

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 612/2014

Date of institution ... 28.04.2014
Date of judgment ... 21.09.2016

Shakir Ullah S/o Umar Khan, Ex-Chowkidar GMS Mani Khela
R/o Mani Khela, Tehsil & District Charsadda.

... (Appellant)

VERSUS

1. Secretary Education Khyber Pakhtunkhwa, Peshawar.
2. Director Education School & Literacy, Peshawar.
3. District Education Officer (Male) Charsadda.
4. Sub-Division Education Officer (Male) Charsadda.
5. District Account Officer, Charsadda.

... (Respondents)

APPEAL UNDER SECTION 10 OF SERVICE TRIBUNAL ACT 1974 AGAINST
OFFICE ORDER Endst No. 5568-68 DATED 03.08.2013 OF THE
RESPONDENT NO. 3 WHEREBY THE SUSPENSION PERIOD w.e.f 23.05.2009
to 30.04.2012 WAS TREATED AS LEAVE WITHOUT PAY AND AS SUCH
SALARIES OF SUSPENSION PERIOD WERE WITHHELD.

Mr. Javed Ali Muhammadzai, Advocate
Mr. Ziaullah, Government Pleader

.. For appellant.
.. For respondents.

MR. ABDUL LATIF
MR. PIR BAKHSH SHAH

.. MEMBER (EXECUTIVE)
.. MEMBER (JUDICIAL)

JUDGMENT

ABDUL LATIF, MEMBER:-

Facts giving rise to the instant appeal are that

the appellant was appointed as Chowkidar at GMS Mani Khela vide office order dated 01.08.1984. That during his service, the appellant was falsely involved in a murder case vide FIR No. 308 dated 22.05.2009 Under Section 302/34 PPC, Police Station Sardheri. That the services of the appellant were suspended vide office order dated 29.07.2009 w.e.f 23.05.2009. That after trial, the Sessions Judge Charsadda acquitted the appellant vide judgment and order dated 16.07.2013. That after acquittal the appellant approached to the

Q.F.I.

respondents for salaries of suspension period. That respondent No. 4 told the appellant that he is going to submit pension paper to the concerned authority and he will be paid his entire outstanding salaries alongwith pension amount. That during process of preparation of pension papers, on 10.01.2014 the appellant came to know that respondent No. 3 vide order dated 03.08.2013 has ordered to treat the services of suspension period w.e.f 23.05.2009 to 30.04.2012 of appellant as leave without pay. That the appellant preferred departmental appeal against the impugned order to the respondent No. 2 on 13.01.2014 but the same has not been decided by the respondent No. 2/appellate authority till date and hence the instant service appeal with a prayer that on acceptance of this service appeal the impugned order dated 03.08.2013 may kindly be set-aside and respondents may also be directed to release the due salaries of period w.e.f 23.05.2009 to 30.04.2012 of the appellant.

2. The learned counsel for the appellant argued that the impugned order dated 03.08.2013 was illegal, against the law and rules on subject. He further argued that no show-cause notice what so ever was issued to the appellant before passing the impugned order dated 03.08.2013 and thus appellant condemned unheard. He contended that the appellant had been honorably acquitted from the charges by the competent court of law and the appellant was entitled to be paid salaries of suspension period. He further contended that under Article 193 C.S.R the respondents were bound to release all salaries of suspension period to the appellant. He prayed that on acceptance of this service appeal the impugned order dated 03.08.2013 may kindly be set-aside and respondents may also be directed to release the due salaries of period w.e.f 23.05.2009 to 30.04.2012 of the appellant.

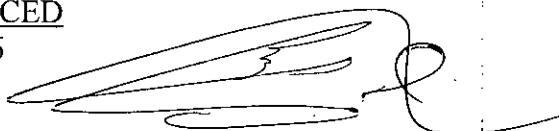
3. The learned Government Pleader resisted the appeal and argued that the appeal was not maintainable. He further argued that being involved in a criminal case the appellant remained fugitive from law and did not perform any duty during the long period of absence from 23.05.2009 to 30.04.2012 adding further that the said period of absence was already treated as leave without pay and in the light of Notification of Government of Khyber Pakhtunkhwa Establishment and Administration Department Regulation Wing No. SOR-1(E&AD)1-19/81/Vol-IV dated 23rd July 2011. He also relied on this Service Tribunal

judgment dated 20.05.2015 in Service Appeal No. 23/2013 titled "Muhammad Alam-vs-District Education Officer Charsadda and others and decision dated 20.09.2016 in Service Appeal No. 138/2013 in case titled "Hayat Gul-vs-Secretary Elementary & Secondary Education and others and prayed that being identical in nature the instant appeal may also be decided and dismissed on the analogy of the said case.

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record it transpired that the appellant was involved in a murder case vide FIR No. 308 dated 22.05.2009. He was suspended by the relevant authority on 29.07.2009 where-after he remained behind the Bar. On his acquittal on 16.07.2013 he approached to the department for release of his salaries. The respondent-department in light of Notification of Government of Khyber Pakhtunkhwa Establishment and Administration Department Regulation Wing No. SOR-1(E&AD)1-19/81/Vol-IV dated 23rd July 2011 denied the payment of salaries for the period he remained absent from duty and treated the absence period of the appellant w.e.f 23.05.2009 to 30.04.2012 as leave without pay. We in the circumstances, do not find any merits for treating the period of unauthorized absence of the appellant as duty for the purpose of drawal of arrears of pay as such payment of salaries could not be justified in such circumstances and in this regard the arguments of learned Government Pleader on the principle of 'No work No pay' as held by the superior court in various judgments relied upon during the course of arguments. Being devoid of merits the appeal is dismissed accordingly. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
21.09.2016



(PIR BAKHSH SHAH)
Member



(ABDUL LATIF)
Member

612/2014

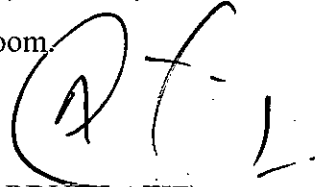
21.09.2016

Counsel for the appellant and Mr. Ziaullah, Government Pleader
for respondents present.

Vide our detailed judgment of today placed on file, this appeal is
disposed of as per the said detailed judgment. Parties are, however, left
to bear their own costs. File be consigned to the record room.

ANNOUNCED
21.09.2016


(PIR BAKHSH SHAH)
MEMBER


(ABDULLATIF)
MEMBER

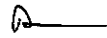
22.09.2015

Appellant with counsel and Mr. Faqir Ahmed, Junior Clerk alongwith Addl: A.G for respondents present. Written comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 22.12.2015.


Chairman

22.12.2015


Counsel for the appellant and Mr. Wisal Muhammad, ADO (Legal) alongwith Mr. Ziaullah, GP for respondents present. Rejoinder submitted. To come up for arguments on 24.5.2016.


Member


Member

24.5.2016

Counsel for the appellant and Assistant AG for respondents present. Counsel for the appellant requested for adjournment. Adjourned for arguments on 21.9.2016.


Member


Member

5

02.04.2015

Appellant Deposited
Security & Process Fee



Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Chowkidar in Education Department when charged in a criminal case registered vide FIR No. 308 u/s 302/34 PPC dated 22.5.2009 registered at P.S Sardheri. That after acquittal the appellant was reinstated in service but his period of detention in judicial lock up was considered as abscondence and treated as leave without pay vide impugned order dated 3.8.2013 against which the appellant preferred departmental appeal on 13.1.2014 which remained un-responded. That limitation would not run as the issue pertains to the pay and pension of the appellant.

That the appellant is entitled to full pensionary benefits by treating the period of absence as on duty.

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 26.6.2015 before S.B.


Chairman

6

26.06.2015

Appellant in person, M/S Khurshid Khan, SO for respondent No. 1, Javed Ahmed, Supdt. for respondent No. 2 and Faqir Ahmed, Junior Clerk, for respondents No. 3 and 4 alongwith Addl: A.G present. Requested for adjournment. To come up for written reply/comments on 22.9.2015 before S.B.


Chairman

3.

Reader Note:

21.01.2015

Since 20th January has been declared as public holiday by the provincial government, therefore, case is adjourned to 24.02.2015 for the same.

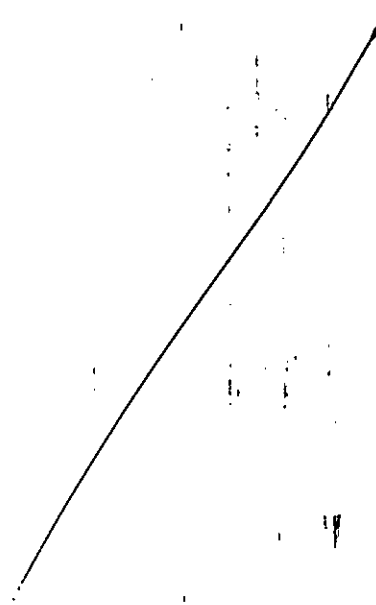

Reader

4.

24.02.2015

No one is present on behalf of the appellant. Notices be issued to the appellant/counsel for the appellant. To come up for preliminary hearing on 02.04.2015.




Member



Form- A
FORM OF ORDER SHEET

Court of _____


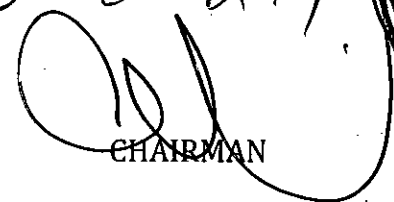
Case No. 1292/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	30/10/2014	<p>The appeal of Mr. Faqir Ali presented today by Mr. Javed Ali Mohammadzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	6-11-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>20-1-2015</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 612 /2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02/05/2014	<p>The appeal of Mr. Shakir Ullah resubmitted today by Mr. Javed Ali Muhammadzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	5-5-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>16-6-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Shakirullah son of Umar Khan Ex-Chowkidar GMS Mani Khela Distt. Charsadda, received today i.e. on 28.04.2014 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Law under which appeal is filed is not mentioned.
- 2- Copies of pension documents mentioned in para-8 of the memo of appeal (Annexure-B) are not attached with the appeal which may be placed on it.
- 3- One copy /set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.


No. 671 /S.T,

Dt. 28/4 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Javid Ali Adv. Peshawar.

Sir, Resubmitted, copy of covering letter in respect of pension is already attached with appeal at page 9. pl put the case before the court for hearings.



*Javid Ali Muhammad 2020
Adv, Pesh*

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

Service Appeal No. 612 /2014

Shakir Ullah

(Appellant)

V E R S U S

Secretary Education KPK and others

(Respondents)

INDEX

S. No.	Documents	Annexure	Page No.
1	Service Appeal		1-3
2	Affidavit		4
3	Copy of Service Book	A	5-7
4	Copy of impugned order dated 03.08.2013 along with pension documents	B	8-10
5	Copy of the departmental appeal	C	11
6	Wakalat Nama		12

Appellant

Through

Javed Ali Muhammadzai
Advocates High Court,
Peshawar

Dated: 26.04.2014

①

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

Service Appeal No. 612 /2014

~~SECRET~~
632
28/4/2014

Shakir Ullah S/o Umar Khan, Ex-Chowkidar GMS Mani Khela
R/o Mani Khela, Tehsil & District Charsadda

(Appellant)

V E R S U S

- 1) Secretary Education Khyber Pakhtunkhwa, Peshawar
- 2) Director Education School & Literacy, Peshawar
- 3) District Education Officer (Male) Charsadda
- 4) Sub-Divisional Education Officer (Male) Charsadda
- 5) District Accounts Officer, Charsadda

(Respondents)

u/s Sec: 4 of Service Tribunal Act 1974

Appeal against office order Endst No. 5568-68 dated 03.08.2013 of the respondent No. 3 whereby the Suspension period w.e.f. 23.05.2009 to 30.04.2012 was treated as leave without pay and as such salaries of suspension period were withheld.

Prayer:

~~SECRET~~
28/4/14

On acceptance of this Service Appeal, the impugned order dated 03.08.2013 may kindly be set aside and respondents may also be directed to release the due salaries of period (23.05.2009 to 30.04.2012) of the appellant.

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

~~SECRET~~
2/5/14

Respectfully Sheweth,

- 1) That the appellant was appointed as Chowkidar at GMS Mani Khela vide office order dated 01.08.1984. (Copy of the service book is attached as Annexure A)
- 2) That being so, the appellant joined his duty and performed his duty with honesty and to the entire satisfaction of his superiors.
- 3) That during his service, the appellant was falsely involved in a murder case vide FIR No. 308 dated 22.05.2009 Under Section 302/34 PPC, Police station Sardheri.
- 4) That because of above mentioned false murder case, the service of the appellant was suspended w.e.f. 23.05.2009 vide office order dated 29.07.2007.
- 5) That after trial, the Sessions Judge Charsadda acquitted the appellant vide judgment and order dated 16.07.2013.
- 6) That after his acquittal, the appellant approached to the respondents and asked them to release his salaries of above mentioned suspension period.
- 7) That the respondent No. 4 told the appellant that he going to submit the pension papers of the appellant to the concerned authority and he will be paid all his outstanding salaries along with pension amount.
- 8) That during process of preparation of pension papers, on 10.01.2014 the appellant came to know that respondent No. 3 vide order dated 03.08.2013 has ordered to treat the service of suspension period (23.05.2009 to 30.04.2012) of appellant as leave without pay. (Copy of impugned order dated 03.08.2013 along with pension documents is attached as Annexure B)

- 9) That the appellant without last of any time, preferred a departmental appeal against the impugned order to the respondent No. 2 on 13.01.2014 but the same has not been decided by the respondent No. 2 / appellate authority till now, hence this appeal on following grounds inter alia. (Copy of the departmental appeal is attached as Annexure C)

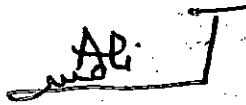
GROUNDS

- A) That the impugned order dated 03.08.2013 is illegal, against the law and rules on subject.
- B) That before passing impugned order dated 03.08.2103, no show cause notice what so ever was issued to the appellant and appellant was condemned unheard, hence the impugned order is against natural justice.
- C) That the appellant has been honourably acquitted from criminal charges by the competent court of law and as such the appellant is entitled to be paid all his due salaries of suspension period.
- D) That under Article 193 C.S.R. the respondents are bound to release all salaries of suspension period to the appellant.

It is, therefore humbly prayed that on acceptance of this appeal, the impugned order may kindly be set aside and the respondents may also be directed to release the outstanding salaries of the suspension period (23.05.2009 to 30.04.2012) of the appellant forthwith.


Appellant

Through


Javed Ali Muhammadzai
Advocates High Court,
Peshawar

(4)

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

Service Appeal No. _____/2014

Shakir Ullah

(Appellant)

V E R S U S

Secretary Education KPK and others

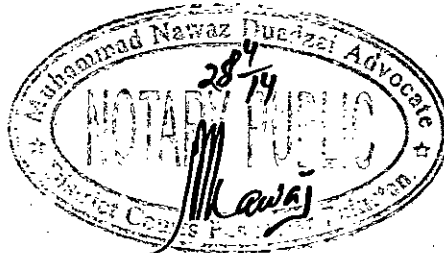
(Respondents)

AFFIDAVIT

I, Shakir Ullah S/o Umar Khan, Ex-Chowkidar GMS Mani Khela R/o Mani Khela, Tehsil & District Charsadda, do hereby solemnly affirm and declare on Oath that the contents of service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable tribunal.

ATTESTED

Shakir Ullah
DEPONENT



5

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

1. Name .. Shaker ullah ✓
 2. Race .. Afghan.
 3. Residence .. village: Mani Khela. Teh: Charsadda.
 Distt: Peshawar. ✓

4. Father's name and residence .. Umar Khan. village: Mani Khela
 Teh: Charsadda. Pesh ✓


5. Date of birth by Christian era as nearly as can be ascertained .. (24-8-1948) 1-5-1952 date of birth


6. Exact height by measurement .. 5-5" Date 2/20/9. 24/2/07


7. Personal marks for identification .. Mole on left side chest.


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

Attested

Little Finger. 

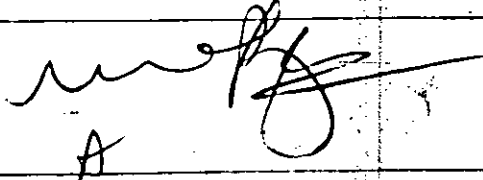
Ring Finger 

Middle Finger. 

Fore Finger 

Thumb. 

9. Signature of Government servant. 

10. Signature and designation of the Head of the Office, or other Attesting Officer. 
 A

8	9	10	11	12	13	14	15	
				Leave				
Signature and designation of the head of the office or other attesting officer in attestation of columns 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	Nature and duration of leave taken	Allocation of period of leave or average pay upto four months for which leave salary is debitable to another Government	Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government Service.
					Period	Government to which debitable		
		11/85	9th					A Chowkidar Appointed as a 4th class at 515 Mani Khet Vad.
		11/86	9th					D. E. G. (M) Peshawar Encl 42-45 Kul 2945-47 dt. 1/88
		6/87	Grade Revised					A. J. G. (M) Peshawar Encl 42-45 Kul 2945-47 dt. 1/88
		30/87						A. J. G. (M) Peshawar Encl 42-45 Kul 2945-47 dt. 1/88
		30/88						A. J. G. (M) Peshawar Encl 42-45 Kul 2945-47 dt. 1/88
		30/89						A. J. G. (M) Peshawar Encl 42-45 Kul 2945-47 dt. 1/88
		30/90						A. J. G. (M) Peshawar Encl 42-45 Kul 2945-47 dt. 1/88
		5/91						A. J. G. (M) Peshawar Encl 42-45 Kul 2945-47 dt. 1/88
		30/91						A. J. G. (M) Peshawar Encl 42-45 Kul 2945-47 dt. 1/88

Sub. Div. Peshawar
Sub. Div. Peshawar
Sub. Div. Peshawar

Attested

Office of the Accountant General
N.W.F.P. Peshawar.
Pay fixed in the revised Pay Scales 1991
of Rs. 920-26-1310 (B-1)
@ Rs. 1102/- P.M. N.E.F. 1-6-1991
with next increment on 1-12-1991

Accounts Office
Pay Fixation Party
Peshawar

Service verified w/e from 3/84 to 30/87 from Acq. Roll & other record of this Office.
Service verified w/e from 30/87 to 30/89 from Acq. Roll & other record of this Office.
Service verified w/e from 1/89 to 31/89 from Acq. Roll and other record of this Office.
Service verified w/e from 1-1-90 to 30-11-90 from Acq. Roll & other record of this Office.
Service verified w/e from 1-12-90 to 30-11-91 from Acq. Roll & other record of this Office.

clerk
Al.
clerk
Al.

31/91
30/91

30-11-91

A. J. G. (M)
Charwadra
Al.

8	9	10	11	12	13	14	15		
					Leave				
					Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government	Signature of the head of the office or other attesting officer		Reference to any recorded punishment or censure, or reward or praise of the Government Servant.
						Period			

<p>Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8</p>	<p>Date of termination of appointment</p>	<p>Reason of termination (such as promotion, transfer, dismissal, etc).</p>	<p>Signature of the head of the office or other attesting officer</p>		<p>Involved in a murder case suspended from service w.e.f 23-5-2009 from the D.O. FIR No. 2009 Chd. B. No. 3410-12 dated 29/7/2009</p>	<p>S.D.E.O. (Male) Charsadda</p>	<p>Reference to any recorded punishment or censure, or reward or praise of the Government Servant.</p>
--	---	---	---	--	--	----------------------------------	--

18

Service notified met w.e.f 1-12-2008 to 23-5-2009 from the A.M. and all other records of this office.

Sub Divisional Edu. Officer (M) Charsadda

19

Service notified met w.e.f 5-2009 to 30-4-2012 from the A.M. and all other records of this office.

Sub Divisional Edu. Officer (M) Charsadda

Attested

Re-instated in service from the date of FIR i.e. 23-5-2009 adjusted in original post/school with D.B.S. M. Chd. Under Endst. No. 5565-68 dated 03-08-2013 on the report of H/A Court of Session Judge Chd. announced on 27-07-2013 and also treated the absconded period with ext. pay.

S.D.E.O. (Male) Charsadda

Retired from service met 30-4-2012 A/N and also 180 days leave encashments in lieu of LPR with D.B.S. M. Chd. Under Endst. No. 5667-71 dated 17-9-2013.

S.D.E.O. (Male) Charsadda

Handwritten: Averted
Handwritten: Mr.

Handwritten: 137

Stamp: Sub Divisional Education Officer (M) Charsadda

Stamp: District Education Officer (M) Charsadda

- 1) District Accounts Officer Charsadda
- 2) SDO (M) Charsadda
- 3) ADO B&A/Supply Local Office
- 4) Official concerned
- 5) Office file

Text: Encl. No. 9565-68 / dt. 23/08 / 2013

Stamp: District Education Officer (M) Charsadda

Text: Necessary entry made in his Service Book.

Text: Mr. Shaker Ullah Chowkidar GIS Manti judgment announced on 27/07/2013. Mr. Shaker Ullah Chowkidar GIS Manti hereby re-instated in service his abscondment period i.e. 23/05/2009 to 30/04/2012 is hereby treated as leave without pay to enable him to get his pension and gratuity.

Text: OFFICE OF THE DISTRICT EDUCATION OFFICER (M) CHARSADDA

Handwritten: 1/18

Handwritten: Am-8

Handwritten: 8

9

Submitting

31

2013-14

OFFICE OF THE SUB-DIVISIONAL EDUCATION OFFICER
(MALE) CHARSAJDA

No. 2168 File No. 38/2 / Date 7/3 /2014

To

The District Accounts Officer,
Charsajda

Prof. Finalized 12/11

SUBJECT: PENSION PAPERS

Memo:

The pension papers along with other relevant documents and service book in r/o Shakir ullah Ex-Chowkidar GPS Mani Khela is re-submitted with the remarks that:

1. The above chowkidar was involved in a murder case and suspended from service w.e.f 23/05/2009.
2. After trailing the case the chowkidar concerned was re-instated by the DEO (M) Charsajda vide order No.5565-68 dated 03/08/2013 decision announced on 27/07/2013 (Copy attached).

P.No. 144300/

By D.O. No. 315

and by S.O. No. 26

Reason of late submission that the chowkidar concerned was retired from service on 30/04/2012 but his case was under trail of the court authority as decision announced on 27/07/2013.

He has been paid up salary upto 31/05/2009 and absconder period treated as leave without pay w.e.f 23/05/2009 to 30/04/2012 by the competent authority i.e. DEO (M) Charsajda (Copy attached).

In the light of the above fact, it is requested that pension paper of the official concerned may kindly be honoured please.

P.No. 142252

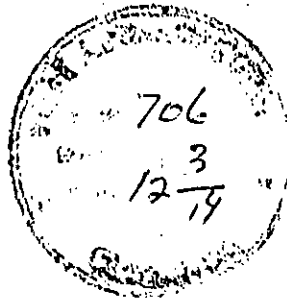
Mr: Fareedullah

12/03/14

SUB-DIVISIONAL EDUCATION OFFICER
(MALE) CHARSAJDA

[Signature]

6/3



Attested

[Signature]

10

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHARSADDA

OFFICE ORDER

On reaching the age of superannuation, Mr. Shakir ullah Chowkidar (BPS-02) GPS Mani Khela is hereby allowed to retire from Govt. Service with effect from 30/04/2012 After Noon with full pensionary benefits as admissible under the rules. His date of birth recorded in his service book is 01-05-1952. Sanction for 180 days leave encashment in lieu of LPR (Not availed) is also accorded in his favour.

Note: Necessary entry to this effect should be made in his Service Book.

(MOIN UD DIN)
DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA

Endst: No. 5667-71- Dated 17/9 /2013

- Copy for information to the:
1. District Accounts Officer Charsadda
 2. Sub-Divisional Education Officer (Male) Charsadda
 3. Official concerned
 4. Office file

Shakir ullah
DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA

Attested
intd

Sub Divisional Edu: Officer
(M) Charsadda

Departmental appeal against the order dated 3/8/2013 whereby the suspension period (23/5/2013 to 30/4/2013) of the appellant has been treated as leave without pay.

R/s. ① That the impugned order dated 3/8/2013 is illegal and inconsistent with laws and rules. Copy of impugned order is attached.

② That the appellant has been acquitted from criminal charges by competent court of law. And the Rules & Law on subject of law.

The appellant is entitled to resume his services of suspension period.

③ That the impugned order was passed at back of the appellant and therefore, in against natural justice.

It is, therefore, requested that impugned order dated 3/8/2013 may kindly be set aside and appellant may be paid his due salaries of suspension period.

Appellant

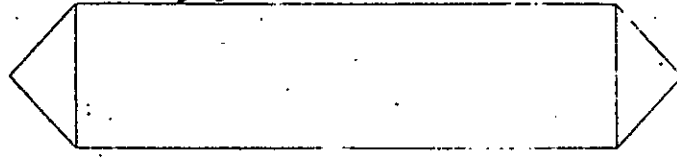
Shakar Ullah, ex chartered

GMS Mani Kola, Charasadda. 20/1/14

Dated 13/1/2014

Attested
[Signature]

بعد الت سرویس میں قبول خیر و خیر خواہی



2014ء پنجاب

28 اپریل

بنام

شکر اللہ نسیم حکومت

سروس ریمیل

موردہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

آن مقام لیسٹہ کیلئے جاوید علی محمد زئی لیسٹہ لیسٹہ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ 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 وکالت نامہ لکھد یا کہ سندر ہے۔

2014ء

اپریل

ماہ

28

المرقوم

Accepted
28/4/2014

کے لئے منظور

لیٹور

مقام

28/4/2014

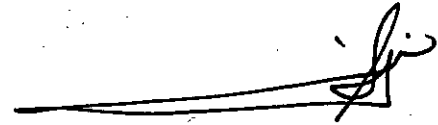
BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No.612/2014

Shakir Ullah
Vs
Govt. of Khyber Pakhtunkhwa & others

INDEX

S No	Description	Annexure	Page
1.	Comments		1-3
2	Affidavit		4
3	Notification / <i>Better Copy</i>	A	5-6



Respondent No.3
District Education Officer
(Male) Charsadda

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No.612/2014

Shakir Ullah

Vs

Govt. of Khyber Pakhtunkhwa & others

Written comments on behalf of Respondents

Preliminary Objections:

Respectfully Sheweth:

- A. That the Appellant has no locus standi and cause of action.
- B. That the present Appeal is wrong, baseless and not maintainable, it shows no strong cause to be taken for adjudication, therefore, the same Appeal is liable to be rejected/ dismissed.
- C. That the Appeal is unjustifiable, baseless, false, frivolous and vexatious. Hence the same is liable to be dismissed with the order of special compensatory costs in favour of Respondents.
- D. That no legal right of the appellant has been violated, therefore, the appellant has no right to file the instant appeal.
- E. That the Appellant is completely estopped/precluded by his conduct to file this Appeal.
- G. Appellant has not come to this Hon' able Tribunal with clean hands. The Appeal also suffers from mis-statements and concealments of facts and as such the Appellant is not entitled to equitable relief.
- H. That the Appellant have no right to file the instant Appeal and the Hon' able services Tribunal have got no jurisdiction to adjudicate upon and the Appeal is liable to be dismissed.

PARA WISE REPLY ON FACTS:

1. That the Para relates to the personal information of the appellant, hence needs no comments.
2. As is replied in Para-1.
3. Needs no comments.

- 2
4. Denied that the appellant was involved in a murder case therefore his services were suspended in accordance with Law, Rules and Policy.
 5. That though the appellant was acquitted by the Hon' able District and session judge Charsadda vide the judgment dated 16/07/2013 through a compromise deed however both the jurisdiction are different in nature and can run side by side.
 6. Though the appellant may have approached the office of the Sub-Divisional Education Officer (Male) Charsadda but is not entitled for arrears of salaries for the period for which he has been remained absent from his duties.
 7. Denied that the answering Respondent No.4 made no such like commitment in respect of salaries for the period in which the appellant remained absent from his duties.
 8. In reply to the Para it is stated that the appellant has been treated in the light of crystal clear Notification of Government of Khyber Pakhtunkhwa Establishment and Administration Department Regulation Wing **No.SOR-1(E&AD)1-19/81/Vol-IV dated the 23rd July 2011** and the judgments delivered by this Hon' able Court and of Apex Court of Pakistan. **(Copy of Notification is annexed as Annexure-A).**
 9. Denied that the Departmental appeal moved by the appellant was of no consideration because earlier on dated 03/08/2013 the appellant has been reinstated through the judgment of the Hon'able District and Session Judge Charsadda announced on 27/07/2013.
Furthermore the answering Respondent No.3 on the basis of judgment dated 27/07/2013 issued office order annexed with the appeal of the appellant on page-8 as annexure-B, in which the period of abscondence i.e. from 23/05/2009 to 30/04/2012 have been treated as leave without pay so as to enable the appellant to get his pension and gratuity.

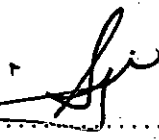
GROUND:


- A. Denied, that the order dated 03/08/2013 is in accordance with Law, Rules and dicta laid down by the Hon'able Superior Court of Pakistan.
- B. That the Para is wrong, misstated and baseless therefore denied.
- C. Denied, that the appellant has been acquitted on the basis of compromise, hence not entitled to be paid the salary of suspension period.

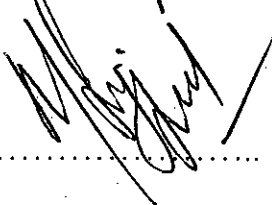
D. That the Para is based on legal proposition hence needs interpretation which is the sole jurisdiction of Hon'able Court.

IT IS THEREFORE MOST HUMBLY PRAYED THAT ON ACCEPTANCE OF THIS WRITTEN PARA WISE COMMENTS, THE APPEAL MAY GRACIOUSLY BE DISMISSED AND ORDER OF EXAMPLARY COST MAY ALSO BE AWARDED IN FAVOUR OF ANSWERING RESPONDENTS, SO AS TO CURB THE MENACE OF ILL PRACTICE OF TEASING THE HONEST, LAW OBSERVING AND LOYAL OFFICIALS.

Respondents:

3. District Education Officer (Male) Charsadda 

4. Sub-Divisional Education Officer (Male) Charsadda 

5. District Accounts Officer Charsadda 

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No.612/2014

Shakir Ullah

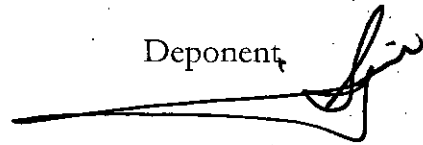
Vs

Govt. of Khyber Pakhtunkhwa & others

AFFIDAVIT

I Mr. Siraj Muhammad DEO (M) Charsadda do hereby solemnly affirms
that the contents of the Para-wise comments submitted by respondents are true and
correct and nothing has been concealed intentionally from this Hon' able Tribunal.

Deponent,



Siraj Muhammad
DEO (Male) Charsadda
CNIC: 17301-2831355-9

Page 5
Annexure A
60-B
78
-20-
2



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT

REGULATION WING

No.SOR-I(E&AD)1-19/81/Vol-IV
Dated the 23rd July 2011

To,
The Secretary to Govt: of
Khyber Pakhtunkhwa,
Elementary & Secondary Education Department,
Peshawar.

Subject: - CONSIDERATION OF ABSCONDER PERIOD AS LEAVE WITHOUT PAY.

Dear Sir,

I am directed to refer to Elementary & Secondary Education Department's letter No.SO(PE)Reinst/2010 dated 09.06.2011 on the subject noted above and to say that teacher concerned has already been re-instated by DCO but actually has not performed the duty during abscondenc period, hence period of absence from 01.09.2008 to 24.05.2010 may be treated as leave without pay.

Opinion of Law Department tendered vide NO.OP 5(113)LD/2010/7600 dated 14.05.2011 is supported:

urgent!
Re. link
25/7
2787
25/7

AS
25/7/2011

Yours faithfully,

(MUHAMMAD QASIM)
Session Officer (Reg-I)

A.S/B & SB
L. No.....
Dated 25/7/2011

CT.C

out
od of
at pay.
GO dated
30/7/11

withd.

AMMAD QASIM
Session Officer (Reg-I)

Better copy

Government of Khyber Pakhtunkhwa
Establishment and Admn Department
(Regulation wing)

No.SOR-1(E&AD)1-19/81/Vol-IV
Dated the 23rd July 2011

To

The Secretary to Govt. of,
Khyber Pakhtunkhwa,
Elementary & Secondary Education Department,
Peshawar.

SUBJECT: CONSIDERATION OF ABSCONDER PERIOD AS LEAVE WITHOUT PAY

Dear Sir,

I am directed to refer to Elementary and Secondary Education Department's letter No.SO(PE)Reinst/2010 dated 09/06/2011 on the subject noted above and to say that the teacher concerned has already been reinstated by DCO but actually has not performed the duty during absence period, hence period of absence from 01/09/2008 to 24/05/2010 may be treated as leave without pay. Opinion of Law department tendered vide NO.OP 5(113)LD/2010/7660 dated 14/05/2011 is supported.

Your's faithfully,

(Muhammad Qasim)
Section Officer (Reg-I)



BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 612/2014

Shakir Ullah

_____ (Appellant)

V E R S U S

Govt. of KPK and others

_____ (Respondents)

REJOINDER TO WRITTEN STATEMENT
ON BEHALF OF THE APPELLANT

Respectfully Sheweth,

On Preliminary Objections:

All the preliminary objections taken by the respondents are incorrect and wrong. The appeal in hand is well within time and maintainable in its present form. Moreover, the appellant has got locus standi to file the present appeal.

ON FACT:

1-3) Paras No. 1 to 3 of the appeal has not controverted by the respondents in their written statement / reply, hence need no reply.

- 4) In reply of Para No. 4 it is submitted that the appellant has been acquitted by the competent court of law and as such he is entitled for all salaries of suspension period under law and rules on subject.
- 5) As per law and rules on subject, on acquittal the appellant is entitled for salaries for the period of the suspension / absence.
- 6) As per above paras
- 7) Incorrect.
- 8) Incorrect. It is well known proposition of law that any Administrative Notification cannot prevail over the substantive law and rules. The law and rules on subject entitled the appellant for the salaries, he claimed in the instant appeal.
- 9) Incorrect. Departmental appeal was not considered by respondents / department as evident from the written statement.

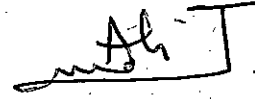
ON GROUNDS:

- a) Denied, the impugned is against law and rules on subject.
- b-c) Incorrect, as per law, and rules the appellant is entitled to be paid the all the salaries of suspension period.
- d) Under Article 193 C.S.R. the respondents are bound to release the salaries of the appellant.

It is, therefore, humbly requested that on acceptance of this rejoinder, the appeal of the appellant may kindly be allowed as prayed for.

Appellant

Through

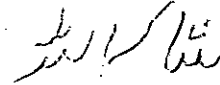


Javed Ali
Advocate, Peshawar

Dated: 19.12.2015

AFFIDAVIT

I, do hereby solemnly affirm and declare on Oath that the contents of this Rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed or misstated from this Honorable Tribunal.



DEPONENT