

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 8959

Dated 13/11/23

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

Service Appeal No. 680/2023

**SAJID IQBAL S/O SAID KHAN** Ex-Naib Qasim, GHSS Jaganath Tehsil  
Razzar District Swabi ..... **Appellant**

**VERSUS**

1. Director E&SE, KP Peshawar, near GHSS No.1, Peshawar City.
2. Assistant Director (Admn) E&SE, KP Peshawar.
3. District Education Officer (Female) Swabi.

**Respondents**

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*Sofia Tabassum*

**DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI**

**District Education Officer  
(Female) Swabi**

01

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

Service Appeal No.680/2023

Sajid Iqbal son of Said Khan Ex-Naib Qasid, GGHS Jaganath, Tehsil Razzar District  
Swabi .....

**Appellant**

**VERSUS**

1. Director E&SE, KP Peshawar, near GHSS No.1, Peshawar City.
2. Assistant Director (Admn) E&SE, KP Peshawar.
3. District Education Officer (Female) Swabi.

**Respondents**

**PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 1 TO 3**

**Respectfully Sheweth,**

**PRELIMINARY OBJECTIONS.**

1. That the appeal is badly barred by time, Hence not maintainable.
2. That the departmental appeal is also barred by time, Hence not maintainable.
3. That the service appeal is wholly incompetent, misconceived and untenable.
4. That the service appeal is wrong, baseless and not maintainable, it shows no strong cause to be taken for adjudication, therefore, the same service appeal is liable to be rejected/ dismissed.
5. That the service appeal is unjustifiable, baseless, false, frivolous and vexatious. Hence the same is liable to be dismissed with the order of special compensatory cost in favour of respondents.
6. That no constitutional or legal right of the appellant has been violated, therefore, the appellant is not entitled to invoke the constitutional jurisdiction of this honourable Service Tribunal under Article 212 of the constitution of Pakistan.
7. That the appellant has not come to the Court/Tribunal with clean hands.
8. That the appellant has concealed the material facts from this Honourable Tribunal.
9. That the appeal is bad for misjoinder and non-joinder of the necessary party.
10. That the appellant has filed the instant appeal just to pressurize the respondents.
11. That the appellant has no cause of action to file the instant appeal.
12. That the appeal is not maintainable in the eye of law.
13. That the instant appeal is not maintainable in the present form and also in the present circumstances of the issue.

*[Handwritten Signature]*  
District Education Officer  
(Female) Swabi  
21/1/2023

## Facts:

02

1. That the para relates to the appointment of the appellant. This does not affect the prayer of the appellant, hence needs no comments.
2. That the appellant misconceives the matter. As a land donor, he shapes up himself as a Don. On appointment of Mst. Haseena D/O Noor Rahman as lab-attendant at GGHS Jagannath swabi vide DEO(F) Endst No: 2185-94 Dated:03-08-2022, when the appointee went to school for taking over charge, the appellant reacted indiscipline by locking the main gate of the school, shouted on the mosque loudspeaker instigating the general public and compelled the other lady staff to take refuge in the nearby places.  
The DEO Female on getting the information, visited the school, analyzed the situation and lodged an FIR No 682 Dated: 06-09-2022U/S 506,341,186/34 PPC in Police Station Yar Hussain. **FIR annexed as A.**
3. That on 06-09-2022, the school opening time was 7:30AM. The untoward situation took place round about the school opening time.  
That on 06-09-2022, the DEO Female Swabi responded promptly, reached the venue, collected the facts, lodged an FIR and issued a show cause Vide Endst No. 2285 Dated 06-09-2022. The reason was that the appellant was aggressive and excited by the time. It is correct to the extent that he submitted reply to the show cause notice Vide Diary No. 2095 Dated:10-09-2022. But DEO Female Swabi as competent authority did not get satisfied with his reply. He was given the opportunity of personal hearing on 26-09-2022 Vide No.2477, Dated: 20-09-2022.  
**Show cause notice, reply of show cause notice and letter for personal hearing annexed as B, C, and D.**
4. That the appellant appeared before the competent authority for personal hearing on 26-09-2022. In personal hearing, the oral and written version were found absolutely contradictory. His version could not satisfy the competent authority.  
**Personal hearing report is annexed as E.**
5. That the appellant through his furious and unlawful attitude had created an atmosphere of uncertainty, wickedness and a local disturbance was seemingly being expected. Hence, he was rightly removed from service failing which the school would have become non-functional. **Removal from service order annexed as F.**
6. That the appellant submitted a time barred departmental appeal to the appellate authority i.e. Director E&SE Khyber Pakhtunkhwa Dated: 20-10-2022. But the appellate authority rejected the time barred departmental appeal of the appellant on 01-12-2022.
7. Incorrect hence denied. The representation of the appellant was rejected by the appellate authority. A copy of the rejection letter has been sent to him on 01-12-2022. It was in the knowledge of the appellant, that his departmental appeal had been rejected. Therefore, his service appeal is barred by time. Judgement of Supreme Court annexed as G
8. That the appellant is not an aggrieved person at all, because, he blatantly obstructed in the discharge of public duty in the arrogance of being a land donor.

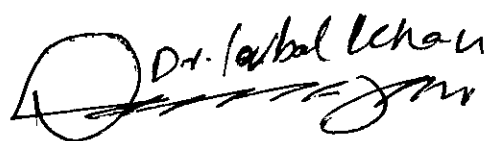
*[Handwritten signature]*  
2/11/2023

He also brought a contempt on the department. Moreover, he had politicized the matter by bringing external interference. The service is appeal is also badly barred by time. Therefore, the appellant has no cause of action to file the instant appeal and appeal in hand is liable to be dismissed on the above facts and circumstances.

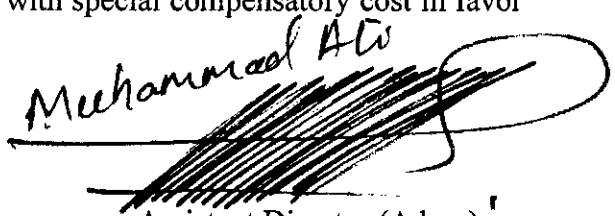
**Grounds:**

- A. That the appellant candidly submits that the orders /letters are in accordance with law, rules and policy.
- B. That the appellant has been rightly removed from service. The FIR was registered against his on account of his criminal attitude and his open threats to the staff and others not to come to school. The case is still under trail. His removal from service is due to his misconduct after observance of due process of departmental procedure.
- C. Incorrect hence denied. The incident on that day is an undeniable fact. He fought with the department on wrong footing. He endangered the lives of innocent, modest and veiled female teachers. He violated the rules, obstructed in the discharge of public duties, shoted the issue for personal gain and created law and order situation in the locality. Timely controlled by the administrative and departmental action against him. There is no question of any favoritism, nepotism and political victimization in the instant case.
- D. Incorrect, hence denied, this was an open and shut case. The school was locked unlawfully. The community was instigated to come out against the duly appointment of an orphan girl. The innocent female staff was compelled to walk stray in the locality. The DEO Female Swabi personally visited the school that time and observed all the facts herself and was an eye witness to the situation. In such like cases, for prompt disposal, the inquiry is always dispensed with. Therefore, the orders under E&D rules 2011 are sustainable in the eyes of law.
- E. The respondents seek permission to raise/argue additional points/grounds on the day of hearing the case.

In view of the above stated submissions, it is therefore earnestly requested that the instant appeal may very graciously be dismissed with special compensatory cost in favor of the department.

*Dr. Farhat Khan*  


Director E&SE  
KP Peshawar  
Respondent No.1

*Muhammad Ali*  


Assistant Director (Admn)  
E&SE KP Peshawar  
**Deputy Director (E&A)**  
Respondents No.2  
Khyber Pakhtunkhwa Peshawar

*Sofia Tebassum*

*[Signature]*  
DEO Female Swabi  
Respondents No.3

Element  
K.P.

District Education Officer  
(Female) Swabi

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

Service Appeal No.680/2023

Sajid Iqbal son of Said Khan Ex-Naib Qasid, GGHS Jaganath, Tehsil Razzar District  
Swabi ..... **Appellant**

**VERSUS**

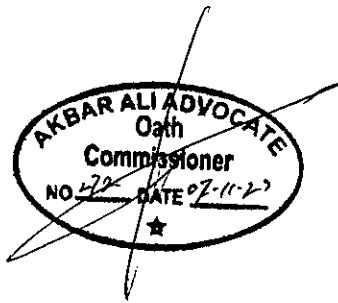
1. Director E&SE, KP Peshawar, near GHSS No.1, Peshawar City.
2. Assistant Director (Admn) E&SE, KP Peshawar.
3. District Education Officer (Female) Swabi.

**Respondents**

**Affidavit**

I Sofia Tabassum DEO Female Swabi do hereby solemnly affirm and declare on oath that the contents of the comments submitted by respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

It is further, stated on oath that in this appeal the answering respondents have neither been placed ex-parte nor has their defense been struck off.



SOFIA TABASSUM  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

District Education Officer  
(Female) Swabi

ابتدائی اطلاعاتی رپورٹ

پولیس سٹیشن، ضلع راجستھان، جگناتھ، پتہ: ...

تاریخ: 08/11/2023

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08

08/11/2023

08/11/2023

جگناتھ (مدرسا) کے مالک اور اس کے والدین نے پولیس سٹیشن پر شکایت کی ہے کہ ان کے بچے کو مدرسہ سے روک دیا گیا ہے۔

اس کے علاوہ، مدرسہ کے مالک نے پولیس سٹیشن پر شکایت کی ہے کہ ان کے بچے کو مدرسہ سے روک دیا گیا ہے۔

پولیس سٹیشن نے تفتیش کی ہے اور اس کے نتیجے میں اس بات کا پتہ چلا ہے کہ مدرسہ کے مالک نے اس کے بچے کو مدرسہ سے روک دیا ہے۔

اس کے علاوہ، مدرسہ کے مالک نے پولیس سٹیشن پر شکایت کی ہے کہ ان کے بچے کو مدرسہ سے روک دیا گیا ہے۔

ابتدائی اطلاعاتی رپورٹ کے مطابق، مدرسہ کے مالک نے اس کے بچے کو مدرسہ سے روک دیا ہے۔

اس کے علاوہ، مدرسہ کے مالک نے پولیس سٹیشن پر شکایت کی ہے کہ ان کے بچے کو مدرسہ سے روک دیا گیا ہے۔

پولیس سٹیشن نے تفتیش کی ہے اور اس کے نتیجے میں اس بات کا پتہ چلا ہے کہ مدرسہ کے مالک نے اس کے بچے کو مدرسہ سے روک دیا ہے۔

اس کے علاوہ، مدرسہ کے مالک نے پولیس سٹیشن پر شکایت کی ہے کہ ان کے بچے کو مدرسہ سے روک دیا گیا ہے۔

Police Commission Swabi Subject Legal action memo it is to inform you that CGHS Jaganath has been locked by one Sajwal Ali (No. 3488) Syed Lyal Ali and Syed Akhbar Ali who are allowing students and staff to enter the school it is therefore advised that legal action may please be taken against the above individual to continue teaching learning process in the school.

پولیس کمیشن سوابی کے لیے اطلاع دینے کے لیے یہ یاد دہانی ہے کہ جگناتھ پولیس سٹیشن پر ایک شخص نے مدرسہ کو لاک کر رکھا ہے۔

08/11/2023

Fair Copy

ابتدائی اطلاعی رپورٹ۔

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

تھانہ: یار حسین ضلع: صوابی

نمبر: 682 تاریخ: وقت وقوعہ 06.9.2022 وقت: 07:15

تاریخ وقت رپورٹ	چاکیڈگی پرچہ 06.09.2022	وقت: 01:13:00
نام و سکونت اطلاع دہندہ مستغیث:	DEO Female Swabi	
مختصر کیفیت جرم (معد دفعہ) حال اگر کچھ لیا گیا ہو۔	PPC:186/34, 341,506	
جائے وقوعہ تھانہ سے اور سمت:	گورنمنٹ گرلز ہائی سکول جگن ناتھ جانب جنوب فاصلہ 5/6 کلومیٹر تھانہ۔	
نام و سکونت ملزم	(۱) ساجد اقبال (۲) جاوید اقبال پسران سید خان (۳) سید عدنان شاہ ولد سید لیاقت شاہ مالکان قطعات	
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کریں۔	چھٹی انگریزی موصول ہونے پر مقدمہ درج کیا گیا۔	
تھانہ سے روانگی کی تاریخ	بہ سبیل ڈاک	

ابتدائی اطلاع نیچے درج کرو

ملزمان مندرجہ خانہ نمبر ۵ نے گورنمنٹ گرلز ہائی سکول جگن ناتھ کوتالا لگا کر سکول استانیات و طالبات کو ڈرا دھکا کر سکول میں داخلے سے منع کر کے مزمان کے خلاف DEO فیملی صوابی نے چھٹی انگریزی نمبر 2283 مورخہ: 06-09-2022 بابت قانونی کارروائی ارسال کر کے جس سے صورت جرم بالا پائی جا کر پرچہ مجرم بالا مرتب کر کے نقول FIR جمع چھٹی انگریزی برائے تفتیش حوالہ متعلقہ تفتیش کیے جاتے ہیں۔ پرچہ گزارش ہے۔

دستخط SI, PS YH

06.09.2022

To the Deputy Commissioner Swabi subject legal action memo: it is to inform you that GGHS Jagan Nath has been locked by one Javed Iqbal Cell No. 0346-9042486 Sajid Iqbal NQ and Syed Adnan Ali Shah Chowkidar are not allowing students and staff to enter the school. it is therefore, requested that strict legal action may please be taken against the mentioned individual to continue teachign learning process in the school please.

دستخط انگریزی

(صدیق اکبر) SI, PS YH

ڈسٹرکٹ ایجوکیشن آفیسر فی میل صوابی۔ مورخہ: 06.09.2022 نقل بمطابق اصل ہے۔



Annexure-B 06/22

OFFICE OF THE DISTRICT EDUCATION OFFICER  
(FEMALE) DISTRICT SWABI

## SHOW CAUSE NOTICE

I Sofia Tabbasum District Education Officer(Female) Swabi, under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011, do hereby serve upon you, Mr: Sajid Iqbal Naib Qasid GGHS Jaga Nath Swabi, this show Cause notice as follows:-

- 1:- That Mst: Haseena D/O Noor Rehman has been appointed vide this office Endst No.2185-94 dated 31-08-2022 as Lab Att: under Gen Quota.
- 2:- That when she attended the school for taking over charge, you did not allow her for taking overcharge and closed the school
- 3:- That you gave her threats not to come to school and also locked the school till the withdrawal of her appointment order.
- 4:- That you have also arose the local community for protest.
- 5:- That you have given the land on market price, but the Govtt: gave you job on humanitarian grounds.
- 6:- That you have also stopped the school staff not to attend for duty.

7:- That By reason of the above, you appear to be guilty of inefficiency and disobedience in your duty under Rules 3(a) (b) and (d) in Rule1 (i), (ii), (iv) and (vi) of the Khyber Pakhtunkhwa Servants (Efficiency and Discipline) Rules 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-04 of the Rules ibid.

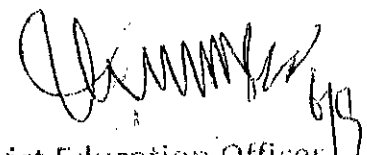
As a result therefore, I as the competent Authority have tentatively decided to proceed against you under the above mentioned rules. You are, therefore, required to show cause as to why one of the major or minor penalty under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, should not be imposed upon you and also intimate whether you desire to be heard in person. If no reply to this office is received within (07) days of its delivery, it shall be presumed that you have no defence to put in and in that case Ex-parte action will be taken against you which may culminate your removal from service.

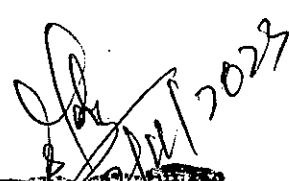
(SOFIA TABBASUM)  
District Education Officer  
(Female) Swabi

Endst No. 2284 / 1 Dated 6/9 /2022

Copy of the above is forwarded for information & necessary Action to the:-

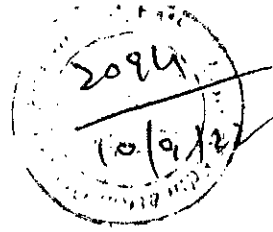
- 1:- Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar;
- 2:- Deputy Commissioner Swabi.
- 3:- Education Monitoring Authority Swabi.
- 4:- District Police Officer with the request for necessary action please.
- 5:- Mr. Sajid Iqbal Naib Qasid GGHS Jaga Nath Tehsil Razzar & District Swabi (Through registered Cover).

  
District Education Officer  
(Female) Swabi

  
District Education Officer  
(Female) Swabi



Annexure C (7)



22  
DA-III  
12/9

To

The District Education officer.(Female)  
District Swabi.

Subject: REPLY TO THE ALLEGED SHOW CAUSE NOTICE VIDE DATED 06-09-2022, ENDST NO. 2284.

Respected Sir/Madam.

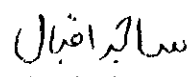
1. That Mr. Sajid Iqbal Naib Qasid GGHS Jaganath Swabi, has nothing to do with Para No 1, hence no concern with the same.
2. That para No 2 of the Show Cause Notice is incorrect, therefore denied in Toto.
3. That Para No 3 is also incorrect, therefore denied in toto.
4. That Para No 4 is also incorrect, hence denied.
5. That Para No 5 is incorrect, as since his birth there is no landed property owned by him and had not sold / given any land to any department, hence this para is denied in toto.
6. That Para No 6 is also incorrect, hence denied, the alleged Show Cause Notice is based on surmises and conjectures and liable to withdrawn.
7. That the allegations against Mr. Sajid Iqbal are baseless with ulterior motives based on surmises and conjectures as Mr. Sajid Iqbal is not involved in the alleged incident.


That Mr. Sajid Iqbal is ready to take Oath that the allegation against his are false and baseless.

8. That the matter alleged in the above cited notice is already pending in the court vide Case FIR No:682 dated 06-09-2022, hence the Show Cause notice in hands is infructuous. (Copies Attached)

It is, therefore, submitted that the Show Cause notice may kindly be withdrawn.

YOUR'S OBEDIENT

  
Sajid Iqbal  
Naib Qasid  
GGHS Jaghnath.

  
District Education Officer  
(Female) Swabi

Annexure-D  
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(08)



PH#0938-280339

**OFFICE OF THE DISTRICT EDUCATION OFFICER  
(FEMALE) DISTRICT SWABI**

NO. 2477 / Dated 20/9/2022

To,

1. Syed Adnan Ali  
Chowkidar GGHS Jaganath.
2. Sajid Iqal Naib Qasid GGHS Jaganath

Subject:- PERSONAL HEARING.

Memo:-

With Reference to the subject cited above. You are directed to attend the office of the District Education Officer (Female) Swabi on 26-09-2022 at 10 AM for personal hearing on date & time mentioned above to resolve the issue.

DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

Endst.No. \_\_\_\_\_

Copy of the above is forwarded for information to the:-  
1. Head Mistress GGHS Jaganath Swabi. Peshawar.

DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

20/9/2022  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI



**DISTRICT EDUCATION OFFICE (FEMALE) SWABI**

(Office phone Fax No 0938280339, [emisfswabi@yahoo.com](mailto:emisfswabi@yahoo.com))

Swabi No 2701-G Dated 8/10/2022

To,

Sajid Iqbal N/Q  
Syed Adnan Ali Chowkidar  
GGHS Jaganath (Swabi)

Subject:- **Personal Hearing Report**

Consequent upon show cause notice issued to the above said Employees vide Endst.No.2284 Dated.06-09-2022 and their replies vide D.No 2094 & 2095 Dated. 10-09-2022 the undersigned due to non-satisfaction over their replies, called both of them for personal hearing for providing them the opportunity of defense.

About the closer of school forcibly by them on 6-09-2022 in protest of employment of another CIV employee at the school which they considered as their right as land donors. It was a clear cut violation of existing departmental policy and superior court order. FIR regarding the incident was lodged against the above said employees and the matter is subjudiced now.

In personal hearing, the oral and written version was absolutely contradictory and they were playing smart with me.  
Both of them could not satisfied the undersigned.

*08/10/2022*  
DY: DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

*08/10/2022*  
District Education Office  
(Female) Swabi

10

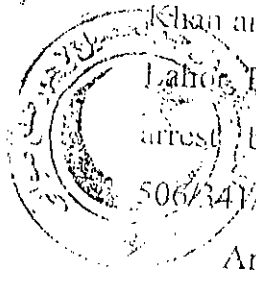
2/10/22

*Sajid Iqbal & others VS State*

22

SPP Syed Aizaz Ali Shah for the state present. Counsel for the petitioner/accused present. Record received.

The accused/petitioner namely Sajid Iqbal, Javid Iqbal sons of Saced Khan and Syed Adnan Shah son of Liqat Shah residents of Jaganath, Tehsil Lahore, District Swabi presently confined in judicial lockup, seeks their post arrest bail, being involved in FIR No. 682 dated 06.09.2022 u/s 506/341/186/34 PPC of PS Yar Hussain.



Arguments heard and record perused.

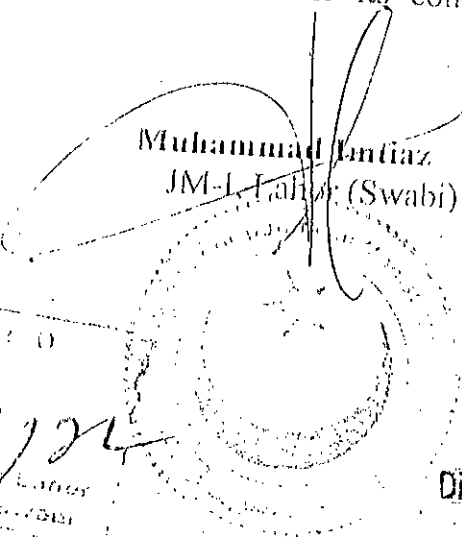
Perusal of record reveals that the accused/petitioners have been charged by the complainant for the commission of offence under section 506/341/186/34 PPC, however section 341/186 PPC are bailable in its nature. The offence under section 506 PPC leveled against the accused/petitioner do not fall within the prohibitory clause of section 497 Cr.P.C. Granting of bail is the settled principle of law which could not be withheld as a punishment much or less where the offences do not fall within the prohibitory clause of section 497 CrPC and in suchlike cases grant of bail is a rule and refusal thereof is an exception.

In view of the above, the accused/petitioners are admitted to be released on bail upon furnishing bail bonds to the tune of Rs. 80,000/- (Eighty thousand) each with two sureties each in the like amount to the satisfaction of this court. Copy of this order shall invariably be made part of the prosecution record, where after the same be returned to the quarter concerned. File be consigned to record room after its completion and compilation.

Announced  
08.09.2022

Muhammad Imtiaz  
JM-L, Lahore (Swabi)

RECEIVED  
Copy of this order shall be made part of the prosecution record  
District Court, Swabi



District Court, Swabi  
08/09/2022



Annexure - F

(11)

39

**DISTRICT EDUCATION OFFICE (FEMALE) SWABI**

(Office phone & Fax No 0938280339, [emisfswabi@yahoo.com](mailto:emisfswabi@yahoo.com))

**ORDER**

**WHEREAS**, disciplinary proceedings were initiated against Mr. Sajid Iqbal, N/Qasid Govt. Girls High School Jagan Naath, Swabi, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. The accused was served with show-cause due to not allowing the new appointee Class-IV, for taking over charge and kept close the school.

**AND WHEREAS**, he arose the local community for protest and also stopped the school staff from their official duty. Moreover he gave threats to the new Class-IV appointee.

**AND WHEREAS**, after receiving reply to the show cause, the accused also opted for personal hearing, according he was personally heard on 26/09/2022.

**AND WHEREAS** after going through the material on record, reply to the show cause and subsequent personal hearing the accused is found guilty of misconduct.

**NOW, THEREFORE**, in exercise of the powers, conferred upon the undersigned (Sofia Tabssum DEO Female Swabi) under Section 4(1) (b)(iii) of the Khyber Pakhtunkhwa (Efficiency & Discipline) rules, 2011, the Competent Authority is pleased to impose the major penalty of "**Removal from Service**" upon Mr. Sajid Iqbal, N/Qasid Govt. Girls High School Jagan Naath, Swabi **with immediate effect**.

(SOFIA TABASSUM)  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

Endst:No. 2815-151 /Dated Swabi the:- 17/10/2022.

Copy of the above is forwarded for information and n/action to the:-

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner, Swabi
3. District Accounts Officer Swabi.
4. District Monitoring Officer (DMO) Swabi.
5. Principal, GGHS Jagan Naath, Swabi.
6. Mr. Sajid Iqbal, N/Qasid Govt. Girls High School Jagan Naath, Swabi, Under Registered cover.
7. Master file.

District Education Officer  
(Female) Swabi

DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

2023 S C M R 866

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Annexure 6

**[Supreme Court of Pakistan]****Present: Umar Ata Bandial, C.J., Ijaz Ul Ahsan and Sayyed Mazahar Ali Akbar Naqvi, JJ****KIRAMAT KHAN---Petitioner****Versus****IG, FRONTIER CORPS and others---Respondents**

Civil Petition No. 3287 of 2019, decided on 18th August, 2022.

(Against judgment dated 25.07.2019 of Federal Service Tribunal, Islamabad, passed In Appeal No.388(P)CS of 2019)

**(a) Limitation Act (IX of 1908)---**

----S. 14---Exclusion of time of proceeding bona fide in Court without jurisdiction---Scope---In order to avail the benefit of section 14 of the Limitation Act, 1908 it is imperative that a litigant seeking benefit of the said provision must show that he was prosecuting his remedy with due diligence and in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it---Material words are "due diligence" and "good faith" in prosecuting a remedy before a wrong forum---Term "due diligence" entails that a person takes such care as a reasonable person would take in deciding on a forum to approach.

**(b) Frontier Corps Ordinance (XXVI of 1959)---**

----Preamble---Service Tribunals Act (LXX of 1973), S. 4---Service Tribunal, jurisdiction of---Employees of the Frontier Corps---Such employees shall be governed under the provisions of Frontier Corps Ordinance, 1959 and for the limited purpose would enjoy the status of civil servants---As such, they could avail their remedies before the (Service) Tribunal for redressal of their grievances.

IG, HQ Frontier Corps v. Ghulam Hussain 2004 SCMR 1397 and Commandant, Frontier Constabulary v. Gul Raqib Khan 2018 SCMR 903 ref.

**(c) Limitation---**

----Void order---Limitation would run even against a void order and an aggrieved party must approach the competent forum for redressal of his grievance within the period of limitation provided by law.

Parvez Musharraf v. Nadeem Ahmed (Advocate) PLD 2014 SC 585; Muhammad Sharif v. MCB Bank Limited 2021 SCMR 1158 and Wajdad v. Provincial Government 2020 SCMR 2046 ref.

Zia ur Rehman Tajik, Advocate Supreme Court for Petitioner.

Nasir Mehmood, Advocate Supreme Court for Respondents.

Date of hearing: 18th August, 2022.

**ORDER**

**IJAZ UL AHSAN, J.**---The petitioner seeks leave to appeal against a judgment of the Federal Service Tribunal, Islamabad ("the Tribunal") dated 25.07.2019. Through the impugned judgment, Appeal No.388(P)CS of 2019 filed by the petitioner was dismissed in limine having been found to be barred by time.

2. Briefly stated the facts of the case are that the petitioner was working with Khyber Rifles in the rank of Naik. On 26.07.2017, he was performing his duty as Signal Operator at Shaheed More Check Post, Torkham when a person named Amir Din son of Tikka Khan Shinwari was arrested and a sum of 10,000 US Dollars was recovered from him. The concerned Subedar directed the petitioner to keep the accused under his watch. However, later the accused was directed to be released. Subsequently, the said Amir Din complained that a sum of 2000 US Dollars had unlawfully been

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retained by officials of Khyber Rifles. The petitioner was put behind bars/quarter guard for 4 months and 12 days and was also demoted to the rank of Lance Naik. Upon his release, the petitioner preferred a departmental appeal and thereafter a constitutional petition bearing No.2267 of 2018 before the Peshawar High Court, Peshawar. The constitutional petition was dismissed for want of jurisdiction, vide order dated 25.02.2019 with an observation that he was at liberty to approach the appropriate forum. The petitioner therefore filed an appeal bearing No.388(P)CS of 2019 before the Tribunal on 28.03.2019, which was found to have been filed beyond the period of limitation and was dismissed in limine vide impugned judgment dated 25.07.2019.

3. The learned ASC for the petitioner at the very outset tried to argue the case on merits. It was however pointed out to him that the Tribunal had dismissed the petitioner's appeal in limine after recording findings that his departmental appeal before the competent authority as well as service appeal before the Tribunal were barred by time. He was therefore directed to address arguments to show either that the said appeals were not barred by time or if at all they were barred by time, it was a fit case for condonation of delay which the competent fora had failed to do. The attention of the learned ASC was drawn to the application for condonation of delay moved before the Tribunal. In the said application, the only ground taken for seeking condonation of delay was that the petitioner had invoked the jurisdiction of the High Court under the bona fide belief that it was the correct forum and therefore he could not approach the Tribunal in time. It was prayed that the period of time spent before the wrong forum may be condoned and the appeal may be decided on merits. The learned ASC has reiterated the said ground. In addition, he has argued that the departmental appeal was filed after the petitioner had been released from custody in the quarter guard for 4 months and 12 days, although he had not moved an application for condonation of delay before the competent authority. The learned ASC has finally relied upon *Managing Director, Sui Northern Gas Company Ltd, Karachi v. Ghulam Abbas and others* (2003 PLC (C.S.) 796) and *Province of Sindh and others v. Ghulam Fareed and others* (2014 SCMR 1189) to argue that this Court encourages decisions on merits rather than non-suiting the parties on technicalities and that no limitation runs against a void order.

4. We have heard the learned counsel for the petitioner and carefully examined the case record. We have also considered his arguments and gone through the judgments of this Court cited by him. The learned ASC for the petitioner has admitted that the departmental appeal filed by the petitioner was barred by time. He has however tried to explain that the appeal was filed immediately after his release from custody on 29.11.2017. We note that the appeal was filed on 06.01.2018. The learned ASC has not been able to explain why the appeal was not immediately filed after his release and despite the fact that it was already barred by time the petitioner consumed approximately another two weeks to file an appeal and that too without an application for condonation of delay explaining the reason for every day of delay as required under the law.

5. The learned ASC has also admitted that the appeal of the petitioner before the Tribunal was barred by time. He has however argued that he was pursuing a remedy before the High Court under the bona fide belief that he was before a right forum. In order to avail the benefit of section 14 of the Limitation Act, 1908 it is imperative that a litigant seeking benefit of the said provision must show that he was prosecuting his remedy with due diligence and in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it. The material words are, "due diligence and good faith" in prosecuting a remedy before a wrong forum. The term "due diligence" entails that a person takes such care as a reasonable person would take in deciding on a forum to approach. The learned ASC has attempted to argue that the law was unclear and there was ambiguity regarding the forum which the employees of Frontier Corps could approach for redressal of their grievances and that such confusion was ultimately resolved by this Court through a judgment reported as *IG, HQ Frontier Corps v. Ghulam Hussain* (2004 SCMR 1397) in which it was held that employees of the Frontier Corps shall be governed under the provisions of Frontier Corps Ordinance, 1959 and for the limited purpose would enjoy the status of civil servants. As such, they could avail their remedies before the Tribunal for redressal of their grievances. The argument of the learned ASC for the petitioner is fallacious. This Court had as far back as 2004 clarified the law on the subject and held that employees of Frontier Corps will be deemed to be civil servants for the purpose of approaching the Tribunal for redressal of their grievances. Reference in this regard may be made to

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IG, HO Frontier Corps v. Ghulam Hussain (2004 SCMR 1397). The subsequent judgment reported as Commandant, Frontier Constabulary v. Gul Raqib Khan (2018 SCMR 903) merely reaffirmed the earlier judgment. In view of the fact that there was no confusion or ambiguity in the law, the argument of learned ASC that the petitioner was bona fide availing a remedy with due diligence before a wrong forum and should therefore be granted the benefit of Section 14 of the Limitation Act holds no water.

6. Adverting to the argument of learned ASC for the petitioner that there is no limitation against a void order, we find that in the first place, the learned ASC has not been able to demonstrate before us how the order of dismissal was a void order. In addition, this Court has repeatedly held that limitation would run even against a void order and an aggrieved party must approach the competent forum for redressal of his grievance within the period of limitation provided by law. This principle has consistently been upheld, affirmed and reaffirmed by this Court and is now a settled law on the subject. Reference in this regard may be made to Parvez Musharraf v. Nadeem Ahmed (Advocate) (PLD 2014 SC 585) where a 14 member Bench of this Court approved the said Rule. Reference in this regard may also be made to Muhammad Sharif v. MCB Bank Limited (2021 SCMR 1158) and Wajdad v. Provincial Government (2020 SCMR 2046).

7. In view of the fact that we have found that the departmental appeal as well as the service appeal of the petitioner were barred by time and no valid or lawful reason for condonation of delay was given and that the benefit of section 14 of the Limitation Act was not available to the petitioner, we do not feel the necessity of discussing the merits of the case.

8. Even otherwise, the learned ASC for the petitioner has not been able to show us any legal or jurisdictional defect or error in the impugned judgment of the Tribunal that may furnish basis, ground or justification for grant of leave to appeal in the matter. Further, we also find that no question of law of public importance within the contemplation of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973 has been raised through this petition. This petition is found to be without merit and is accordingly dismissed. Leave to appeal is refused.

MWA/K-1/SC  
dismissed.

Petition