government Servants (Efficiently & Disciplinary) Rules, 2011, do hereby serve you, Mr. Dawood Khan (N/Q) GMS Kana khel Nowshera as follow: -

1. That consequent upon the enquiry report you were absent from your duties since 5/10/2009 till date.
2. That the enquiry officer serve upon you a notice for appearing before the enquiry committee on 24/7/2017 for the purpose of conducting enquiry as per direction/judgment of the Khyber Pakhtunkhwa service tribunal Peshawar in which you were badly failed to appear before the enquiry committee.
3. As a result therefore, I as competent authority, have tentatively decided in the light of the enquiry report, to impose upon you the major penalty under (E&D) Rules 2011, rule 4 (b (ii)) of:
  - a) Removal from service
4. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desired to be heard in person.
5. If no reply to this office is received within one week of its delivery, it shall be presumed that you have no defense to put in and in that case Ex-Parte action shall be taken against you under E&D rules 2011. (Enquiry report of the enquiry officers is attached.)

(Fayyaz Hussain)  
Competent Authority / District Education Officer (M)  
Nowshera

Dated Nowshera the 15/01/2018

Endstt. No. 2003-07 /DEO NSR/Estb(S)

Copy of the above is forwarded for information to the: -

- 1: Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 2: Deputy Commissioner Nowshera.
- 3: District Accounts Officer Nowshera.
- 4: Mr. Dawood khan (N/Q) GMS Kana khel Nowshera.
- 5: Head Master GMS Kana Khel.

Competent Authority / District Education Officer (M)  
Nowshera

and adjustment against the

Annexure-D

10



OFFICE OF THE  
DISTRICT EDUCATION OFFICER (MALE)  
NOWSHERA

(Office Phone#0923-9220228, Fax#0923-9220228)

Notification

1. Where As, Mr. Dawood Khan (N/Q) GMS Kana khel was proceeded under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules-2011, on the charges of will full absenteeism w.e.f. 5/10/2019 from School Duty as reported by the enquiry officer's in their enquiry report.
2. And whereas, Letter was served upon Mr. Dawood Khan (N/Q) GMS Kana khel Nowshera on 18-07-2017 by the enquiry officer's to appear before the Enquiry committee.
3. And whereas, Mr. Dawood Khan (N/Q) GMS Kana khel Nowshera badly failed to appear before the enquiry committee on 24/7/2017 and remained absent.
4. And whereas, absence notice was issued to Mr. Dawood Khan (N/Q) vide DEO (M) office Letter No. 87-88 dated 25-11-2017, and a subsequent Show cause notice vide No.2003-07 Dated 15-01-2018 on his home address for appearance before the District Education Officer (M) Nowshera and for submission of reply of the showcase notice.
5. And whereas, Mr. Dawood Khan (N/Q) GMS Kana khel Nowshera badly failed to satisfy the competent authority against the allegation levelled against him in his show cause reply.
6. And whereas, the authority having considered the charges, evidence on the record and giving the opportunity of personal hearing to the accused official, is of the view that the charges leveled against him have been proved.
7. Now, Therefore, in exercise of the powers conferred by the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, rule 4 (b (iii)), the Competent Authority is pleased to impose the Major Penalty of Removal From Service upon Mr. Dawood Khan (N/Q) GMS Kana khel Nowshera.

(Fayyaz Hussain)  
District Education Officer (M)  
Nowshera

3294-99  
Endst No: /DEO (M)/NSR/Disc Act/ Mr. Dawood Khan (N/Q) Dated 16/02/2018.

Copy for information to the:-

1. Director (E&S) Education Govt. of Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Nowshera.
3. District Accounts Officer Nowshera.
4. Head Master GMS Kana Khel.
5. District Monitoring Officer (DMO) Nowshera.
6. Mr. Dawood Khan (N/Q) GMS Kana khel Nowshera R/O Village Touheed Abad Saifan Chowk Kaga Wala Badher Peshawar.
7. Office Copy

(Competent Authority)  
District Education Office  
Nowshera

16/02/18