

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**CAMP COURT SWAT**

**SERVICE APPEAL NO. 706/2016**

Date of institution ... 30.06.2016  
Date of judgment ... 09.01.2019

Jani Malik S/o Pati Mulk  
R/o Shontala, Tehsil and District Dir Lower ... (Appellant)

**VERSUS**

1. Secretary to Education of Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department, Peshawar.
2. District Education Officer (F), District Dir Lower at Timergara.
3. Section Officer (C-III), Government of Khyber Pakhtunkhwa Elementary & Secondary Education, Achieves & Libraries Department, Peshawar.
4. Principal Government Girls Middle School, Shontala, Samar Bagh, Dir Lower.
5. Director of Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

\_\_\_\_\_  
APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT, 1974,  
AGAINST THE ORDER DATED 28.07.2015, WHEREBY THE  
APPELLANT, WHO WAS SERVING AS SWEEPER AT GGMS WAS  
REMOVED FROM SERVICE WITHOUT AFFORDING AN  
OPPORTUNITY OF PERSONAL HEARING AND FULFILLING THE  
CODAL FORMALITIES.

Mr. Waqas-ur-Rehman, Advocate. .. For appellant.  
Mr. Mian Ameer Qadir, District Attorney .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)  
MR. AHMAD HASSAN .. MEMBER (EXECUTIVE)

**JUDGMENT**

**MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant**

alongwith his counsel present. Mr. Mian Ameer Qadir, District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Education Department as Sweeper. He was removed from service

*M. Amin*  
*09.01.2019*

vide impugned order dated 28.07.2015 on the allegation of absence from duty. The appellant filed department appeal on 01.09.2015 which was not responded hence, the present service appeal.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was appointed as Sweeper in Education Department by the competent authority vide order dated 18.09.1995 and has 21 years serving in his credit but he never remained absent from duty. It was further contended that neither any charge sheet, statement of allegation was framed/served upon the appellant nor any inquiry was conducted nor the charge sheet, statement of allegation or inquiry report are available on the record. It was further contended that a show-cause notice was issued to the appellant on 08.03.2015 regarding the willful absence but the said show-cause notice does not disclose the absent period of the appellant. It was further contended that the respondents have also not disclosed in their written reply/comments that how much days the appellant remained absent from duty. It was further contended that the Headmistress of the said school have personal grudges with the appellant and on her complaint the appellant was removed from service mechanically without adopting proper procedure therefore, the impugned order is illegal and liable to be set-aside.

5. On the other hand, learned District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant remained absent from duty. It was further contended that all the codal formalities were fulfilled and the absent of the appellant was proved therefore, the competent authority has rightly removed the appellant from service and prayed for dismissal of appeal.

*M. Anwar  
01.10.2014*

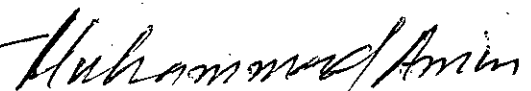
6. Perusal of the record reveals that nothing is available on the record nor the respondent has mentioned in the impugned order or their comments/reply that for how much period the appellant remained absent from duty. Moreover, <sup>As</sup> that neither any absence notice or any advertisement regarding the absence of the appellant in the newspaper are available on the record nor charge sheet, statement of allegation or inquiry report has been brought on the record by the respondent-department. Meaning thereby that the appellant was removed from service mechanically without adopting proper procedure as laid down in the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011. Moreover, the appellant has also 21 years service in his credit but the competent authority has not considered the same at the time of passing the impugned order therefore, the impugned order is illegal and liable to be set-aside. As such, we accept the appeal, set-aside the impugned order and reinstate the appellant into service. However, the respondent-department is at liberty to conduct de-novo inquiry against the appellant as per rule within a period of ninety days from the date of receipt of judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

09.01.2019



(AHMAD HASSAN)  
MEMBER  
CAMP COURT SWAT



(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER  
CAMP COURT SWAT

08.11.2018

Due to retirement of the Hon'ble Chairman Service Tribunal is incomplete. Tour to Camp Court Swat has been cancelled. To come up for the same on 09.01.2019 at camp court Swat.



Reader

09.01.2019

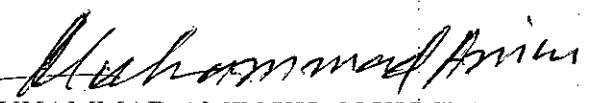
Appellant alongwith his counsel present. Mr. Mian Ameer Qadir, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, we accept the appeal, set-aside the impugned order and reinstate the appellant into service. However, the respondent-department is at liberty to conduct de-novo inquiry against the appellant as per rule within a period of ninety days from the date of receipt of judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
09.01.2019



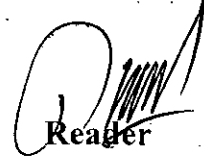
(AHMAD HASSAN)  
MEMBER  
CAMP COURT SWAT



(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER  
CAMP COURT SWAT

06.08.2018

Appellant in person present. Mr. Hazrat Nabi, ADEO alongwith Mr. Usman Ghani, District Attorney for respondents present. Due to summer vacation the case is adjourned to 01.10.2018 for the same at camp court Swat.



Reader

01.10.2018

Neither appellant nor his counsel present. Mr. Zazart Nabi, ADO alongwith Mr. Usman Ghani, District Attorney for respondents present. Case to come up for arguments on 08.11.2018 before D.B at camp court Swat.



Member



Chairman  
Camp Court Swat

(Note)

01.10.2018.

Lateron appellant Jani Malik alongwith his counsel Mr. Waqasur Rahman, Advocate appeared and handed over to them Parcha Peshi for next date.



Member




Chairman  
Camp Court Swat

05.03.2018

Appellant in person and Addl. AG alongwith Muhammad Shoaib, ADO for the respondents present. Appellant seeks adjournment as his counsel is not in attendance. To come up for arguments on 04.04.2018 at camp court Swat.


  
Member

  
Chairman  
Camp court, Swat

04.04.2018

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Shoaib, ADO for the respondents present. Appellant seeks adjournment as his counsel is not in attendance today. Granted. To come up for arguments on 06.06.2018 before D.B at Camp Court; Swat.

  
Member

  
Chairman  
Camp court, Swat

06.06.2018

Appellant Jani Malik in person present. Mr. Hazrat Nabi, ADO (F) Dir Lower alongwith Mr. Usman Ghani, District Attorney for the respondents present. Appellant made a request for adjournment that his counsel has gone to Saudi Arabia for performing of Umra.

From perusal of previous order sheets it appears that the appellant is seeking adjournments since long. This time request is allowed but as a last chance. To come up for arguments on 06.08.2018 before the D.B at Camp Court Swat.

  
Member

  
Chairman  
Camp Court, Swat

08.08.2017

Clerk of counsel for the appellant and Mr. Muhammad Zubair, District Attorney alongwith Mr. Nasirullah, ADO for the respondents present. Clerk of counsel for the appellant seeks adjournment as his counsel is not in attendance due to strike of the bar. Adjourned. To come up for arguments on 5.10.2017 before the DB at camp court, Swat.

Member

Chairman  
Camp court, Swat

05.10.2017

Counsel for the appellant and Mr. Muhammad Zubair, District Attorney for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 2.01.2018 before DB camp court, Swat.

Member

Chairman  
Camp court, Swat

02.01.2018

Counsel for the appellant and Addl. AG alongwith Muhammad Shoaib ADO for the respondents present. Counsel for the appellant seeks adjournment. Granted. To come up for arguments on 05.03.2018 before D.B at camp court, Swat.

Member

Chairman  
Camp Court, Swat

706/18


06.10.2016

Appellant in person and Mian Amir Qadar, GP for the respondents present. Requested for adjournment. To come up for written reply/comments and on 09.12.2016 at camp court, Swat.

  
Chairman  
Camp Court, Swat

09.12.2016


Appellant in person and Mr. Muhammad Shoaib, ADO alongwith Mian Amir Qadir, GP for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 05.04.2017 at camp court, Swat.

  
Chairman  
Camp court, Swat

05.04.2017

Appellant in person and Mr. Muhammad Zubair, Senior Government Pleader for respondents present. Rejoinder submitted. To come up for arguments on 08.08.2017 before D.B at Camp Court Swat.


  
(AHMAD HASSAN)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER  
Camp Court Swat.



13.07.2016

Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 27.07.2016 before S.B.

  
Member

27.07.2016

Counsel for the appellant present. Learned counsel for appellant argued that the appellant was serving as Sweeper at GGMS Shontala Samar Bagh Lower Dir when removed from service vide impugned order dated 28.7.2015 communicated to the appellant on 03.08.2015 on the allegations of willful absence where-against he preferred departmental appeal on 01.09.2015 which was processed but not finally decided constraining the appellant to prefer the instant service appeal on 30.06.2016.

That the appellant had never remained absent. That no enquiry in the mode and manners prescribed by law was conducted and appellant condemned unheard. That the impugned order is illegal and void. Regarding limitation reliance was placed on case-law reported as 2002-SCMR-155.

Points urged need consideration. Admit subject to limitation. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 6.10.2016 before S.B at camp court, Swat as the same pertains to territorial limits of Malakand Division.

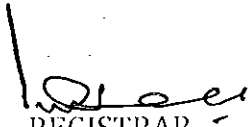
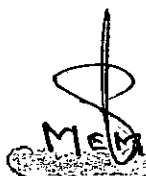
Appellant/Deposited  
Security/Process Fee

  
Chairman

Form- A  
FORM OF ORDER SHEET

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

Case No. 706/2016

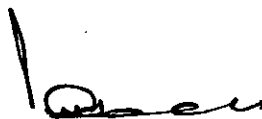
S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04/07/2016	<p>The appeal of Mr. Jani Malik resubmitted today by Mr. Waqas-ur-Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	12-7-16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>13-7-16</u></p> <p style="text-align: right;"> MEMBER</p>

The appeal of Mr. Jani Malik son of Pati Mulk received to-day i.e. on 30.06.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Addresses of respondent No. 1 & 4 are incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- The authority to whom the departmental appeal was made/preferred has not been arrayed a necessary party.

No. 1116 /S.T,

Dt. 30/6 /2016

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Waqas-ur-Rehman Adv. Pesh.

*Note: All objections have been removed.*



**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR.**

*Appeal no. 706/2016*

JANI MALIK


VS  
SECRETARY ETC

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Appellant

Through:

  
**WAQAS UR REHMAN**  
Advocate, Peshawar

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR.**

Khyber Pakhtunkhwa  
Service Tribunal

Service Appeal # 706 of 2016

Diary No. 683

Dated 30-6-2016

**JANI MALIK SON OF PATI MULK RESIDENT OF SHONTALA, TEHSIL AND  
DISTRICT DIR LOWER.**

Appellant

**Versus**

1. SECRETARY TO EDUCATION OF GOVERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY & SECONDARY EDUCATION DEPARTMENT, PESHAWAR.
2. DISTRICT EDUCATION OFFICER (F), DISTRICT DIR LOWER AT TIMERGARA.
3. SECTION OFFICER (C-III), GOVERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY & SECONDARY EDUCATION, ARCHIEVES & LIBRARIES DEPARTMENT, PESHAWAR.
4. PRINCIPAL GOVT GIRLS MIDDLE SCHOOL, SHONTALA, SAMAR BAGH, DIR LOWER.
5. DIRECTOR OF ELEMENTARY & SECONDARY EDUCATION, KPK, PESHAWAR

Respondents

Filed to-day

Registrar

30/6/16

Re-submitted to -day  
and filed.

Registrar

4/7/16

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 28.07.2015, WHEREBY THE APPELLANT, WHO WAS SERVING AS SWEEPER AT GGMS WAS REMOVED FROM SERVICE WITHOUT AFFORDING AN OPPERTUINIITY OF PERSONAL HEARING AND FULLFILLING THE CODAL FORMALITIES.

**PRAYER IN APPEAL:**

ON ACCEPTANCE OF THIS APPEAL THE IMPUGNED ORDER DATED 28.07.2015, MAY

**KINDLY BE SET ASIDE BEING ILLEGAL AGAINST THE FACTS, LAW & PROCEDURE ON THE SUBJECT AND THE APPELLANT MAY KINDLY BE RE-INSTATED IN SERVICE ALONGWITH ALL BACK BENEFITS.**

**Respectfully Shewith:**

1. That the appellant is the law abiding citizen of the Pakistan, the appellant was appointed at GGMS, as sweeper, took charge on **18.9.1995** and performed his duties to the entire satisfaction of his high ups and remained in service for **21 years**.
2. That the appellants worked at the GGMS, where there is no proper place/office in the said school for the appellant due to which the appellant had to spend all the duty time outside the school after completing his work as the female staff observed parada from the appellant, when ever required the appellant used to work as per their directions.
3. That it is worth to mention, that after so many requests by the appellant for proper sittings and place to the high ups, but in vein.
4. That, unfortunately the school is for females where all the staff of the school is female, the appellant has been told by the female staff that do not mark attendance in the register and we will procure the attendance of the appellant and the appellant after completion of his work sat/remained out of the school under the presumption that his attendance was marked.
5. That the appellant was on each day present but appellant had to remained outside the school, therefore, a partial inquiry in absence of the appellant was conducted by the competent authority against the appellant and removed the appellant from service without following the law & procedure and the appellant remained unheard which is against the principle of natural justice i.e. ***Audi Alteram Partem***.

**(Copy of the removal order of the appellant is annexed as annexure A)**

6. That the partial inquiry was concluded without adopting the proper procedure enshrined in the Law and the appellant was removed by the authority without any fault on the part of the appellant.
7. That it is in the utter disregard of law, without serving any show cause notice on the appellant or asking any explanation from the appellant, an Inquiry Officer was appointed and neither any show cause notice nor any letter of personal hearing was issued to the appellant as the allegations pertain to the appellant was his absence.
8. That when came to know about his dismissal order, the appellant left with no option but to file a departmental appeal/representation/ review vide order dated **1.9.2015** against the order dated **28.7.2015** through post, but no acknowledgement of the receiving of the same was given to the appellant.

**(Copy of the departmental appeal/review/representation is annexed as annexure-B)**

9. That in said departmental appeal the appellant disclosed his miseries to the authority in detail upon which the assistant director (Admin) directed the EDO (Female) Dir Lower to provide personal hearing to the appellant at the earliest opportunity but the competent authority did not provided any opportunity.

**(Copy of the letter is annexed as annexure C)**

10. That left with no option the appellant visited the office of the appellate authority and the appellate authority told to the appellant that his case is genuine and he would be re instated soon and there is no need to file the appeal before the competent Court of Law.
11. That since the Competent Authority is unable to adjudicate upon the appeal/review/representation of the appellant, nor communicated to the appellant any of its decision, therefore, the appellant is left with no option but to prefer the present appeal on the following grounds, inter alia:

### **GROUND:**

1. That the appellant was kept in dark and not aware from any intimation or information by the Principal which act of the respondents is against the law and fact.

2. That vide letter dated **21.9.2015**, the Competent Authority despite giving clear direction to the Inquiry Officer to provide **reasonable opportunity of personal hearing** to the appellant and to submit sound recommendation proposing punishment is not complied so far, as no opportunity of personal hearing was afforded/given to the appellant, which is against the principal of natural justice and rightly enshrined in the maxim ***Audi Alteram Partem*** (no one should be condemned unheard). The august Supreme Court of Pakistan in a cited judgment **2005 SCMR 678** held that not providing an opportunity of personal hearing is enough to even vitiate the most solemn proceedings. Moreover, **Rule 15 of the Khyber Pakhtunkhwa Government Servants (Efficiencies & Discipline) Rules, 2011**, also provides personal hearing which is not the case in hand.
3. That no charge sheet /statement of allegations has been given to the appellant nor the same has been served, if any, on the appellant which is also in violation of the cited judgment given by the **august Peshawar High Court, Peshawar i.e. 2014 PLC (C.S.) 476 by the Division Bench** in the following words “**demand of statutory law was that before proceeding against any civil servant, who had been appointed/selected after due process of law, proper inquiry such as issuing charge sheet/statement of allegations and show cause notice should be conducted---record of the present case was silent about adopting of any procedure, which was violative of law---petitioner was re-instated into service with all back benefits---constitutional petition was allowed.** It is pertinent to mention that in a recent judgment given by the **Supreme Court of Pakistan in 2014 SCMR 147**, it was held that “**competent authority had to firstly provide opportunity of hearing to accused officer and secondly he had to pass a reasoned order with conscious application of mind,** whereas by removing the appellant since 2008 is not appealing to a prudent mind.



4. That **Rule 5(2) of the Khyber Pakhtunkhwa Government Servants (Efficiencies & Discipline) Rules, 2011**, specifically provides that ***“the charge sheet or statement of allegations or the show cause notice, as the case may be, shall be signed by the competent Authority”*** which is not the case in hand.
  
5. That it is worth to mention that **Rule 9 of the Rules** *ibid* provides the procedure in case of willful absence, if any, which reads as ***“Notwithstanding anything to the contrary contained in these Rules, in case of willful absence from duty by a Government Servant for seven or more days, a notice shall be issued by the competent Authority through registered acknowledgement on his home address directing him to resume duty within 15 days or issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least 2 leading newspapers directing him to resume duty within 15 days of the publication of that notice, failing which an ex parte decision shall be taken against the absentee. On expiry of the stipulated period, given in the notice, major penalty of removal from service may be imposed upon such government servant”*** Needless to mention that the said mandatory provision is not followed in the case of appellant which is the clear violation of Rules.
  
6. That the Full Bench of the august Supreme Court of Pakistan in a cited case **2008 SCMR 1369, titled Naseeb Khan versus Divisional Superintendent, Pakistan Railway Lahore & others**, it was held that ***“ non holding of departmental enquiry ---violation of principal of Natural Justice---effect---held, in case of imposing major penalty, the principles of natural justice required that a regular enquiry was to be conducted in the manner and opportunity of defence and personal hearing was to be provided to the civil servant proceeded against, otherwise, civil servant would be condemned unheard and major penalty of dismissal from***

*service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice"*

The order of removal of the appellant is clear violation of the mentioned precedent *ibid*.

7. That the malafide on the part of respondent # 4 can be gauged from this fact that the appellant so many times approached the respondent # 4 for getting the appointment order and other documents of the appellant but the respondent # 4 became reluctant and refused which is against the mandate of right to information Act.
8. That the appellant remained on duty but in the impugned order the competent order mentioned that the absence period till date may be treated as an unauthorized absent from duty is beyond understanding and not appealing even to a prudent mind as the appellant was on duty.
9. That the appellant being a old person and also looking after his family was placed in a position which is not only embarrassment for him but also got mental agony to see the removal order as the same is in violative of **Article 10-A of the Constitution of the Islamic Republic of Pakistan 1973**.
10. That the impugned order is against the law & fact and, as such, not tenable in the eye of law and needs to be set aside.
11. That the appellant never remained absent from duty, rather he was on duty but remained outside the school for whole day on the assurance of the principal which shows the whole and sole malafide on the part of the authority. That the appellant has never been served with any show cause notice nor provided any opportunity of personal hearing which is the inherit & fundamental right of the appellant.
12. That all the formalities have been completed at the back of the appellant as the appellant was kept in dark of the entire proceedings and in this way the appellant has been condemned unheard.

It is therefore most humbly prayed that on acceptance of the appeal in hand, the impugned order of removal from service of the appellant may kindly be set aside and the appellant may kindly be re-instated with all back benefits and seniority and allow to join his duty, in large interest of justice & fair play.

Any other relief, not specifically prayed for and deem fit in the interest of justice may also be granted to the appellant.



Appellant

Through:



**WAQAS UR REHAMN**  
Advocate, peshawar

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR.**

Service Appeal # \_\_\_\_\_ of 2016

Jani malik

Versus

Chief Secretary etc

**Affidavit.**

As per the instruction of my client I do hereby affirm & declare on oath that the contents of accompanying appeal is true & correct to the best of information furnished by my client and that nothing has been concealed from this Hon'ble Tribunal.

  
Deponent

ATTESTED BY  
OATH COMMISSIONER  
IREAN ULLAH  
Advocate High Court  
29/04/2016

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR.**

Service Appeal # \_\_\_\_\_ of 2015

Jani malik

Versus

Chief Secretary etc

**APPLICATION FOR CONDONATION OF DELAY IN FILING OF APPEAL.**

**Respectfully Shewith:**

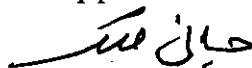
1. That the appellant moves the present appeal in which no date has yet been fixed.
2. That the contents of the main appeal may be read as integral part & parcel of the present appeal.
3. That the authority time & again told to the appellant that the appellant would be reinstated and there is no need to prefer an appeal and if the appellant prefer an appeal they will not be in a position to help out.
4. That no decision has been taken so far on the departmental appeal/ review/representation of the appellant and the appellant has been kept in dark by the respondents .
5. That the appellant is sanguine about the success of his appeal as the Department was bound under the law to intimate the appellant about the fate of his departmental appeal or provide personal hearing but nothing was done in the case of the appellant.

the fate of his departmental appeal or provide personal hearing but nothing was done in the case of the appellant.

6. That the law also favors adjudication on merits and avoid technicalities and another other point will be agitated during the course of arguments.

**Prayer**

It is , therefore, most humbly prayed that on acceptance of the application in hand, delay in filing of the appeal may kindly be condoned in the large interest of justice and the appeal of the appellant may kindly be disposed of on merits.



Appellant

Through:



**WAQAS UR REHMAN**  
Advocate, Peshawar

**Affidavit.**

As per the instruction of my client I do hereby affirm & declare on oath that the contents of accompanying application is true & correct to the best of information furnished by my client and that nothing has been concealed from this Hon'ble Tribunal.



Deponent

ATTESTED BY  
OATH COMMISSIONER  
IRFAN ULLAH  
Advocate High Court

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR.**

Service Appeal # \_\_\_\_\_ of 2016

**ADDRESSES OF THE PARTIES**

**JANI MALIK SON OF PATI MULK RESIDENT OF SHONTALA, TEHSIL AND  
DISTRICT DIR LOWER.**

Appellant


Versus

1. **SECRETARY TO EDUCATION OF GOVERNMENT OF KHYBER  
PAKHTUNKHWA ELEMENTARY & SECONDARY EDUCATION DEPARTMENT,  
PESHAWAR.**
2. **DISTRICT EDUCATION OFFICER (F), DISTRICT DIR LOWER AT  
TIMERGARA.**
3. **SECTION OFFICER (C-III), GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDR EDUCATION, ACHIEVES & LIBRARIES  
DEPARTMENT, PESHAWAR.**
4. **PRINCIPAL GOVT GIRLS MIDDLE SCHOOL, SHONTALA, SAMAR BAGH, DIR  
LOWER.**
5. **DIRECTOR OF ELEMENTARY & SECONDARY EDUCATION, KPK,  
PESHAWAR**

Respondents

**APPELLANT**

**THROUGH**

  
**WAQAS UR REHMAN**  
**ADVOCATE, PESHAWAR**

OFFICE OF THE DISTRICT EDUCATION OFFICER DISTRICT DIR LOWER AT TIMERGARA.

OFFICE ORDER.

Whereas I Mst: Zaibun Nisa District Education Officer (F) Dir Lower, as competent authority, am of opinion that Mr. Jani Mulk Sweeper GGMS Shuntala Tehsil Samar Bagh Dir lower is rendered his self liable to be proceeded against, as he committed following act/omission with the meaning of rules 3(d) the Khyber Pakhtunkhwa Government servant (Efficiency and Disciplinary) rules 2011.

Statement of Allegations:-

"As reported by Head Miss concerned, that he was absent from duty since long. Show cause notice issued in the matter, and the absence of the above named official has been proved. His acts is against the office discipline and amount to mis-conduct under rules 3(b) & (d) of the Khyber Pakhtunkhwa Govt: Servants (Efficiency and discipline) rules 2011.

Whereas 1st show cause notice was served upon the accused official vide this office Endst: No. 2941-44 dated 08-06-2015, but he failed to resume his duty nor he submitted any convincing reply to the notice.

Whereas 2nd show cause notice was served upon the accused official vide office Endst: No. 3232-35 dated 15-06-2015, but no response has been received.

Whereas personal hearing letter was served upon the accused official vide Endst: No. 3643-45 dated 03-07-2015, but no response has been received.

Now therefore I Miss: Zaibun Nisa District Education Officer (F) Dir Lower, in the capacity of competent authority am satisfied that the charges against the accused, has been proved beyond no doubt, as a competent authority, under the power conferred upon me under rules, 4, b(iii) of the Khyber Pakhtunkhwa Government servant (Efficiency and Disciplinary) rules 2011 hereby impose major penalty of "Removal from service" upon Mr. Jani Mulk Sweeper GGMS Shuntala Tehsil Samar Bagh Dir Lower from the date of his absence.

Note:- Necessary entry to this effect should be made in his service book accordingly.

(ZAIBUN NISA)  
DISTRICT EDUCATION OFFICER  
(F) DIR LOWER AT TIMERGARA.

Endst: 3854-59 Dated Timergara the 28/07 2015.

Copy of the above is forwarded to:-

1. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Dir Lower at Timergara.
3. The District Accounts Officer Dir Lower
4. The Deputy District Education Officer (F) Dir Lower.
5. The Head Mistress GGMS Shuntala Samar Bagh.
6. The accused concerned.

*[Signature]*  
DISTRICT EDUCATION OFFICER  
(F) DIR LOWER AT TIMERGARA

Attested  
*[Signature]*

Received  
*[Signature]*  
3/8/15

*[Handwritten notes and signatures]*  
318/2015  
NIC No 15303-1628824-9



(13) Annex "B"  
مختصر جناب ڈائریکٹر صاحب ابتدائی ثانوی تعلیم صوبہ خیبر پختون خواہ

عنوان: اپیل بابت بحالی سروس

جناب عالی!

مودبانہ گزارش حسب ذیل ہے۔

- 1- یہ کہ بندہ محشیت خاکروب گورنمنٹ گرلز میڈل سکول شوئالہ شہر باغ دیر پائین میں 18-09-1995 سے اپنی فرائضی منصبی سر انجام دے رہا ہے۔ اور تقریباً 21 سال سروس میں بندہ کے خلاف کوئی الزام یا رپورٹ آفسران بالا کو نہیں ہوئی ہے۔
- 2- یہ کہ علاقہ ہذا کے ایک خاندان کے ساتھ پرانے زمانے سے کشیدہ تعلقات چلے آ رہے ہیں۔
- 3- یہ کہ بد قسمتی سے سکول ہذا میں جو ہیڈ مسٹرس گزشتہ تقریباً ایک سال سے تعینات ہوئی جو مذکورہ خاندان سے تعلق رکھتی ہے بندہ کیلئے آئے روز مختلف مشکلات اور پریشانی پیدا کرنے پر تلی ہوئی ہے۔
- 4- یہ کہ سکول ہذا کا بلڈنگ بندہ کی پدروی جائیداد پر تعمیر کی گئی ہے۔ جو کہ کل اراضی چار 4 کنال پر مشتمل ہے۔
- 5- یہ کہ مورخہ 3 اگست 2015 بندہ کو ایک چھٹی ملی جس کو پڑھ کر بندہ کو معلوم ہوا کہ بندہ کی سروس ہیڈ مسٹرس کی رپورٹ پر ختم کی گئی ہے جس میں مختلف اظہار وجوہ نوٹسز اور پرسنل ہیئرنگ کا ذکر کیا گیا ہے حالانکہ بندہ کو کوئی نوٹس وغیرہ نہیں ملا ہے۔ صرف اور صرف برخاستگی آرڈر مل چکا ہے باقی سارے کاراوائی سے لاعلم رکھا گیا ہے۔
- 6- یہ کہ جناب ڈسٹرکٹ ایجوکیشن آفیسر زنانہ دیر پائین نے بغیر انکوائری اور فرسٹل ہیئرنگ کے سروس سے برخاستگی کا حکم نامہ جاری کیا ہے جو کہ انصاف کے خلاف ہے۔

لہذا عرض ہے کہ مہربانی کر کے مندرجہ بالا حقائق کے روشنی میں برخاستگی حکم نامہ زیر 59-3854 مورخہ: 28/07/2015 کو Set aside کیا جائے اور بندہ کو سروس پر بحال فرما کر مشکور فرمادیں بڑی مہربانی ہوگی۔

مورخہ: 01-09-2015

Attested  
(M) Dehman

العارض

جانی ملک خاکروب گورنمنٹ گرلز میڈل سکول شوئالہ شہر باغ دیر پائین

Annex "C" (14)

Directorate of Elementary & Secondary Education,  
Khyber Pakhtunkhwa, Peshawar

No. \_\_\_\_\_/A-20/C-IV/Dir Lower-II

Dated Peshawar the 21/9 /2015.

To

The District Education Officer  
(Female) Dir Lower

Subject: APPEAL AGAINST REMOVAL FROM SERVICE.

Memo:

I am directed to refer to the subject noted above and to enclose herewith a copy of appeal alongwith its enclosure in-r/o Jani Mulk Sweeper GGMS Shuntal P/O & Tehsil Samar Bagh District Dir Lower for necessary action and submit detailed report/comments at an early date. Also provide detail proceeding record and direct the appellant for personal hearing at the earliest.

32

Assistant Director (Admn)  
Directorate of E&SE K.P, Peshawar

Endst; No. 3907-8

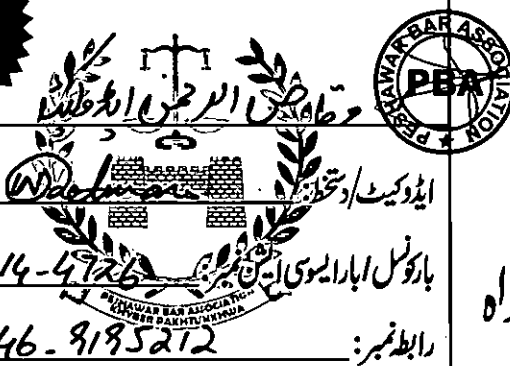
Copy forwarded to the:-

1. Mr. Jani Mulk Sweeper GGMS Shuntal P/O & Tehsil Samar Bagh District Dir Lower.
2. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

Assistant Director (Admn)  
Directorate of E&SE K.P, Peshawar

Attested  
(M) *Admn*

تہمت  
10



52218

ایڈووکیٹ/دستخط  
بارکول ابار ایسوسی ایشن  
رابطہ نمبر: 0346-9195212

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سروس سٹرائٹنومل خیبر پختونخوا، پشاور

<p>APPELLANT</p> <p>جانی ملک</p> <p>بنام</p> <p>حکومت خیبر پختونخواہ وغیرہ</p>	<p>مخائب:</p>	<p>دعوی:</p> <p>علت نمونہ:</p> <p>مورد فرس:</p> <p>جرم:</p> <p>تھانہ:</p>
--	---------------	---

**باعت تحریر آگے**

جانی ملک ولد پاپائی ملک

علی حس

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ  
 ان مقام پشاور و تھانہ ایدو لیسٹ کو وکیل مقرر  
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو  
 راضی نامہ کرنے و تقریر نمائندگی و فیصلہ برصفت دینے جواب دعوی اقبال دعوی اور درخواست از ہر قسم کی تصدیق  
 زریں ہدایت نظر کرنے کا اختیار ہوگا، نیز ضرورت ہوتی ہو تو پیروی یا اہیل کی فراہمی اور منسوخ، نیز  
 دائر کرنے اہیل نگرانی و نظر جانی و پیروی کرنے کا مختار ہوگا اور ضرورت ہوتی ہو تو مقدمہ مذکورہ کے کل یا جزوی  
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب  
 مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساتھ ہر ذمہ دار منظور قبول ہوگا دوران مقدمہ  
 میں جو خرچہ ہر جہان التوائے مقدمہ کے نتیجے سے ہوگا وہ وکیل موصوف وکیل کے لئے کا مختار ہوگا کوئی تاریخ پیشی مقام  
 دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی یا جزوی ہر ذمہ دار کو قبول، لہذا وکالت نامہ لکھ دیا تاکہ سندر ہے۔

المرقوم: 29. 6. 2016

\_\_\_\_\_

مقام پشاور کے لئے منظور ہے۔

Attested and accepted by  
 Wasayas-ur-Rehman  
 Advocate, Peshawar

تہمت اس وقت تک کارروائی میں قابل قبول نہیں

BEFORE THE HON'BLE SERVICE TRIBUNAL  
KPK.

Joni Malik

VS

The Secretary etc.

Hand  
to  
27.07.16

Application for deposit  
of Security amount.


Respectfully Submitted:

1. That the above titled Service appeal is subjudice before this Hon'ble Tribunal which is fixed for 6.10.2016.
2. That on 27.7.2016 this Hon'ble Tribunal was pleased to issue direction for submission of Security amount by admitting the appeal for hearing.
3. That as the appellant is resident of Dir, so the said amount could not be submitted yet.
4. That the appellant is ready to deposit the said amount.

In view of the above mentioned facts and circumstances of the case, it is therefore most humbly prayed that on acceptance of instant application the appellant may kindly be allowed to deposit said amount.

Appellant

through

  
Wasim-ur-Rehman  
Advocate, Peshawar.

Date: 6.9.2016.

01

1-3

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

**SERVICE APPEAL NO.706/2016.**

**Mr. Jani Mulk S/O Fati mulk Sweeper R/O Shuntala Tehsil SamarBagh Dir lower.**

**.....Appellant**

**VERSUS**

1. The Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
2. The Director, Elementary and Secretary Education Khyber Pakhtunkhwa Peshawar.
5. The District Education Officer (Female) Dir lower.

**.....Respondents**

**PARA WISE COMMENTS/REPLY FOR AND ON BEHALF OF THE RESPONDENTS NO 1, 2 & 5.**

**Respectfully Sheweth:-**

**Preliminary Objections:-**

1. The appellant has got no locus standi or cause of action to file the instant appeal.
2. The instant appeal is badly time barred.
3. The appellant has concealed the material fact from this Hon! Able Tribunal, hence liable to be dismissed.
4. The appellant has not approached this Honorable Tribunal with clean hands.
5. The present appeal is liable to be dismissed for mis-joinder of unnecessary and non-joinder of necessary parties.
6. The appellant has filed the instant appeal on malafide motives.
7. The instant appeal is against the prevailing laws & rules.
8. The instant appeal is not maintainable in the present form & also in the present circumstances of the issue.
9. The appellant is estopped by his own conduct to file in present appeals.

**FACTS.**

- (1) No cements.
- (2) Incorrect, sufficient room's, space, office were available at GGMS Shontala, Samar Bagh District Dir Lower.
- (3) In correct:- As no request /Application Submitted to the higher officer for proper sitting and place was made by the petitioner.
- (4) Incorrect: That no attendance in proper attendance register of the petitioner was made by the Female Staff.  
As at this stage, the petitioner has been produce no female staff for evidence before the Enquiry officer.

- (5) Incorrect:- As all the codal formalities under Efficiency and Disciplinary Rules, 2011 against the petitioner has been completed, as such, Explanation for willful absence from his duty has been called publication in the petitioner, show cause notices have been made and proper service upon the petitioner has been made but the petitioner did not joined his duty.(Annexer-A)
- (6) Incorrect:- As the codal formalities against the petitioner, has been completed, as first absence report from his duty has been submitted to the higher officer by the Head Mistress of GGMS Shontala, Samar Bagh Dir Lower. The first show cause notice has been issued on 08-06-2015 and the 2<sup>nd</sup> show cause notice has been issued on 15-06-2015 on Anex-C
- (7) Incorrect: As explained his paras, 4 and 5 a above.
- (8) Correct:- As the petitioner has filed departmental appeal, but the petitioner cannot wait to the decision of his departmental appeal, and has filed this service appeal writ petition before this honorable court. So, at this stage, the appeal of the petitioner is not maintainable.
- (9) Incorrect:- The enquiry officer(ASDEO) female Dir Lower has been made several directions by the district Education officer,(female) Dir Lower, at Timergara vide latter No.3643-45 dated 03/07/2015 addressed to the,  
(1) Head mistress GGMS Shontala ,Samar Bagh Dir Lower.  
(2)Mr.Sadiq shah Naib Qasid GGMS, Shontala Samar Bagh.  
(3)Mr. Jani Mulk Sweeper GGMS, Shontala Sammar Bagh (petitioner) to attend his office for personal hearing ,and proper service has also been made ,but they (along with the petitioner) does not appear for personal hearing to the District Education officer (female) Dir Lower all the relevant papers are available on the (record office). Personal hearing letter on Annex-C
- (10) Incorrect:- As explained in para above.
- (11) No comments.

**GROUND**

- (1) No comments.
- (2) Incorrect:- As in light of letter No.3406/a-20E-IV/Dir Lower-II Dated, 21/09/2015 from the Assistant Director of E&SEKP. Peshawar, addressed to the District Education officer (female) Dir Lower with copies, endorsed to the petitioner namely.  
(1) Jani Mulk Sweeper GGMS Shontala Tehsil Samar Bagh District Dir Lower.  
(2)P.A to District Elementary and secondary Education KPK Peshawar.in response of the letter No.3406/A-20/C-IV/Dir Lower II dated 21/09/2015 ,the District Education office (female) Dir Lower Timergara has issued letter No.3643-45 dated 03/07/2015 addressed to (a) Head Mistress GGMS Shontala (b)Mr. Sadiq shah Naib Qasid GGMS Shontala (c) Mr. Jani Mulk (petitioner) sweeper of GGMS Shontala Samar Bagh to attend his office for personal hearing ,but in-spit service of this letter they along with the petitioner could not attend the office of DEO (female)Dir Lower for Personal hearing.

- (3) Incorrect:- All codel formalities regarding removal from his service (petitioner) have been completed under Efficiency and Disciplinary Rules, 2011 all the official record etc. Available on the case file.
- (4) Incorrect:- As explained in para No.3 above.
- (5) Incorrect:- As all formalities have been completed, against the petitioner under Efficiency and Disciplinary Rules,2011 and also as explained above his para No.2,above.reveals that in- spite of repeated directions, and letters issued to the petitioner for his personal attendance and hearing before, by Enquiry officer, but the petitioner did not complied the orders and directions of his superior officers as well as Enquiry officer, as appointed in the willful absence of the petitioner .As such the Enquiry officer imposed major penalty against the petitioner, and on 28/07/2015 he removed from his service all the relevant papers i.e. explanation, show cause Notices are available on the record.
- (6) No comments:- As explained in para-5 above, as well as pertaining to office record.
- (7) Incorrect:- No such claims proofs against the respondent No.4 has be produced by the petitioner in his departmental appeal as well as is this service appeal.
- (8) Incorrect:- No, proofs etc. have been submitted regarding his willful absence from duty have been produced by the petitioner, to his superior officers in light of his defense.
- (9) No comments:- As explained above. The removal order has been found according to law and rules.
- (10) Incorrect:- The removal order has been made in light of the office record as well as reporting of the superior and immediate officers of the petitioner
- (11) No comments.
- (12) No Comment pertaining to office record.

It is requested, that as explained above the appeal filed the petitioner is illegal and unjustified may kindly and be dismissed with costs, Please.

Director, 07/12/2016  
 ELEMENTARY AND SECONDARY DUCATION  
 KHYBER PAKHTUNKHWA, PESHAWAR  
 (Respondent No.2)

SECRETARY  
 ELEMENTARY AND SECONDARY DUCATION  
 KHYBER PAKHTUNKHWA, PESHAWAR  
 (Respondent No.1)

DISTRICT EDUCATION OFFICER (F)  
 DIR LOWER AT TIMERGARA  
 (Respondent No.5)



(زمانہ)

خدمت جناب ڈی۔ ای۔ او صاحبہ حکم تعلیم ضلع دیر نوٹر بمقام سرگرم  
عنوان! وضاحتی رپورٹ برصلاف نائب قاصد، خاکروب GMS شونہ شام

صاحبہ عالمہ!

مکملہ بحوالہ کال نمبر 8519 03-5200 بوقت 55 : 10 بجے حوصہ 2/6 نائب قاصد  
اور خاکروب کے بارے میں وضاحت طلب کی گئی تھی۔ وضاحتی رپورٹ  
درجہ ذیل ہے۔

صاحبہ عالمہ!

① یہ کہ فاتح محو دستہ زارہ پبلی گورنمنٹ گرنڈل سکول شونہ شام میں نائب قاصد  
پوسٹ پر ڈیوٹی سہرا انجام دے رہا تھا۔ ریٹائرمنٹ کے بعد اس کا بیٹا  
مسکی صدیق شاہ اپنے والد کے جگہ نائب قاصد پوسٹ پر تعینات ہوا ہے۔  
کیونکہ ڈیوٹی بحال صدیق شاہ کی جگہ اس کی ریٹائرڈ والد سہرا انجام دے رہا ہے  
صاحبہ عالمہ: چونکہ DE صاحبہ سکول پڑا کا فوڈ وینڈ کیا تھا۔ اور انچارج صاحبہ  
نے درجہ بالا نائب قاصد کے بارے میں بتایا تھا۔  
لیکن DE صاحبہ نے کہا تھا کہ مجھے سکول میں نوٹر چاہیے۔ خواہ بیٹا ہوں۔

یا باب

② یہ کہ جانی جگہ جو کہ خاکروب پوسٹ پر تعینات ہے، وہ بھی غیر حاضر ہے۔  
اگر اس کی جگہ بھی اجنبی آدمی رات کے وقت آ رہا ہے۔ اور اس آدمی کو  
جانی الملک 3000 روپے دے رہا ہے۔ ہذا المللائی رپورٹ ارسال خدمت ہے

نمائندہ انچارج ہیڈ ماسٹرس

No. 01 Date: 03-06-2015

9/1 Shafiq

Head Mistress  
Govt. Girls Middle School  
Sadash Shonhala Distt. Dir(L)

05

SHOW CAUSE NOTICE.

I Zaibun Nisa District Education Officer (F) Dir lower as a competent authority, under the Khyber Pukhtoonkhwa removal from service (Special Powers) Ordinance 2011, do here by serve you the following class iv servants schools noted against their names :-

1. Sadiq Shah Naib Qasid GGMS Shuntala.
2. Jani Mulk Sweeper GGMS Shuntala.

As reported by the Head Mistress Concerned about your willful absence from duty and involved in impersonation through your relative.

3. I am satisfied that you committed the following acts / omission specified in the section 3 of the said ordinance.

" Guilty of habitually absenting yourself from duty".

4. As a result thereof, I being a competent authority have tentatively decided to impose upon you the penalty mentioned in section 4(a) & (b) of the said rules.
5. You are therefore required to show cause notice as why the aforesaid penalty should not be imposed upon you.
6. If no reply to this notice is received within 7 days its delivery in the normal course of circumstances it shall be presumed , that you have not defense to put in, in that case , ex party decision will be taken against you.

(ZAIBUN NISA)  
District Education Officer  
(Female) District Dir lower.

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) DISTRICT DIR LOWER.

Endst:No. 2941-44 Dated Timergara the 08/08/2015.

Copy forwarded to:-

- 1 The Deputy Commissioner Dir lower at Timergara.
2. Mr. Kabal Khan SDEO(F) Smar Bagh, with direction to serve the show cause notice on the accused official and acknowledge receipt may sent to this office for record.
4. The accused's concerned.

Aland-Dim  
ASDEO(F) Circle  
S1 Bagh

Note and do as directed

Zaibun Nisa  
District Education Officer  
(Female) District Dir lower

8/16  
2015  
SDEO(F)  
S1 Bagh

*Handwritten notes in Urdu:*  
میں نے اس کے بارے میں رپورٹ کی ہے اور اس کی کاپی ڈی پی او کے پاس بھیج دی ہے۔  
اس کی کاپی ڈی پی او کے پاس بھیج دی ہے اور اس کی کاپی ڈی پی او کے پاس بھیج دی ہے۔  
NIC No 15303-1270825

خدمت جناب - D.E. صاحبہ (وزن نام) پتہ راجہ دیہہ راجہ  
عنوان! - اطلاع ریورس صاحبہ ام صدرین شاہ صاحبہ

جناب عالیہ -  
مذکورہ سے - تم کو منتخب کر کے عدل سکول سونام میں  
فلاح محمد سیرا اورہ بھتیجی نائب قاعدہ لوسٹ میں اپنا ڈیوٹی سنبھالی  
رہ رہا تھا - اب وہ ریٹائر ہو گیا تھا - تو اس کی جگہ اس کا  
بہن صدرین شاہ نائب قاعدہ لوسٹ میں لگائی ہو گیا تھا -  
ڈیوٹی صدرین شاہ کی جگہ اس کے والد صاحب نے کر رہا تھا -  
میں اب جوئے کا ام 16/06/2016 صدرین شاہ نائب قاعدہ نذرانہ خود  
ڈیوٹی پر حاضر ہوا -

میں اطلاع ریورس خدمت کا ادائیگی  
میں ارسال خدمت ہے -

16-06-2016 No 02

Shah  
Headmistress  
Govt. Girls Middle School  
Badeen Shomalia Dist. Sindh

خدمت جنا - D.E.O(F) صاحب قلم درہائیں

(27)

لواسطت بیڈ میسر و میں G.M.S. شونٹا سرگ

جنا لعالی

تذاریش حسب ذیل ہے - آپ صہبان کے طرف سے

شوکار لغٹس نمبر 44-2941 تاریخ 08-06-2015 ورمول

ہوا - جس میں آپ صہبان نے میرے غیر حاضری کا زکر کیا ہے -

جنا - اسی دن میرے والدہ صاحبہ بیمار تھی - اور اسے ڈاکٹر صاحب

سے پاس لے گیا تھا - اور اسی دن میرے والد صاحب نے میرے گھر ڈیوٹی

سرا انجام دی - میرا والد صاحب ایک بزرگ اور شریف بندہ ہے

اب اٹنڈہ لیکے محتاط رہو تھا - اور باقاعدگی سے ڈیوٹی

سرا انجام دو تھا - اور اٹنڈہ لیکے آپ جو حکم صادر فرماوے

میں تعمیل کرو تھا - لہذا آج صہبان کی خدمت میں عرض کیا ہے - کہ میرے غیر حاضری

کو leave / c میں تبدیل کرنے کا حکم صادر فرمادیں

فقط آداب

الحارثی

سائیل صدر لوق شاہ و لرفاخ محور  
N/Q گورنمنٹ فرم سٹریٹ شونٹا سرگ

(98)

**2<sup>nd</sup> SHOW CAUSE NOTICE.**

I Mst: Zaibun Nisa District Education Officer (F) Dir lower as a competent authority, under the Khyber Pakhtunkhwa Government servant (efficiency & Disciplinary rules 2011), do hereby serve the following class iv servants schools noted against their names:

- a. Sadiq Shah Naib Qasid GGMS Shuntala.
  - b. Jani Mulk Sweeper GGMS Shuntala.
2. Show cause notice about your willful absence was served upon vide this office Endst: No.2941-44 dated 8-06-2015 but no response has been received so far, hence this notice.
  3. I am satisfied that you committed the following acts / omissions specified in the section 3 (d) of the said rule.  
"Guilty of habitually absenting yourself from duty".
  4. As a result there of, I being a competent authority has tentatively decided to impose upon you the penalty mentioned in section 4(a) & (b) of the said rules.
  5. you are therefore required to show cause notice as to why the aforesaid penalty should not be imposed upon you.
  6. If no reply to this notice is received within 7 days and not more than fifteen days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in, In that case, ex-parte action shall be taken against you.

(Zaibun Nisa)  
DISTRICT EDUCATION OFFICER  
(F) DIR LOWER AT TIMERGARA

OFFICE OF THE DISTRICT EDUCATION OFFICER (F) DISTRICT DIR LOWER.

Endst: No. 323235 / Dated Timergara the 15/06/2015.

Copy forwarded to:-

1. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
2. The Deputy District Education Officer (F) local Office.
3. Kabal Khan SDEO (F) Samar Bagh Dir Lower with the direction to serve the show cause notice on the accused Class-iv, and acknowledgement receipt may be sent to this office for record.
4. The accused Class-iv concerned.

*Alaud. Dim  
ASDEO (F)  
Circle S/Bagh.*

*[Signature]*  
DISTRICT EDUCATION OFFICER  
(F) DIR LOWER AT TIMERGARA

*Note and do as directed*

*On 15/6/2015*

*Noted.*

*[Large handwritten signature and notes at the bottom of the page]*

09

OFFICE OF THE DISTRICT EDUCATION OFFICER (Female) DIR LOWER AT TIMERGARA.

No. 3643-451

Date: Timergara the 03/07/2015.

To,

1. Head Mistress GGMS Shuntala
2. Mr. Sadiq Shah Naib Qasid GGMS Shuntala.
3. Mr. Jani Mulk Sweeper GGMS Shuntala.

Subject: PERSONAL HEARING.

Memo:

You are directed to attend this office upto 06-07-2015 and meet with the undersigned for personal hearing. Otherwise ex-parte decision will be taken against you under the E&D rules 2011.

*Alaud-Dim  
ASDEOCS  
circle S/Bagh.*

DISTRICT EDUCATION OFFICER (F)  
DIR LOWER AT TIMERGARA

*Note and do as directed.*

*Alaud-Dim  
7/7/15 ASDEOCS  
S/Bagh.*

*میں نے اس کے بارے میں جاننے کے لیے اس کے پاس گئے اور اس نے کہا کہ وہ اس وقت نہیں آسکتے ہیں۔  
میں نے اسے 7/7/15 کو اس کے پاس بلا دیا اور اس نے کہا کہ وہ اس وقت نہیں آسکتے ہیں۔  
اس کے بارے میں وضوح کی جاوے۔*

*Alaud-Dim*

*Alaud-Dim*  
NIC. 15303-1270825-9

10

OFFICE OF THE DISTRICT EDUCATION OFFICER (F) DISTRICT DIR LOWER AT TIMERGARA.

OFFICE ORDER.

Whereas I Mst: Zaibun Nisa District Education Officer (F) Dir Lower , as competent authority , am of opinion that Mr. Jani Mulk Sweeper GGMS Shuntal Tehsil Samar Bagh Dir lower is rendered his self liable to be proceeded against , as he committed the following act/omission with the meaning of rules 3(d) the Khyber pakhtunkhwa Government servant (Efficiency and Disciplinary) rules 2011.

Statement of Allegations:-

" As reported by Head Mistress concerned , that he was absent from duty since long. Show cause notice issued in the matter, and the absence of the above named official has been proved. his acts is against the office discipline and amount to miss-conduct under rules 3(b) & (d) of the Khyber Pakhtunkhwa Govt: Servants (Efficiency and Discipline) rules 2011.

Whereas 1st show cause notice was severed upon the accused official vide this office Endst: No. 2941-44 dated 08-06-2015, but he failed to resume his duty nor he submitted any convincible reply to the notice.

Whereas 2<sup>nd</sup> show cause notice was served upon the accused official vide office Endst: No.3232-35 dated 15-06-2015, but no response has been received.

Whereas personal hearing letter was served upon the accused official vide Endst: No. 3643-45 dated 03-07-2015, but no response has been received.

Now therefore I Miss: Zaibun Nisa District Education Officer (F) Dir Lower , in the capacity of competent authority am satisfied that the charges against the accused, has been proved beyond no doubt, I as a competent authority , under the power conferred upon me under rules, 4,b(iii) of the Khyber pakhtunkhwa Government servant (Efficiency and Disciplinary rules 2011 hereby impose major penalty of "Removal from service" upon Mr. Jani Mulk Sweeper GGMS Shuntal Tehsil Samar Bagh Dir Lower from the date of his absence.

Note:- Necessary entry to this effect should be made in his service book accordingly.

(ZAIBUN NISA)

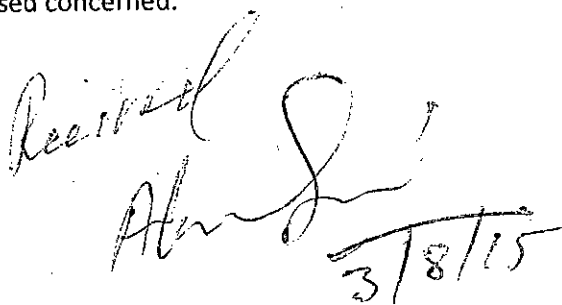
DISTRICT EDUCATION OFFICER  
(F) DIR LOWER AT TIMERGARA

Endst: 3854-59 Dated Timergara the 28/07/2015.

Copy of the above is forwarded to:-

1. The Director (E&SE)Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Dir Lower at Timergara.
3. The District Accounts Officer Dir Lower
4. The Deputy District Education Officer (F) Dir Lower.
5. The Head Mistress GGMS Shuntala Samar Bagh.
6. The accused concerned.

  
DISTRICT EDUCATION OFFICER  
(F) DIR LOWER AT TIMERGARA

  
Received  
3/8/15





**BEFORE THE HON'BLE SERVICES TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR**

**Rejoinder**

**In**

**Service Appeal No. 706 of 2016.**

**JANI MALIK**

**V**ERSUS

**THE SECRETARY TO ELEMENTARY AND SECONDARY EDUCATION  
KPK & OTHERS**

**REJOINDER TO THE PARA-WISE COMMENTS FILED  
BY RESPONDENTS NO1, 2 & 5.**

**Respectfully Sheweth;**

**REJOINDER TO THE PARA-WISE COMMENTS ON PRELIMINARY  
OBJECTIONS:**

1) Para No. 1 is incorrect hence, denied. The appellant has a good arguable case and has got cause of action against the respondents, hence, appeal is maintainable.

2) In reply to Para No. 2, it is submitted that no doubt the appeal of the appellant is time barred but an application u/s 5 for condonation of delay has already been filed with the instant appeal wherein, the reason of delay had been explained. Moreover, the order passed by the respondents is illegal order and there is no limitation against the illegal order as laid down in the **cited judgment 2002 SCMR 155.**

Besides this, limitation runs from the date of knowledge and the appellant has rightly filed the instant appeal.

- 3) Para No. 3 is incorrect hence, denied. Respondents have not pin point any facts, which was concealed by the appellant from this Hon'ble Tribunal.
- 4) Para No. 4 is incorrect hence, denied. Prior to filing the instant appeal before this Hon'ble Tribunal, the appellant has filed representation to the respondents but till date, the fate of the said representation was not communicated to the appellant, hence, the present appeal has rightly been filed before this Hon'ble Tribunal firstly, **under Rule 2(d) Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011** define "charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules; whereas, **under Rule 5** provides initiation of proceedings, **under section 5**, the personal hearing is mandatory, which is not the case of the appellant by not providing her personal hearing nor issued any show cause notice to the appellant, which is against the Rules mentioned ibid and all the proceedings are nothing but nullity in the eyes of law. It is pertinent to mention that when no proper inquiry was conducted then it is the discretion of the Tribunal to condone delay and in such like cases, the Supreme Court did not interfere as laid down in **2010 SCMR 1173**, therefore, the appellant has approached this Hon'ble Tribunal with clean hands.

- 5) Para No.5 is incorrect, hence denied. Moreover the instant appeal has rightly been filed by arraying the all the necessary parties in order to redress the grievances of the appellant.
- 6) Para No.6 is incorrect hence, denied. Moreover the appellant has served the department for almost 21 years with due diligence, in fact it is the respondents who with malafide intention dismissed/removed the appellant from his service by not adopting the proper course of law.
- 7) That Para No.7 is incorrect, hence, denied. The present appeal has rightly been filed in accordance with law, hence maintainable.
- 8) That Para No.8 is misleading, therefore, incorrect, hence, denied. The instant appeal has been filed by the appellant by fulfilling all the legal requirements and is entertainable.
- 9) That Para No.9 is incorrect, hence, denied. The respondents has miserably failed to pin point any cogent reason to substantiate the plea of estoppel against the appellant, therefore, such plea of the respondents is unreliable.

**REJOINDER TO THE PARA-WISE COMMENTS ON FACTS**

1. That Para No.1 needs no reply, as admitted by the respondents.
2. That Para No.2 is incorrect, hence, denied. Moreover the respondents have failed to substantiate the fact the there is proper place of sitting for the appellant at school, mere denial on part of the respondents is not sufficient to negate the stance of the appellant.

3. That Para No.3 is incorrect, hence denied. As several oral requests were made by the appellant to the school staff/high ups but all were regretted and the appellant was kept in dark.
4. That Para No.4 is incorrect, hence denied. It is one of the admitted fact that the instant school is for female and the appellant was intentionally misled by the staff of the school by not allowing the appellant to mark his attendance. Moreover it is pertinent to mention here that as no proper inquiry has been conducted and no chance of personal hearing has been provided to the appellant, than how the appellant could produce evidence before the inquiry officer, as whole alleged inquiry procedure has been conducted in absence of the appellant in order to dismiss/remove the appellant from his service.
5. That Para No.5 is incorrect, hence, denied. It is pertinent to mention here that the no proper procedure whatsoever has been adopted by the inquiry officer as the show cause notice annexed with the comments has not been served upon the appellant, which fact can be gauged from this fact that no signature of the appellant has been procured upon the same, furthermore no affidavit or statement on oath has been taken from the process server concerned. Needless to mention here that there is no publication in respect of willful absence of the appellant is published, which is mandatory requirement under the **Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011** wherein, **Rule-9** provided as follows: -

**Procedure in case of willful absence -**

*--Notwithstanding anything to the contrary*

*contained in these rules, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absence. On expiry of the stipulated period given in the notice, minor penalty of removal from service may be imposed upon such Government servant.*

If any publication has been made in the daily news paper than why the same has not been annexed by the respondents with the comments, such action and inaction shows the malafide intention on the part of the respondents.

6. Para No. 6 is incorrect hence, denied. As already above explained above.
7. Para No. 7 is incorrect, hence, denied as already explained above.
8. In reply to Para No. 8 the departmental appeal of the appellant has been admitted by the respondents but the respondents have no plausible justification and explanation

as to why the fate of the same has not been communicated to the appellant. Moreover, the appellant was kept in dark and misled by the respondents that the case of the appellant is genuine and soon the appellant would be restored to his post but all in vein, hence, the instant appeal.

9. That Para No.9 is incorrect, hence, denied. No letter whatsoever has neither been issued nor received by the appellant in respect of personal hearing. If the appellant would remain absent from his duty, than definitely the respondent no.04 i.e. head mistress would appear before the inquiry officer and would state against the appellant, which is not the case in hand.

10. Para No. 10 needs no reply.

11. Para No. 11 needs no reply as admitted by the respondents.

12. Para No. 18 is incorrect. As already explained the appellant has moved departmental appeal but the fate of the same was not communicated to the appellant therefore, the instant appeal has been preferred before this Hon'ble Tribunal.

#### **REJOINDER TO THE PARA-WISE COMMENTS ON GROUNDS**

1. Para No.1 needs reply as admitted by the respondents.

2. Para No. 2 being misleading is incorrect hence, denied. Moreover the Assistant Director of E&SEKP issued letter to the respondent No.2 i.e Inquiry officer on **21.9.2015**, for providing hearing opportunity to the petitioner and the said

letter was also forwarded to the P.A to Director Elementary and Secondary Education KPK, Peshawar, than how the respondent No. 2 in Compliance of letter of the Assistant Director E&SEKP, issued letter of personal hearing on **3.7.2015**, which is self contradictory, which clear reflects that no letter in respect of the personal hearing has been issued to the petitioner and the petitioner was condemn unheard.

3. Para No. 3 is incorrect hence, denied as no proper procedure has been adopted by the respondents in respect of the inquiry.
4. Para No. 4 is incorrect hence, denied as no charge sheet has been annexed with the comments and **Article 129 (g) of Qanun-e-Shahadat Order**, not annexing the said documents is presuming that the same does not exist.
5. Para No. 5 has already been explained in the preceding paras. If there was any publication then why the same has not been annexed with the comments.
6. Para No. 6 is incorrect hence, denied. The respondents did not bother to resort to the proper procedure of law.
7. Para No. 7 is incorrect hence, denied.
8. Para No. 8 is incorrect hence, denied. No chance of defense has been given to the appellant than how the appellant could disclose his miseries to the respondents.
9. That Para No.9 is incorrect, hence denied. The appellant has served the school for almost 21 years to the satisfaction of his high ups and it does not appeal to a prudent mind that how a

person served for decades could leave his service specially in situation where he is in need of the same, hence removing the appellant without any lawful justification is against the norms of natural justice.

10. That Para No.10 is incorrect, hence denied as the removal order is passed in violation of the mandatory provision of law, hence, not maintainable.

11. That Para No. 11 needs no reply.

12. That Para No.12 needs no reply being admitted by respondents.


### ***Prayer***

**In view of the above mentioned facts and circumstances of the case, it is therefore most humbly prayed that by accepting this Rejoinder, the service appeal may kindly be allowed as prayed for.**

**Any other relief not specifically prayed for but deemed proper by this honorable court in the circumstances of the case may also be granted.**

  
Appellant

Through:

  
**Waqas Ur Rehman**  
Advocate, Peshawar



**BEFORE THE HON'BLE SERVICES TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR**

**Rejoinder**

**In  
Service Appeal No. 706 of 2016.**

**JANI MALIK**

**VERSUS**

**THE SECRETARY TO ELEMENTARY AND SECONDARY EDUCATION  
KPK & OTHERS**

**AFFIDAVIT**

I, **Jani Malik son of Pati Mulk** do hereby solemnly affirm and declare on oath that the contents of the accompanying petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

*[Signature]*  
**ATTESTED**

*[Signature]*  
Deponent

