

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	27.03.2017	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u></p> <p style="text-align: center;">Appeal No. 905/2015</p> <p style="text-align: center;">Daud Khan Versus Government of Khyber Pakhtunkhwa through Secretary, E&amp;SE, Peshawar etc.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>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.</p> <p>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.</p> <p>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</p>

*[Handwritten signature]*  
27.03.17

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

27/03/17

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.

(Muhammad Azim Khan Afridi)

Chairman

(Muhammad Amin Khan)  
Member

ANNOUNCED  
27.03.2017

21.03.2016

None present for appellant. M/S Khurshid Khan, SO, Hameed-ur-Rehman, AD (lit.) and Inayatullah, ADO (legal) alongwith Addl: A.G for respondents present. Written statement submitted. The appeal is assigned to D.B for rejoinder and final hearing for 28.6.2016.

  
Chairman

28.06.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 21.11.2016.

  
Member

  
Member

21.11.2016

Clerk to counsel for the appellant and Addl. AG for respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 27.03.2017. For the appellant see's adjournment. To come up for arguments on 27.03.2017.



(ABDUL LATIF)  
MEMBER

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

26.08.2015

Agent of counsel for the appellant present. Counsel for the appellant is not in attendance as his father is indisposed. Adjourned to 3.9.2015 for preliminary hearing before S.B.

  
Chairman

03.09.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant is serving as Naib Qasid/Behshti since 1992. That the respondents withheld his salary without any appropriate order including inquiry etc where against he preferred departmental appeal on 17.4.2015 which was not responded and hence the instant service appeal on 29.7.2015.

That without inquiry or other appropriate proceedings on the allegations of wilful absence salary of the appellant cannot be withheld.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 25.11.2015 before S.B.

  
Chairman

25.11.2015

Agent of counsel for the appellant and Mr. Inayatullah, ADO alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 21.3.2016 before S.B.

  
Chairman

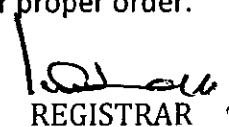


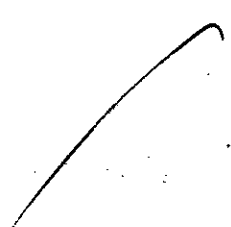
Appellant Deposited  
Security and Process Fee



Form- A  
FORM OF ORDER SHEET

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

Case No. 905/2015

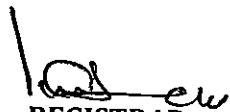
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11.08.2015	<p>The appeal of Mr. Daud Khan resubmitted today by Mr. Sajjid Amin Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p> REGISTRAR</p>
2	12-8-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>13-08-15</u></p> <p> CHAIRMAN</p>
3	13.08.2015	<p>Agent of counsel for the appellant present. Counsel for the appellant is stated busy at Islamabad. Adjourned to 26.8.2015 for preliminary hearing before S.B.</p> <p> Chairman</p> 

The appeal of Mr. Daud-Khan Naib Qasid office of the DEO Male Nowshera received to-day i.e. on 29.07.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures-A and B of the appeal are illegible which may be replaced by legible/better one.

No. 1125 /S.T,

Dt. 30/7 /2015

  
REGISTRAR -  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Sajid Amin Adv. Pesh.

1) Better copy to attached with appeal please send to the court

  
Jazirana

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 905 /2015

**Daud Khan**, Naib Qasid/Behshti, Office of the DEO Male Nowshera  
R/o Village Tohid Abad saifan Choak Village Kagawala Badaber  
Peshawar. **(Appellant)**

**VERSUS**

Govt of Khyber Pakhtunkhwa through Secretary Elementary &  
Secondary Education, Khyber Pakhtunkhwa, Peshawar & Others.

**(Respondents)**

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7	Arrival Report	F	15
8	Copy of the departmental appeal	G	16- 18
9	Vakalatnama		

*دود خان*

Appellant

Through

*Sajid Amin*

**SAJID AMIN**

Advocate Peshawar.



**BEFORE THE KHYBER PAKHTUNKWA  
SERVICE TRIBUNAL PESHAWAR**

P.W.F. PROVINCE  
SERVICE TRIBUNAL

Diary No. 906

Dated 29-7-2015

Appeal No. 905 /2015

**Daud Khan**, Naib Qasid/Behshti, Office of the DEO Male Nowshera  
R/o Village Tohid Abad saifan Choak Village Kagawala Badaber  
Peshawar. (Appellant)

**VERSUS**

1. Govt of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Nowshera.

(Respondents)

**Service Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, for directing the respondents to release salary of the appellant w.e.f September, 2009 till date and onwards with proper adjustment against regular post and against not taking action on departmental appeal dated 17.04.2015 despite the lapse of 90 days statutory period.**

Prayer in appeal

**On acceptance of this appeal the respondent may kindly be directed directing the respondents to release salary of the appellant w.e.f September, 2009 till date and onwards with further direction for proper adjustment of the appellant against regular post of Behashti / Naib Qasid with all back and consequently benefits.**

Respectfully submitted,

1. That the appellant was initially appointed as Behashti / Naib Qasid in the year 1992. After having medically examined and found fit, the appellant duly was duly handed over charge of his post thereafter he started performing his duties. (Copies of the appointment order and service book is attached as Annexure A & B)

re-submitted to ~~the~~  
and filed.

*[Signature]*  
Registered

11/8/15

2. That the service book of the appellant was also prepared and maintained from time to time for the purpose of pay and pension. *(Copy of the service book is attached as Annexure C)*
3. That it is pertinent to mention here that ever since his appointment, the appellant has performed his duties as assigned with zeal and devotion and there was no complaint what so ever regarding his performance. It is pertinent to mention here that the appellant continuously received salary of his post till September 2009. *(Copy of the pay slip is attached as Annexure D)*
4. That while serving in the said capacity, due to his domestic problems in the year 2009, the appellant applied for inter district transfer from Nowshera to Peshawar, his application for transfer was duly processed, in the meantime the applicant also got seriously ill and therefore could not join his duty, however he duly informed his office about his illness and also submitted application for medical leave. *(Copy for application for transfer is attached as Annexure E)*
5. That thereafter, the appellant when regained health in the month of April, 2010, he duly went to join his duties but not only his salary was illegally withheld but also he was not allowed to join. *(Copy of the arrival report is attached as Annexure F)*
6. That the appellant continuously approached the department for allowing him to join his duties and for the release of his salaries, however, he was only given verbal assurances that he may be adjusted and his salary will also be released but neither his salary has been released nor has he allowed to join his duties.
7. That as a last resort the appellant submitted his departmental appeal on 15.04.2015, however the same has not been responded despite the lapse of 90 days statutory period hence the instant service appeal. *(Copy of the departmental appeal is attached as Annexure G)*
8. That the appellant prays for the acceptance of his appeal inter alia on the following grounds:

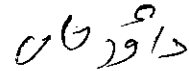
**GROUND OF DEPARTMENTAL APPEAL**

- A. That the appellant have not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.
- B. That the appellant have never been proceeded against, nor any charge sheet or show cause notice has ever been served upon him, his services have not been terminated thus the appellant is entitled for the release his 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 the appellant have been denied of his livelihood, which amounts to violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1974.
- E. That his absence form duties was not willful but was due to his illness, however after gaining health the appellant continuously visited the office for allowing him to join his duties, but the appellant was not allowed to join his duties thus he has been illegally and without any justification kept away from his duties.
- F. That since his services have not been terminated, therefore the appellant is on the strength of the department, thus being civil servant the appellant is entitled to be adjusted against the post against which the appellant had served for more then 20 years and also for the release of his salary illegally withheld.
- G. That the appellant was appointed by the competent authority, the appellant duly took over charge of his post and performed his duties for more then 20 years and has received salaries against his post thus valuable rights have been created in his favour the same cannot be undone or snatched away from him illegally.
- H. That not releasing salary of the appellant is also violation of section 4 of the Khyber Pakhtunkhwa Civil Servants Act, 1973.
- I. That the appellant continuously approached the department for allowing him to join his duties and for his proper adjustment, however, he has been kept away illegally form his duties for

no fault on his behalf, thus is entitled for the release of his salary for the intervening period.

- J. That the appellant belongs to a poor family and has a large family dependent upon him, moreover the appellant have no other source of income, due to the withholding of his salary his whole family is thus suffering.
- K. That the appellant seeks permission of this honourable court to rely on additional grounds at the time of hearing of the appeal.

*It is, therefore, humbly prayed that on acceptance of this appeal the respondent may kindly be directed to release salary of the appellant w.e.f September, 2009 till date and onwards, with further direction for proper adjustment of the appellant against regular post of Behashti / Naib Qasid with all back and consequently benefits..*



**Appellant**

Through



**SAJID AMIN**

Advocate, Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Appeal No. \_\_\_\_/2015

***Daud Khan***, Naib Qasid/Behshti, Office of the DEO Male Nowshera  
R/o Village Tohid Abad saifan Choak Village Kagawala Badaber  
Peshawar. **(Appellant)**

**VERSUS**

Govt of Khyber Pakhtunkhwa through Secretary Elementary &  
Secondary Education, Khyber Pakhtunkhwa, Peshawar & Others.

**(Respondents)**

***APPLICATION FOR CONDONATION OF DELAY,  
IF ANY IN FILING THE TITLED APPEAL***

*Respectfully submitted:*

1. That the appellant has today filed the accompanied appeal before this honorable tribunal in which no date of hearing is fixed so far.
2. That the applicant prays for condonation of delay if any in filing the instant appeal inter alia on the following grounds:-

**GROUND OF APPLICATION**

- A. That the appellant throughout agitated the matter of his release of salary and adjustment before the departmental authority and never remained negligent in perusing his remedy, however the department initially gave verbal assurances to the appellant that he may be adjusted and that his salary will also be released, therefore the appellant waited with impression that his grievance will be redressed, the appellant waited for a long period and continuously visited the office of the respondent, at last when the respondents refused to redress his grievance, the appellant submitted his departmental appeal on 17.04.2015, however the same has not been responded despite the lapse of 90 days, thereafter the instant appeal is well in time. Since the appellant has illegally been deprived of his lively hood, therefore, delay if any in filling of the instant appeal deserves to be condoned.

- B. That the delay if any in filing the instant appeal was not willful nor can the same be attributed to the appellant as the appellant duly agitated the matter before the departmental authority, therefore the appellant cannot be made suffered for the faults of others and delay if any deserves to be condoned.
- C. That it has been consistently held by the superior courts that matter pertains to pay / pension being continuous wrongs hence no period of limitation is applicable. Reliance is placed on 2005 PLC (C.S) 1439 & 2002 PLC (C.S) 1388
- D. That valuable rights of the appellant are involved in the instant case, hence the delay if any in filing the instant case deserves to be condoned.
- E. That it has been the consistent view of the Superior Courts that causes should be decided on merit rather than technicalities including limitation. The same is reported in 2014 PLC (CS) 1014, 2003 PLC (CS) 769.

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

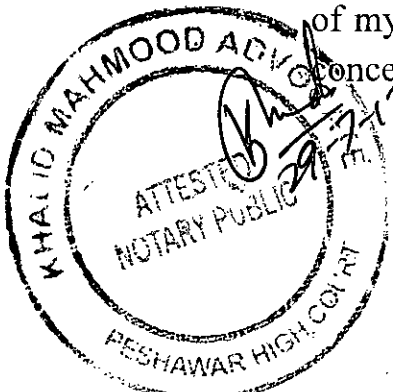
*دود خان*  
Applicant

Through

*Sajid Amin*  
SAJID AMIN  
Advocate, Peshawar

### AFFIDAVIT

*I, Daud Khan, Naib Qasid/Behshti, Office of the DEO Male Nowshera R/o Village Tohid Abad saifan Choak Village Kagawala Badaber 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.*



*دود خان*  
Deponent

DAWOOD KHAN B/O PARASI RAZIO

Now Shau Khan ...

the date of taking over ...

1. Change reports should be sent to this office.
2. SO. PA/A is allowed being first appointment.
3. On joining time is allowed what is absolutely necessary for the transit.
4. The appointment is purely temp; basis and subject to the termination at any time/notice. In case he wishes to leave the appointment he should have to submit one month in advance notice.
5. He should be produced his health and age certificate from the General Civil Surgeon/A.S. within 10 days after the issue of this order as required under rule (21.12) 1.4.
6. In case the candidate fails to take over charge within 10 days from the date of issue of this order, his appointment shall stand cancelled automatically.
7. The candidate shall be held liable for any loss or damage to the property on 13/12/72.
8. The pay scale and service rules shall be subject to the provisions in accordance with the rules to be passed by the Government from time to time.
9. He will produce photo pass, his relevant documents, SO. Office order, Medical certificate, Identity Card, domicile etc. at the time of taking over charge.
10. He will be dealt with under the S.O. rules if he violate Govt. Rules and regulations.

(Johannal Zaman Khan)  
Sd/-, Divisional Justice Officer (II)  
Lahore.

2431- ... 3/9/72

...  
D.A.O Now ...

*[Signature]*  
3/9/72  
279/2

*[Signature]*

Better Copy P/V

OFFICE OF THE SUB DIVISIONAL ESTABLISHMENT OFFICER-II NOWSHERA.

Mr. DAWOOD KHAN S/O FAZLI RAZIQ

R/O Nowshera Kalan

In Cash Rs.900/-

Making over the bank GPS No.2 NSR

Charge reports should be sent to this office.

No TA/DA is allowed being first appointment.

No joining time is allowed what is absolutely necessary for the transit.

The appointment is purely temporary basis and subject to the termination at any time/notice. In case he wishes to leave the Department he should have to submit one month pay prior notice

He should be produced his Health certificate from the concerned Civil Surgeon within 10 days after the issue of this order is required under rule (27.10) A. N.

In case the candidate fails to take over charge within 10 days from the date of issue of this order, his appointment stand cancelled automatically.

The pay scale and service rules will in accordance with the orders to be passed by the committee time to time.

He will produced charge copies under the the rules if he violate Govt; Rules with and Regulations.

(Mohammad Zaman Khan)

Sub Divisional Establishment officer (II)  
Nowshera.

Encl: No. 243-G.UV. Dated NSR 3/9/2012.

Copy forwarded for information to  
official concerned.

ATTESTED.



8

ANNEXURE "B"

MEDICAL CERTIFICATE

Ex 2  
16/9/52  
Age

Name of Official ..... Dawood Khan

Rank of Official ..... (Muslim)

Post of Official ..... Fazal Razvi

Address of Official ..... alleged and P.O. District of ...  
Tehsil Nisra, Bahawalpur

Date of Birth ..... 30.5.1921

Examined by measurement ..... 5' 6"

Person marked as unfit for ..... 27.9.52

Signature of the Official .....

Signature of head of office .....

Seal of Office

I do hereby certify that I have examined Mr Dawood Khan a candidate for employment in the Office of the Education Dept.

and have not discovered that he had any disease communicable or other cause of incapacity or bodily infirmity except ~~in his eye~~ NIL

I do not consider this as disqualification for employment in the office of the Education Dept. His age according to his own statement is 27 years and he appears to be about Twenty one years.

LEFT HAND THUMB AND FINGER  
IMPRESSIONS

Medical Superintendent  
Civil Hospital

16/9/52

Attest  
[Signature]

MEDICAL CERTIFICATE.

Name Dawood Khan  
(Miscellaneous)

S/O Fazle Raheem

Address- Village and P.O. Nowshera Kalan

Dated- 30-5-1971

50 00

Signified .....

Seal of office.....

-----

Certify that I have examined the Mr. Dawood Khan  
a certificate in this is sent to the Education Deptt;

admissible

or other countersigned

infirmary except.....MB.....

disqualification for employment to the office  
of the Education Deptt;. The age according to his own  
statement 21 years.

Twenty 02 years.

Sd /- Medical Superintendent.

Civil Hospital,....

(9)

ANNEXURE C

The entries in this page should be renewed or re-attested at least every five years and the signature in lines 9 and 10 should be dated.

1. Name: Mr. Daud Khan

2. Race: Afghan

3. Residence: Mohalla Aree Roy  
Andar Shahr Peshawar city

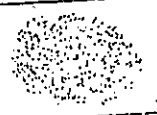
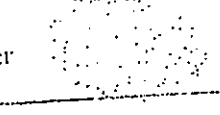
4. Father's name and residence: Mr. Fazle Raziq  
Acheive


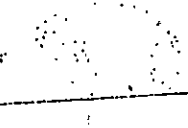
5. Date of birth by Christian era as nearly as can be ascertained: 30-05-1971  
30th May 1971 and Seventy One

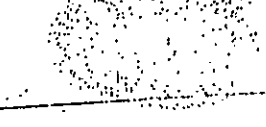
6. Exact height by measurement: 5-6

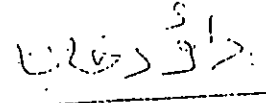
7. Personal marks for identification: A Scar on the fore head

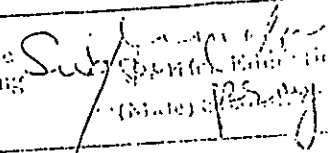
8. Left hand thumb and finger impression of (non-gazetted) officer

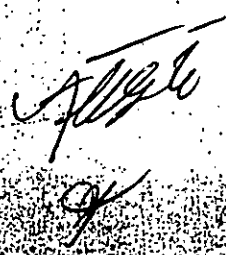
Little Finger:  Ring Finger: 

Middle Finger:  Fore Finger: 

Thumb: 

9. Signature of Government servant: 

10. Signature and designation of the Head of the Office, or other Attesting Officer:   
Sub-Inspector (State) Peshawar



(10)

1	2	3	4	5	6	7	8	9
	Whether sub-sta-tive or official acting and whether permanent or temporary	If reclassification, state (a) substance of appointment, or (b) whether service contract for position under Act 371 C. S. D.	Pay in relative post	Additional Pay for Grading	Other emolument falling under the term "Pay"	Date of appointment	Signature of Government servant	Signature of officiating or temporary
W/Quaid EIMS No. 1 NSR Contd.	off/c	BPS No. 1 : 920-26-1370	920/P.O.			9/3/92		
W/R EIMS Contd. (Khalid) NSR	-Do-		920/P.O.			10/93		
-Do-	-Do-		946/P.O.			12/93		
-EIMS W/R Khalid (Khalid) NSR	-Do-	(Revised BPS No. 1 : 1245-35-1770)	1280/P.O.			6/94		
-Do-	-Do-		1315/P.O.			12/94		
-Do-	-Do-		1350/P.O.			12/95		
-Do-	-Do-		1385/P.O.			12/96		
-Do-	-Do-		1420/P.O.			12/97		
-Do-	-Do-		1455/P.O.			1-12-98		
-do-	-do-		1490/P.O.			1-12-99		

*[Handwritten signature]*

11

Signature and name of the head of the office or other authority attesting to the facts in forms 1 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 authority	Nature and duration of leave taken	Allocation of period of leave on a pro-rata basis upto four months for which leave salary is payable to another Government	Signature of the head of the office or other authority	Ref. to any other document or record of the Government
S/Dy Insp	30/9/93	Transfer	S/Dy Insp		Approved against 1/80 Post		
S/Dy Insp	30/11/93	A/O	S/Dy Insp		vide S.D.E.O. (M) No. 21/31 dt 30/9/92		
S/Dy Insp	30/5/94	Scale	S/Dy Insp				
S/Dy Insp	30/11/94	Revised	S/Dy Insp		Service verified w.e.f. 30/9/92 to 30/9/93		
S/Dy Insp	30/11/95	A/O	S/Dy Insp		from register and other record of this office		
D.E.O. (Secy)	30/11/96	All Inc.	D.E.O. (Secy)				Service verified w.e.f. 1-1-93 to 31-12-93 from register and other record of this office
D.E.O. (Secy)	30/11/97	All Inc.	D.E.O. (Secy)				
D.E.O. (M)	30/11/98	All Inc.	D.E.O. (M)				Service verified w.e.f. 1-1-94 to 31-12-96 from register and other record of this office
D.E.O. (M) Secy: Nowshera	30/11/99	A/Dy Insp	D.E.O. (M) Secy: Nowshera				
D.E.O. (M) Secy: Nowshera							D.E.O.
							Service verified w.e.f. 1-1-97 to 31-12-98 from register and other record of this office

Handwritten signature and initials at the bottom left of the page.

125

8	9	10	11	12	13		14	15
Signature of Government	Signature and position of the head of office or other signing officer in Sub-sections 1 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	Leave		Signature of the head of the office or other attesting officer	Reference to any recorded, pending, or other, in order or praise of the Government serv
					Nature and duration of leave taken	Allocation of period of leave on average pay up to four months for which leave salary is payable to another Government		
						Period		

Government to which is payable: *Scrapped*

31-12-99 from *Algeria*

of other *Record of the Office*

Signature of the head of the office or other attesting officer

Secy. Govt. Serv.

*Amir*

14

ANNEXURE 'E'

APPLICATION FORM FOR INTER-DISTRICT TRANSFER

- 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): Distt. Peshawar
- 7- Reason for Transfer: very far from my house
- 8- G.P. Fund No.: EDUNR001000 old (0004029189)
- 9- Personal No.: 00139067
- 10- Numbers of C/L/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: DAUD KHAN  
 Name of Applicant: DAUD KHAN  
 N.I.C.No.: 17301-3674502-3

Certificate by the relieving EDO E&SE

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

2- The following arrangement will be made by me for filling up the post in case of transfer of Mr/Mst: 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 (Male) Elem. & Secy. Edu: District officer

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/Mst: DAUD KHAN, Behshiti  
 of against a vacant post of Beshiti (Name of School) GMS 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: JAMIC UR RAHMAN 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 (d) Previous transfer order (if any) (c) SSC. Intended in: PTC, CT, B.Ed, etc.

*[Handwritten signature]*

AFINE KURE

(15)

کریکٹ کے لیے ایک آفسر انچارج ایئر سٹیشن کے آفیسر کے طور پر

Do (M) need to do

صوبہ ہریانہ کے آفسر کے طور پر ایئر سٹیشن کے آفیسر کے طور پر

ایئر سٹیشن کے آفیسر کے طور پر ایئر سٹیشن کے آفیسر کے طور پر

ایئر سٹیشن کے آفیسر کے طور پر ایئر سٹیشن کے آفیسر کے طور پر

ایئر سٹیشن کے آفیسر کے طور پر ایئر سٹیشن کے آفیسر کے طور پر

ایئر سٹیشن کے آفیسر کے طور پر ایئر سٹیشن کے آفیسر کے طور پر

فادو خان

الفارحی

ایئر سٹیشن کے آفیسر کے طور پر ایئر سٹیشن کے آفیسر کے طور پر

ایئر سٹیشن کے آفیسر کے طور پر

Ar. 346 / 23/4/17

Handwritten signature



(15)

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.



(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 fo 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 form 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 then 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 then 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 form my duties for no fault on my behalf, thus I am entitled for the release of my salary for the intervening period.

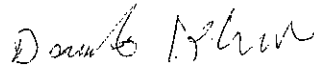


(18)

- 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,



DAWOOD KHAN

S/o FAZLI RAZIQ

Beheshti

Office of DEO (Male)  
Nowshera.

R/o Muhallah Toheed Abad  
Saifan Choak Village Kaga  
Wala, P.O Badaber, Tehsil  
and District Peshawar.

Dated:

17/04/2015



## POWER OF ATTORNEY

In the Court of Khyber Pakhtunkhwa, Service Tribunal,  
Peshawar.

Daud Ullah

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

**VERSUS**

Court of Khyber

} Defendant  
} Respondent  
} Accused

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

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

### SAJID AMIN ADVOCATE, HIGH COURT

\_\_\_\_\_ my true and lawful attorney, for me  
in my same and on my behalf to appear at Peshawar 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 sub-  
poena 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  
authorizes 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 or 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 Peshawar  
the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_  
Executant/Executants \_\_\_\_\_  
Accepted subject to the terms regarding fee \_\_\_\_\_

  
**SAJID AMIN**  
Advocate High Court

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4

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR**

Appeal No 905/2015

Mr. Daood Khan.....Appellant

VERSUS

1- Govt: of Khyber Pakhtunkhwa, Peshawar & others..... Respondents

**Respectively Sheweth**

Written comments/reply on behalf of respondents are as under:-

**Preliminary Objections**

1. That the Appellant has no cause of action/locus standi to file the instant appeal.
2. That this honorable service tribunal has got no jurisdiction to entertain the present appeal.
3. That the present Appeal is bad for mis joinder and non-joinder of necessary parties.
4. That the instant appeal is badly time barred.
5. That the appellant has concealed material facts from this honorable service tribunal.
6. That the appellant is estopped by his own conduct, by deed and by law to file the instant appeal.
7. That the instant appeal is not maintainable in its present form.

**Factual Objection**

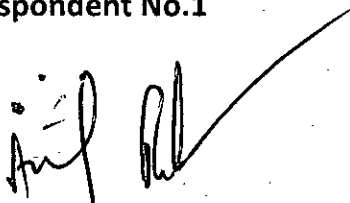
- 1 Pertains to the appellant record.
- 2 Pertains to the appellant record.
- 3 Pertains to the appellant record.
- 4 In Correct. The Appellant was willful absent from duty w.e.f 05/10/2009 the appellant neither applied for leave nor informed the department about his absenteeism. The appellant left the school without proper leave sanction form the competent authority. Therefore his salary was stopped by the Department.
- 5 No Comments.
- 6 Incorrect. The appellant filed departmental appeal on 23/04/2010 after this he never visited/attended Office of the EDO Nowshera. Reportedly the appellant went abroad and filed the instant appeal after laps of five years.
- 7 No Comments. However there is no second Departmental Appeal under the law.
- 8 No Comments.

Grounds:

- A. In correct. The appellant was wilful absent which is misconduct on his part.
- B. In correct.
- C. In correct.
- D. In correct.
- E. In correct. The appellant was wilful absent from duty. Moreover the appellant never visited Office of the EDO/DEO (M) Nowshera about his appeal.
- F. In correct. The appellant was not entitled for salaries and readjustment as he was wilful absent from duty more than five years.
- G. In Correct. Detail reply has been given in the paras above.
- H. In correct.

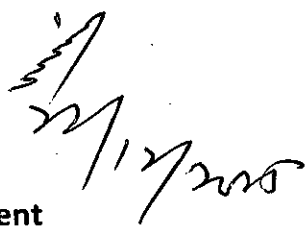
It is therefore, requested before your honor that the present appeal is against facts and without force, may kindly be dismissed with cost.

Respondent No.1



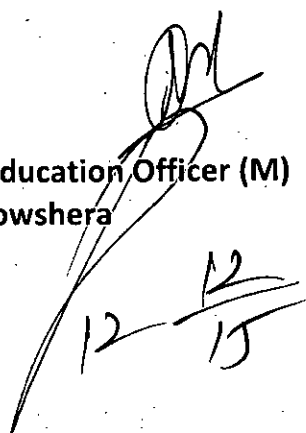
Secretary Education Department,  
Govt: of KPK. Peshawar

Respondent No.2



Director (E&SE) Department  
Govt: of KPK Peshawar

Respondent No.3



District Education Officer (M)  
Nowshera

**BEFORE THE KHYBER PAKHTUNKWA SERVICE  
TRIBUNAL PESHAWAR**

Service Appeal No. 905/2015

*Daud Khan*, Naib Qasid/ Beheshti, office of the DEO Male  
Nowshera R/O Village Toheed Abad Saifan Safan Chowk  
KagaWala Badbher Peshawar.

**Appellant**

**VERSUS**

Government of Khyber Pakhtun Khwa, Peshawar and others

**Respondents**

**Rejoinder on behalf of the appellant**

**Respectfully Submitted:**

1. That the contents of Para No. 1 of the reply are incorrect. The appellant has been denied his salary and has not been allowed to join his duties, hence he has the cause of action.
2. That the contents of Para No. 2 of the reply are incorrect. All the necessary parties have been made party in the appeal.
3. That the contents of Para No. 3 of the reply are incorrect. The instant appeal is well within time.
4. That the contents of Para No. 4 of the reply are incorrect. Nothing has been concealed from this Honorable Tribunal.
5. That the contents of Para No. 5 of the reply are incorrect. No law of estoppel is applicable to the facts of the case.
6. That the contents of Para No. 6 of the reply are incorrect. The instant appeal is maintainable.

**On Facts**

1. That Para No. 1 needs no reply.
2. That Para No. 2 needs no reply.
3. That Para No. 3 needs no reply.

4. That the contents of Para No. 4 of the reply are incorrect. Contents of the Appeal are correct.
5. That Para No. 5 needs no reply.
6. That the Contents of Para No. 6 of the reply are incorrect. Contents of the Appeal are correct.
7. That the Contents of Para No. 7 of the reply are incorrect. Contents of the Appeal are correct. The appellant filed his departmental appeal in the year 2015.
8. That contents of Para No. 8 needs no reply.

**ON GROUNDS**

Contents of Para No. A to H of the reply are incorrect. Contents of the appeal are true and correct.

*It is therefore prayed that the appeal may kindly be accepted as prayed for.*



**Appellant**

Through



**IJAZ ANWAR**  
Advocate, Peshawar

&



**YASIR SALEEM**  
Advocate, Peshawar



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

Service Appeal No. 905/2015

Daud Khan, Naib Qaiser, Behehti Office of the DEO Male  
Nowshera R/o Village Toheed Abad, Saifan Safan Chowk, Kaga  
Wala, Badhber, Peshawar.

.....Appellant

**VERSUS**

Govt. of Khyber Pakhtunkhwa Peshawar and others

.....Respondents

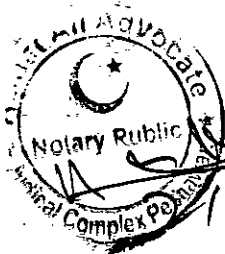
**AFFIDAVIT**

I, Daud Khan, Naib Qaiser, Behehti Office of the DEO Male  
Nowshera R/o Village Toheed Abad, Saifan Safan Chowk, Kaga  
Wala, Badhber, Peshawar, do hereby solemnly affirm and declare  
on oath that all the contents of instant **REJOINDER** are true and  
correct to the best of my knowledge and belief.

*ab JGL*

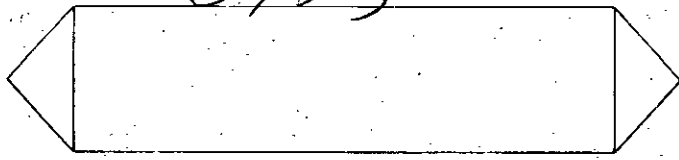
**DEPONENT**

**ATTESTED**



*11-11-2016*

بعدالت خیر بخیر خواہ سرور رٹریڈنگ ایسوسی ایشن



موزہ 27 مارچ 2017ء پنجاب عدالت  
مقدمہ  
دعوئی  
جرم  
داؤد خان بنام لوئیس

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام لکھنؤ کیلئے سکرٹری (ڈاؤد خان) مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعوئی اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعوئی اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا کالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم 27 مارچ 2017ء

عدالت خیر خواہ

کے لئے منظور ہے۔

Amir

مقام

Amir

داؤد خان

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 629 /ST

Dated 30 /3 / 2017

To


The Director E&SE,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 27.3.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.