

S.No. of proceedings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	16.01.2017	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>CAMP COURT ABBOTTABAD</u></p> <p style="text-align: center;">APPEAL NO. 128/2016</p> <p style="text-align: center;">Muhammad Said Versus Government of Khyber Pakhtunkhwa through Secretary E&SE Peshawar and 3 others.</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 and Mr. Rashid Ahmad, ADO along with Ms. Shazia Mughal, Government Pleader for respondents present.</p> <p>Rejoinder submitted.</p> <p>2. Muhammad Said s/o Abdul Kareem hereinafter referred to as the appellant has preferred the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 02.06.2015 vide which he was removed from service w.e.f 01.02.2015 and where-against his departmental appeal was also rejected vide final order dated 14.10.2015.</p> <p>3. Brief facts giving rise to the present appeal are that the appellant was serving as Chowkidar when subjected to enquiry on the allegations of wilful absence and removed from service vide original impugned order dated 02.06.2015 where-against his departmental appeal dated 16.06.2015</p>

16.01.17

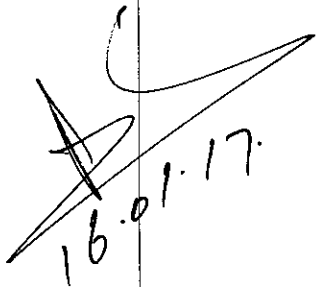
was also rejected vide final order dated 14.10.2015 and hence the instant service appeal on 13.11.2015.

4. Learned counsel for the appellant has argued that neither any enquiry was conducted nor provision of Rule 8-A of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 were complied with. That the impugned order are therefore liable to be set aside.

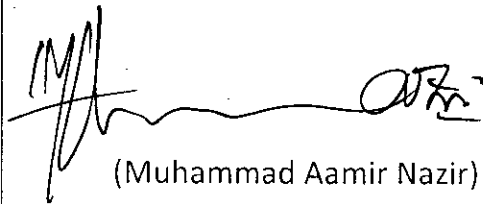
5. Learned Government Pleader has argued that show cause notice was issued to the appellant but he failed to appear and resume duty and as such the impugned order is in accordance with law and warrants no interference.

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


7. Material placed on record would suggest that the competent authority has signed show cause notice dated 7.05.2015 but there is ^{no} proof of sending the same to the appellant in the mode and manners prescribed by rules. No Publication whatsoever as required under the rules was ever made in the leading newspapers. Even the absence period of the appellant is not ascertainable from the record. We are therefore left with no option but to accept the present appeal, set aside the impugned order dated 02.06.2015 and 14.10.2015 and, as a consequence thereof, reinstate the appellant in service. The competent authority is however placed at liberty to conduct *de-novo* enquiry against the appellant within a period of two months from the date of receipt of this judgment. If the enquiry is not


16.01.17

conducted and concluded within the specified period of two months then the appellant shall be deemed to have been reinstated in service with all back benefits however, his absence period from duty shall then be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Aamir Nazir)
Member



(Muhammad Azim Khan Afridi)
Chairman
Camp Court, Abbottabad

ANNOUNCED
16.01.2017

128/2016

21.7.2016

Counsel for the appellant and Mr. Abdul Wali, Supdt. alongwith Mr. Muhammad Siddique Sr.GP for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 16.1.2016 at camp court, Abbottabad.



Chairman
Camp Court, A/Abad

16.03.2016

Counsel for the appellant present. Seeks adjournment. To come up for preliminary hearing before S. B on 20.4.2016 at Camp Court A/Abad.


Chairman
Camp Court A/Abad

20.04.2015

^{EF} Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Chowkidar when subjected to enquiry on the allegations of wilful absence from duty and removed from service vide impugned order dated 02.6.2015 where-against he preferred departmental appeal on 16.6.2015 which was rejected on 14.10.2015 and hence the present service appeal on 13.11.2015.

That the enquiry was not conducted in the prescribed manner and that the absence of the appellant was not wilful as he was ill and admitted to Ayub Teaching Hospital, Abbottabad.

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 21.07.2016 before S.B at camp court, Abbottabad.

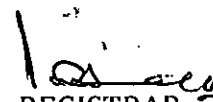


Chairman
Camp court, A/Abad.

Appellant Deposited
Security & Process Fee

Form- A
FORM OF ORDER SHEET

Court of _____


Case No. 128/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	<p>04.02.2016</p> <p>2 - 2 - 16</p>	<p>The present appeal was received on 13.11.2015 which was returned to the counsel for the appellant for completion and resubmission within 10 days. Today i.e on 04.2.2016 he resubmitted the same late by 73 days. The same may be entered in the institution register and put up to the Worthy Chairman for appropriate order please.</p> <p style="text-align: right;">  REGISTRAR </p> <p>This case is entrusted to Touring Bench A.Abad for preliminary hearing to be put up there on <u>17-2-2016</u>.</p> <p style="text-align: center;"> None present for appellant. Notice to counsel for the appellant be issued for preliminary hearing before S.B at Camp Court A/Abad. CHAIRMAN S.B at Camp Court A/Abad </p> <p>17.02.2016</p> <p>None present for appellant. Notice to counsel for the appellant be issued for preliminary hearing for 16.3.2016 before S.B at Camp Court A/Abad.</p> <p style="text-align: right;">  Chairman Camp Court A/Abad </p>

The appeal of Mr. Muhammad Said son of Abdul Kareem r/o Osoi Tehsil Dassu Distt. Kohistan received today i.e. on 13.11.2015 is returned to the counsel for the appellant with the direction to submit four more copies/sets of the appeal along with annexures i.e. complete in all respect with in 10 days.

No. 1776 /S.T,

Dt. 16/11 /2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Abdul Saboor Khan Adv.
High Court Abbottabad. Manshra

A.W.F. Province
Service Tribunal
Diary No. 286-2016
Dated 04-2-2016

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

Service appeal No. 128 of 2015

Muhammad SaidAppellant

VERSUS

The Government of Khyber Pakhtunkhwa
through Secretary (Elementary & Secondary)
Education, Peshawar etc.....Respondents

SERVICE APPEAL

INDEX

S#	Particulars of documents	Annexure	Pages
1	Memo of service appeal.	1-5
2	Correct addresses of the parties.	6
3	Copies of medical slips.	"A"	7-11
4	Copy of the impugned order dated 02.06.2015.	"B"	12
5	Copy of the appeal.	"C"	13-14
6	Copy of the order dated 14.10.2015.	"D"	15
7	Wakalat Nama.	16

Dated 10.11.2015

Muhammad Said
Appellant

Through

ABDUL SABOOR KHAN,
Advocate High Court,
Mansehra.

P. 1

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

Service appeal No. 128 of 2016

Muhammad Said son of Abdul Kareem
resident of Osoi, Tehsil Dassu District
Kohistan Appellant

**W.P. Province
Service Tribunal**
Diary No 1357
Dated 13-11-2015

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary) Education, Peshawar.
2. The Director (Elementary & Secondary) Education, Peshawar.
3. The Deputy Director (F&A) Elementary & Secondary Education, Peshawar.
4. The District Education Officer (Male), Dassu Kohistan..... Respondents.

**SERVICE APPEAL UNDER SECTION 4 OF
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
ORDER ENDST. NO.7588-92 DATED
02.06.2015 PASSED BY THE RESPONDENT
NO.4 VIDE WHICH THE APPELLANT
WAS REMOVED FROM SERVICE W.E.F
01.04.2015 AND ORDER DATED 14.10.2015
WHEREBY THE DEPARTMENTAL
APPEAL OF THE APPELLANT WAS
DISMISSED BY RESPONDENT NO.2**

PRAYER: -

On acceptance of instant appeal, the impugned orders dated 02.06.2015 and 14.10.2015 may kindly be set aside and the appellant may graciously be re-

[Signature]
13-11-15
Registrar

no-submitted to-day
and filed.

[Signature]
Registrar
1/12/2016

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instated in service with all back benefits.

Respectfully Sheweth!

1. That, the appellant was appointed as Chowkidar/Naib Qasid by competent authority and had been rendering the services for the last 20 years at Government Primary School Bar Osoi, Tehsil Dassu District Kohistan.

2. That, the appellant was suffering from Arq-un-Nisa (Sciatica) disease and remained under treatment, that's why could not report to the duty after bring the fact into the notice of the respondent No.4.

(Copies of medical slips are annexed as annexure "A").

3. That, the appellant was removed from service w.e.f. 01.02.2015 by respondent No.4 without observing the pre-requisite legal formalities.

(Copy of the impugned order dated 02.06.2015 is annexed as annexure "B").

4. That, the appellant preferred a departmental appeal before respondent No.2 vide appeal dated 16.06.2015 which was turned down without assigning reasons by

respondent No.2 vide order dated 14.10.2015.

(Copies of the appeal and order dated 14.10.2015 are annexed as annexure "C" & "D").

5. That, the appellant being aggrieved from the impugned orders, seeks the gracious indulgence of this Honourable Court, inter alia, on the following grounds: -

GROUNDS

- a. That, the appellant never remained willfully absent from duty and remained under treatment by taking the respondent No.4 on board.
- b. That, neither any show cause notice was service nor any charge sheet was furnished nor any inquiry was conducted by the respondent No.4 before passing the impugned order which is nullity in the eye of law.
- c. That, the appellant was never provided an opportunity of personal hearing nor producing evidence in

P. 4

defence which is illegal and against the norms of natural justice.

- d. That, in view of the disease with which the petitioner had been suffering has not taken into account by respondent No.4 before passing the impugned order.
- e. That, the respondent No.4 has acted illegally and unfairly which has resulted into grave miscarriage of justice.
- f. That, the services of the appellant was dispensed with, with a single stroke of pen by neglecting the law, rules and regulations.
- g. That, no legal reason has been furnished by respondent No.4 while removing the appellant from service and the respondent No.2 while rejecting the departmental appeal of the appellant.
- h. That, the quantum of sentence doesn't commensurate with the charge and maximum and excessive punishment has been awarded which is illegal and unjust.

It is, therefore, most humbly prayed that on acceptance of instant appeal, the impugned orders dated 02.06.2015

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and 14.10.2015 may kindly be set aside and the appellant may graciously be reinstated in service with all back benefits.

Dated 10.11.2015



Muhammad Said
...Appellant

Through

ABDUL SABOOR KHAN,
Advocate High Court,
Mansehra.

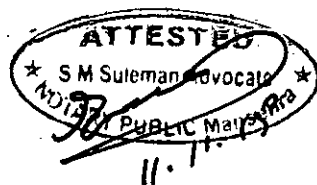
AFFIDAVIT.

I, Muhammad Said son of Abdul Kareem resident of Osoi, Tehsil Dassu District Kohistan, Appellant, do hereby solemnly affirm and declare on oath that the contents of the foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Dated 10.11.2015



Muhammad Said
(DEPONENT)



11.11.15

R-6

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

Service appeal No. ____ of 2015

Muhammad SaidAppellant

VERSUS

The Government of Khyber Pakhtunkhwa
through Secretary (Elementary & Secondary)
Education, Peshawar etc.....Respondents

SERVICE APPEAL

CORRECT ADDRESSES OF THE PARTIES

APPELLANT

Muhammad Said son of Abdul Kareem
resident of Osoi, Tehsil Dassu District
Kohistan.

RESPONDENTS

1. The Government of Khyber Pakhtunkhwa
through Secretary (Elementary & Secondary)
Education, Peshawar.
2. The Director (Elementary & Secondary)
Education, Peshawar.
3. The Deputy Director (F&A) Elementary &
Secondary Education, Peshawar.
4. The District Education Officer (Male), Dassu
Kohistan.

Dated 10.11.2015

Muhammad Said
Appellant

Through

ABDUL SABOOR KHAN,
Advocate High Court,
Mansehra.

P. (7)



AYUB TEACHING HOSPITAL, ABBOTTABAD

Filter Out Patient Department

014
ANNEX (A)

Book No. 10519

Patient ID:	303212	Patient Name:	M. Saeed
Patient Age:	47 yr.	Patient Sex:	M
Patient Date & Time:	1-2-2015	Patient Mode:	—
OPD:	Bilal	Address:	Kabulistan
IDP Status:		Amount:	1/2

1. Tab Cava 20ml
—
2. Tab Roxican 20ml
—
3. Tab Seml. 2
—
4. 10 Calceph
—

A: ortho con
ad:
x. for L.S. sp
ad cat
—
Blood c/s
RA Fact

Ad Compli RA JW one month
c/s

[Signature]
Medical Superintendent
Ayub Teaching Hospital
Abbottabad

[Signature]
Surgeon
Ayub Teaching Hospital
Abbottabad

④ XMM

⑤ 9

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AYUB TEACHING HOSPITAL, ABBOTTABAD
Filter Out Patient Department

Book No. **3449**

S.No. **3**

Patient ID: **722012**
Patient Age: **47 years**
Patient Date & Time: **1-3-15**
OPD
IDP Status:

Patient Name: **M Saeed**
Patient Sex: **M**
Patient Mode:
Address: **Kohistan**
Amount: **10**

6

A: 58000
Ad.
M.R.
SPN
L.S.

1. by myself in 00

2. by van in 00

3. ad Dalsen
in 00

4. ad Saeed I
in 00

Ad Coupler bed 2A in
one month 013

Medical Superintendent
Ayub Teaching Hospital
Abbottabad

Registrar
Surgical Unit
Ayub Teaching Hospital
Abbottabad
1/3/2015

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AYUB TEACHING HOSPITAL, ABBOTTABAD

Filter Out Patient Department

Book No. 10518

S. No. 015

Patient ID: 677211

Patient Name: Mansoor

Patient Age: 47 years

Patient Sex: M.

Patient Date & Time: 1-4-15

Patient Mode:

OPD:

Address: Kohistan

IDP Status: +

Amount: 10

[Signature]

1. tal cara
[Signature]

ad: Blood
CP

2. tal Feldin Blar
[Signature]

HB
U/S

3. 9 ulscus
[Signature]

4. tal kama
[Signature]

Ad. Complu ent for one roll
cis

Dy. Medical Superintendent
Ayub Teaching Hospital
Abbottabad

Registrar
Surgical Unit
Ayub Teaching Hospital
Abbottabad

1/4/15



AYUB TEACHING HOSPITAL, ABBOTTABAD
Filter Out Patient Department

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013

Book No.	10514	S. No.	
Patient ID:	612527	Patient Name:	Jawad
Patient Age:	47 years	Patient Sex:	M.
Patient Date & Time:	4-5-15	Patient Mode:	
OPD:		Address:	Kohistan
IDP Status:		Amount:	10

1. M. Nadeem Ihs
2. M. Qasim
3. M. D. Khan
4. M. Ihsan

Adm
Ahsan
Adm

Ad. G. Khan ref for one month

Dr. Medical Superintendent
Ayub Teaching Hospital
Abbottabad

Registrar
Medical Unit
Ayub Teaching Hospital

1/5/15



AYUB TEACHING HOSPITAL, ABBOTTABAD
Filter Out Patient Department

014

Book No. 10519

S. No.

Patient ID: 567312	Patient Name: Muhammad Saeed
Patient Age:	Patient Sex: M
Patient Date & Time: 1/6/2015	Patient Mode:
OPD:	Address: Kohistan
IDP Status:	Amount: 10

1. Test send to
2. Test done
3. Test done

A. R. SM
Ad. X-ray
Both
Knee

Ad 8/1 - in two weeks
15 days

By: Medical Superintendent
Ayub Teaching Hospital
Abbottabad

Registrar
Surgical "A" Unit
Ayub Teaching Hospital
Abbottabad
1/6/15



OFFICE OF THE DISTRICT EDUCATION OFFICER (M) KOHISTAN

NOTIFICATION.

Consequent upon the information collected and on the completion of departmental Enquiry, I Riasat Khan District Education Officer(Male) Kohistan being Competent Authority is fully satisfied to **remove** the following Chowkidars/ Niab Qasids of Elementary & Secondary Education Department District Kohistan from service on the basis of Charges noted against their names with effect from the date noted against their names.

S #	Name of Official with Desig:	Name of School	Charge.	Remarks
1	Said Rahim Chowkidar	GPS Sigayoun Patlan	According to S/Book his date of Birth is 1955 however he made cutting in S/Book.	Removal from Service.wef 1/4/2015
2	Muhammad Said Chowkidar	GPS Bar Osol	Willful absence	Removal from Service.wef 1/2/2015
3	Abdus-Salam Chowkidar	GPS Dago B.Shariyal	do	Removal from Service.wef 1/4/2015
4	Jahangir Khan Chowkidar	GPS Kohi Mada Khail	Willful long absence.	Removal from Service.wef 1/12/2014
5	Iskandar Zaman Chowkidar	GPS Jabri Jalkot	Willful absence	Removal from Service.wef 1/5/2015
6	Muhammad Faroz Chowkidar	GHS Banil Jag	Willful long absence	Removal from Service.wef 1/10/2014

*District Education Officer
(Male) Kohistan.*

Endstt; /No./Estab: 7588-92 /dated Kohistan the 02/06 /2015

Copy of the above is forwarded to the:

1. PA to Director E&SE Khyber Pkhtunkhuwa Peahswar.
2. Deputy District Education Officer (M) Kohistan.
3. Sub Divisional Education Officer (M) kohistan.
4. Head Master CHS Doga B. Ranelia/Banil Jag.
5. Office file.

*District Education Officer
(Male) Kohistan.*

محفوظ حساب والا شان ناظم تعلیمات صواب سکولز جسپر فٹو فوٹو لکشاؤر

Annex C

درمندانہ اپیل بھراؤ اپیل گنڈہ تو والی ٹوٹری پریمی اور DEO (مردانہ) کوستان کی حکیم

نمبر 92-7588 المرکز 2005/06/02 کی منوفی بوجھات ذیل

حساب جاری 1

اپیل گنڈہ صواب ذیل بعض مسائل

- 1۔ دیکھ سائل / اپیل گنڈہ موضع اوشی تحصیل دسو ضلع کوستان کا ماہ گنڈہ۔
(CNIC کا مالی فقدان سے اپیل ہے)
- 2۔ دیکھ سائل / اپیل گنڈہ جو کہ پید سے پہلے گنڈہ ملک پیر کوٹھن پیر الہی سکول اوشی دسو کوستان میں
بھراؤ پر غلطی سے آٹا ملائج تعمیرات و 1۔ اور تقریباً 25 سال پہلے کی ہے۔
- 3۔ دیکھ سال 2008 میں اپیل گنڈہ کی ٹوٹری پیکر Permanent کر دی گئی کہ تمام لوگوں سے ابھج دیا
کر دیا گیا۔
- 4۔ دیکھ المرکز 02/2015 کو عرق النساء بیماری میں مبتلا و 1۔ کہ تمام علاج معالجہ کر دیا گیا
5۔ دیکھ بوم بیماری کہ علاج معالجہ اپیل گنڈہ ڈیوٹی گنڈہ کی اوشی کوٹھن سے قائم رہا۔
(علاج معالجہ بیماری کی پورے کی پورے کوستان میں)
- 6۔ دیکھ اسی درمندانہ DEO مردانہ کوستان بوم غیر ظہری المرکز 06/02 کوٹھن پیر
92-7588 کے ذریعے اپیل گنڈہ کو ٹوٹری سے بغیر کوٹھن و پیکر کہ اپیل گنڈہ کو
تینے بغیر بوجھات کر دیا، جو کہ قانون کے مطابق کی گئی ہے۔
(بہر ضابطی لکسر کا مالی فقدان سے)
- 7۔ دیکھ سائل / اپیل گنڈہ گنڈہ 20 سالہ ٹوٹری کے درمیان نیابت صابھائی کہ

ایمانداروں کے ساتھ دہائی (دسویں) دہائی کے لیے کئی بی بی نامہ / خطی و غیر خطی دستاویز

8: ایک سال (ایک تفریق) کے لیے معافی کے لیے درخواستیں، غریب خاندانوں سے تعلق رکھنے والی

ایک طرف غیر نصابی علاج معالجہ کے لیے معافی کے لیے درخواستیں اور دوسری طرف قلم / DEO

صاحبانہ ایک تفریق کو نوٹ کر کے تمام کے لیے حکم جاری ہے۔

استدعا ہے کہ بینظوری و حکمانہ ایک اور ایسی تفریق کو دوسری نوٹوں میں بحال کر کے

DEO کو صحت کی حالت کو مشورہ کر کے مشورہ فرمادیں۔ تاریخ: 16/06/2015



جناب کا خلیفہ ایسی تفریق کے لیے سید ولد عبداللہ سکن اوٹھی داسو کو صحتانہ تفریق

CNIC # 13401-5738711-1

Cell # 0342-9540165

بیانِ خلاف

مجاہد مرتبہ دھواں / ایسی تفریق کے لیے
یقیناً کے مطابق دستاویز جمع کروائے
یوثقہ کہ خفی الخ



ایسی تفریق کے لیے سید ولد عبداللہ سکن اوٹھی داسو کو صحتانہ تفریق

CNIC # 13401-5738711-1

ATTESTED
16.06.2015
Mian Sibghat Ullah Shah
Advocate
OATH COMMISSIONER
High Court Peshawar



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR

P. (15)

No. 2771 / F.No. 29/A-20/C-IV/Kohistan.
Dated: 14/10 /2015.


To

Muhammad said S/O Abdul Kareem
Resident village Usai, Daso Kohistan

Annex (D)

Subject: - APPEAL FOR RE-INSTATEMENT

I am directed to refer to your appeal dated 16/06/2015 on the subject cited above and to inform you that your appeal has no weightage. Hence your appeal is regretted under Section 17 read with rule (2), (a) of the E&D Rules 2011.


Deputy Director (F & A)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.

Encls No. _____ /

Copy forwarded to the: -

1. District Education Officer (M) Kohistan w/r to his letter No. 10083 dated 20/08/2015.
2. PA to Director E&SE local Directorate.
3. Master File.

Deputy Director (F & A)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

وکالت نامہ

KPK Service Tribunal Peshawar

بنام محترمتہ KPK

دعویٰ یا جرم Service appeal منجانب Appellant

باعث تحریر آنکے سندس راجسٹریل رٹائن مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی بمقام

عبدالعزیز بن عبدالرحمن صاحب کار

ہدیں شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص روز عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی پیشی پر مظہر حاضر نہ ہو اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ مقام پکھری کے کسی اور جگہ باعث ہونے پر یا بروز پکھری کے اوقات کے آگے یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے واسطے کسی متاوضہ ادا کرنے، مختیار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کل ساختہ پرداخت صاحب مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجرائے ڈگری و نظر ثانی اپیل گمرانی دائر کرنے، نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرانے کا ہر قسم بیان دینے اور سپرد تاشی و راضی نامہ و فیصلہ برخلاف کرنے و اقبال دعویٰ کا اختیار ہوگا اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا طرفہ درخواست حکم امتناعی یا ڈگری قبل از فیصلہ اجرائے ڈگری بھی صاحب موصوف کو بشرط ادا ایگی علیحدہ پیروی مختیار نامہ کرنے کا مجاز ہوگا اور بصورت ضرورت اپیل اور اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو، پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختیار نامہ لکھ دیا ہے کہ سندر ہے۔

المترقوم 10/11/2015

محمد سید واہد عبدالکریم صاحب کار
سندس راجسٹریل رٹائن

ATTESTED & ACCEPTED

Handwritten signature and date 10/11/15

33

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO 128 OF 2016

Muhammad Said -----

Petitioner

VERSUS


1. Govt of Khyber Pakhtun Khwa through Secretary (E&S) Education Peshawar
2. Director Elementary & Secondary Education KPK Peshawar
3. Deputy Director(F&A) Elementary & secondary Education Peshawar
4. District Education Officer Male Kohistan ----- **Respondents**

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS NO1,2 , 3 & 4.

INDEX

S#	Particulars of documents	Annexure	Pages
1	Comments along with affidavit		1-4
2	Copy of show cause notice	A	5
3	Copy of final show cause notice	B	6
4	Copy of letter of director	C	7
5	Copy of reply of director letter	D	8
6	Copy of decision of director	E	9

Dated 11.4.2016


Respondent No.4

Factual Objections:

1. Para No 1 is correct to the extent of appointment of appellant.
2. Para No 2 is incorrect, strongly denied with the facts that the appellant was reported absent from duty by school staff, field staff and local community and a show cause notice was served to appellant (Copy of show cause notice is attached as Annexure A) and on receiving no reply, a final show cause notice in which a chance of personal hearing was provided was also served to the appellant but in vain (Copy of final show cause notice is annexed as Annexure B).
3. Para No 3 is incorrect, strongly denied with the facts that the appellant was removed from service on the charge of willful long absent from duty after observing all the pre requisite codal formalities and with the satisfaction that the appellant was habitual in non performing of school duties.
4. Para No 4 is correct to the extent that the appellant submitted a departmental appeal before the respondent No2 (Director Elementary and Secondary Education KPK Peshawar) dated 16.6.2015 and the respondent No 2 in the response of appeal asked to respondent No 4 (DEO)Vide letter No 8734 dated 30.6.2015 to submit detailed report/comments on the appeal of appellant at the earliest (Copy is attached as Annexure C) and in the reply of director letter the detailed report/ comments has been submitted Vide letter No 10083 dated 20.8.2015 (Copy is attached as annexure D) and the respondent No 2 Vide letter No 2771 dated 14.10.2015 has not considered the appeal of the appellant for reinstatement under section 17 read with rule (2),(a) of the E&D Rules 2011(Copy is attached as annexure E).
5. Para No 5 is incorrect. It is humbly submitted that both the orders of competent authorities are correct as per rule of law and the appeal is liable to be dismissed without any further proceeding.

GROUNDS

- A. Incorrect, strongly denied with the facts that the appellant never performed his duty regularly and mostly been reported willful absent from duty and never informed to respondent No 4 or other field staff and school staff.
- B. Incorrect, strongly denied. As stated in Para No 2 of the facts that the appellant was reported absent from duty by school staff, field staff and local community and a show cause notice was served to the appellant and on receiving no reply, a final show cause notice with a chance of personal hearing was served to the appellant and the appellant was removed from the service after fulfilling all the pre requisite formalities with the satisfaction that the appellant was habitual in non performing of his school duty
- C. Incorrect, strongly denied that the appellant was provided a chance of personal hearing in final show cause but the appellant being absent did not avail the chance of personal hearing.
- D. Incorrect, strongly denied that the appellant never informed to respondent No 4 or other subordinate staff about the disease but willfully absented himself from the duty.
- E. Incorrect, strongly denied. As stated in Para No 2 of the facts.
- F. Incorrect, strongly denied. As stated in Para No 2 of the facts.

32

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO 128 OF 2016

Muhammad Said -----

Petitioner

VERSUS

1. Govt of Khyber Pakhtun Khwa through Secretary (E&S) Education Peshawar
2. Director Elementary & Secondary Education KPK Peshawar
3. Deputy Director(F&A) Elementary & secondary Education Peshawar
4. District Education Officer Male Kohistan -----

Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS NO1,2, 3 & 4.

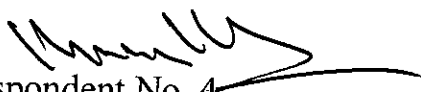
Respectfully Sheweth:


PRILIMINARY OBJECTIONS:-


- I. That the appellant has not come to this Honorable Court with clean hands.
- II. That the appellant has got no cause of action/ locus standi to file the instant appeal.
- III. That the appeal has been filed to pressurize the respondents.
- IV. That the appellant is estopped to sue through his own conduct.
- V. That the present appeal is not maintainable due to mis-joinder and non-joinder of necessary parties.
- VI. That the appellant has concealed the material facts from this Honorable Court ,hence not entitled for any relief and appeal is liable to be dismissed.
- VII. That the appellant has been removed from service due to willful long absence hence the appeal is liable to be dismissed.
- VIII. That the competent authority has removed the appellant after fulfillment of all codal formalities, hence the instant appeal is liable to be dismissed.
- IX. That the appeal is time barred, hence liable to be dismissed.

- G Incorrect hence denied. As stated in Para 2 above of the facts.
- H. Incorrect hence denied and the major penalty of removal has been given to the appellatant as per rule of law. It is further submitted that the respondents seeks permission for arguing the other points at the time of arguments.

It is therefore, in the light of above stated facts and circumstances, Very humbly prayed that the appeal in hand may please be dismissed with cost.


 Respondent No. 4
 District Education Officer,
 (Male) Kohistan

 21/4/2016
 DIRECTOR
 Elementary and secondary Education
 Khyber Pakhtun Khawa Peshawar

 9/5/2016
 SECRETARY
 Elementary and secondary Education
 Khyber Pakhtun Khawa Peshawar

29

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

¹²⁸
APPEAL NO 218 OF 2016

Muhammad Said

Petitioner

VERSUS

1. Govt of Khyber Pakhtun Khwa through Secretary (E&S) Education Peshawar
2. Director Elementary & Secondary Education KPK Peshawar
3. Deputy Director(F&A) Elementary & secondary Education Peshawar
4. District Education Officer Male Kohistan ----- **Respondents**

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS NO1,2 , 3 & 4.

AFFIDAVIT.

I, Riasat Khan DEO (Male) Kohistan do hereby solemnly affirm and declare that the contents of Parawise comments in the above titled case are true and correct to the best of my knowledge and belief, and that nothing, material has been suppressed from this Honourable court.

Identified by,



DEPONENT.



98

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) KOHISTAN

Email: emiskohistan@yahoo.com

Phone # 0998-407128

SHOW CAUSE NOTICE

I, Riasat Khan, District Education Officer, (Male) Kohistan, as competent authority under the Khyber Pakhtunkhwa Govt: Servants (E&D) Rules, 2011, do hereby serve you Mr, Muhammad Said Chowkidar GPS Bar Usol Kohistan as follows:-

That as per public information you found committed of the following offence.


1. Willful absence from duty.

As a result thereof, I have tentatively decided to impose upon you the penalty of **RECOVERY OF SALARY FOR THE ABSENT PERIOD AND REMOVAL FROM SERVICE.** Under rule 4 of the said rule.

You are, thereof required to reply the show cause as to why the aforesaid penalty should not be imposed upon you and also intimate ***whether you desired to heard in person.***

If your reply will not receive within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.

Endstt: No 7188 /Dated Kohistan the 7/5 /2015.


COMPETENT-AUTHORITY

30

Directorate of Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar.
No. 8734 /F.No. 291/A-20/C-IV/Kohistan-II
Dated Peshawar the 30/6 /2015.

To

The District Education Officer
(Male) Kohistan

Subject: APPEAL FOR RE-INSTATEMENT. ✓

Memo:

I am directed to refer to the subject noted above and to enclose herewith a copy of appeal alongwith its enclosure in r/o Muhammad Said S/o Abdul Karim R/O Daso Kohistan for necessary action and submit detailed report/comments at an early date.

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

Endst; No. _____/

Copy forwarded to the: -

1. Mr. Muhammad Said S/o Abdul Karim R/O GPS Bar Osoi Kohistan.
2. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

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

A/E
Pls Puro case
As per

District Office
No. 380
Date: 23/7/15

District Office
Peshawar



**OFFICE OF THE DISTRICT EDUCATION OFFICER
(M) KOHISTAN**

No 10083 / Dated Kohistan the 20/8 / 2015

To

The Director,
Elementary and Secondary Education,
Khyber Pakhtunkhwa Peshawar.

Subject:- **APEAL FOR RE-INSTATEMENT**
Memo:-

Reference your letter No. 8734/File No.291/A-20/C-IV dated Peshawar the 30/06/2015 on the subject cited above, I have the honor to submit that vide our notification 7588-92 dated 02/06/2015, some class IV were removed from service due to reasons given against their names.

As for as subject class IV is concerned, he was removed from service due to willful long absence (more than three years) from the duty.

All the correspondence is done by a group of peoples that were getting their salaries and few more cases are under process for removal.

Moreover all the codal formalities have been completed.

It is requested that the case may not be entertain please.

al

[Signature]
District Education Officer
(Male) Kohistan.

24 P. (15)

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR

No. 2771 / F.No. 29/A-20/C-IV/Kohistan.
Dated: 14/10 /2015.


To

Muhammad said S/O Abdul Kareem
Resident village Usai, Daso Kohistan

Anna (D)

Subject: - APPEAL FOR RE-INSTATEMENT

I am directed to refer to your appeal dated 16/06/2015 on the subject cited above and to inform you that your appeal has no weightage. Hence your appeal is regretted under Section 17 read with rule (2), (a) of the E&D Rules 2011.


Deputy Director (F & A)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endst No. _____ /

Copy forwarded to the: -

1. District Education Officer (M) Kohistan w/r to his letter No. 10083 dated 20/08/2015.
2. PA to Director E&SE local Directorate.
3. Master File.

Deputy Director (F & A)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal NO. 128/2016

MUHAMMAD SAEEDPETITIONER

VERSUS

GOVERNMENT OF KPK ETC.....RESPONDENTS

=====

REJOINDER ON BEHALF OF APPELLANT

=====

Respectfully Sheweth:

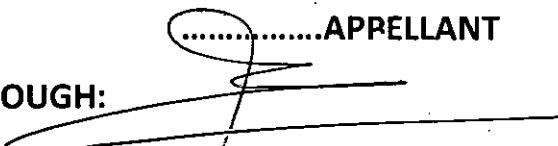
1. That, No show cause notice was not issued to the appellant nor any inquiry was conducted before removing the petitioner from service.
2. That, the appellant remained under treatment in Hospital and in respect whereof Medical Certificates were provided to the Department.
3. That, there is no mention of the alleged absence in the impugned order.
4. That, no inquiry was conducted in order to prove the alleged charge.
5. That, the requirements of Rule 8-A of Govt Servants Efficiency and Discipline Rules 1973 was not followed before passing the impugned order.
6. That, the respondents have not controverted the stance of the appellant in respect of his being remained under treatment at the Hospital.
7. That, the respondent have submitted evasive written reply without

Furnishing any relevant documents to controvert the stance of the appellant.

- P- (2)
8. That, the appellant has almost 20 years service at his credit with unblemished service record and he has been removed from service in a slipshod manner.
 9. That, there is no proof with the respondent in respect of the alleged absence of the appellant from duty.
 10. That, neither the Head Teacher nor any concerned officer has ever made complaints against the appellant nor there is statement of any one about the alleged absence of the appellant from duty.

It is therefore, very humbly prayed that the Appeal of the Appellant may kindly be accepted as prayed for with cost throughout.

.....APPELLANT

THROUGH: 

ABDUL SABOOR KHAN
Advocate High Court,

Affidavit:

I, Muhammad Saeed S/o Abdul Karim R/o Jalkot, Tehsil Dassu District Kohistan, do hereby solemnly affirm and declare on oath that the contents of instant Rejoinder are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Dated;; 16-01-2017


DEPONENT:

.....Muhammad Saeed



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 153 /ST. Dated 24 / 1 / 2017


To

The D.E.O (Male) E&SE,
Government of Khyber Pakhtunkhwa,
Dassu Kohistan.

Subject: - JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 16.01.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.