

Service Appeal No.1478/2023 titled "Liaqat Ullah versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar and others", decided on 21.11.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, D.I.Khan.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR**  
**AT CAMP COURT, D.I.KHAN**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**MUHAMMAD AKBAR KHAN... MEMBER (Executive)**

*Service Appeal No.1478/2023*

Date of presentation of Appeal.....21.06.2023  
Date of Hearing.....21.11.2023  
Date of Decision.....21.11.2023

**Liaqat Ullah S/O Sona Khan** case Gandapur resident of Gara Galandar, Tehsil & District Dera Ismail Khan. Chowkidar at Primary School Chah Baray Wala, Tehsil & District Dera Ismail Khan.....(*Appellant*)

Versus

1. **The Government** of Khyber Pakhtunkhwa Peshawar through Secretary Elementary & Secondary Education Department, Peshawar.
2. **The Director** Elementary & Secondary Education Department, Peshawar.
3. **Executive District Officer** Now the District Education Officer Elementary & Secondary Education Department, Dera Ismail Khan
4. **District Accounts Officer**, Dera Ismail Khan.....(*Respondents*)


Present:

Mr. Arif Hussain Niazi, Advocate.....For the appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

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...  
**APPEAL AGAINST THE ORDER OF DIRECTOR  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT KHYBER PAKHTUNKHWA ENDST:  
NO.8914-15 DATED 31.05.2023 WHEREIN  
DEPARTMENTAL APPEAL AGAINST ORDER OF  
DISTRICT EDUCATION OFFICER, EDUCATION  
DEPARTMENT D.I.KHAN ORDER DATED 30.11.2018 WAS  
REJECTED AND APPELLANT DEPRIVED FROM ALL  
BACK BENEFITS SALARIES I.E. PERIOD RANGING  
FROM MARCH 2011 TO 30.11.2018.**

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## **JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case, as enumerated in the memo and grounds of appeal, are that appellant was initially appointed as Chowkidar on contract basis vide order dated 15.03.2007. During service, he was ordered to work against the post of PST and accordingly, he started to perform against the said post. That in the meanwhile, his pay was stopped w.e.f February, 2011, against which, he filed departmental appeal followed by Service Appeal No.1501/2011. That vide order dated 28.11.2017 passed in the said service appeal, the Tribunal remitted the case back to the departmental authority to decide the departmental appeal through speaking order within a period of three months. Resultantly, vide order dated 30.11.2018, the appellant was adjusted against the post of Chowkidar but with immediate effect and the intervening period was treated as leave without pay. Feeling aggrieved, he filed departmental appeal on 30.12.2018, which was rejected. Therefore, the appellant filed the instant service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.



03. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

04. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

05. The concluding remarks of the order of Tribunal in the earlier service appeal of the appellant were as under:

*"As such, we are constrained to partially accept the appeal of the appellant and remit the case to the departmental authority to decide the departmental appeal through a speaking order within a period of three months after the receipt of this judgment and also direct to communicate the said order to the appellant and thereafter if any party is aggrieved then he is at liberty to approach this tribunal if so desire. Parties are left to bear their own costs. File be consigned to the record room."*

06. While the order from which the appellant is aggrieved and was passed in response to the judgment of the Tribunal, is reproduced:

*"Reference to the Honorable Khyber Pakhtunkhwa Service Tribunal Camp Court D.I.Khan appeal No.1501/2011 dated 23.07.2017 and in the light of direction of Court inquiry was conducted by the inquiry committee consist of Mr. Fakhar Din Principal, GHS Dhalla and Muhammad Shoib Khan Principal GHSS No.2 Paharpur Dera Ismail Khan. In the light of recommendation of inquiry committee submitted to this office vide No.412 dated 04.05.2018 Mr. Liaqat Ullah Khan S/O Sona Khan residence of Basti Kuhawar Umer Town Arra Road Dera Ismail Khan is hereby adjusted against the vacant post of Chowkidar (Additional) at GPS Chah Baray Wala with immediate effect.*

*Note:*

- 1. No DA/DA is allowed.*
- 2. Charge report should be submitted to all the concerned in duplicate/DDO will countersigned the same and charge report will not be accepted without the countersigned of the DDO.*

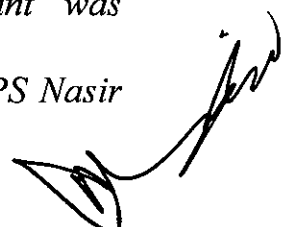


3. *Necessary entry to be made in his service book and their intervening period as recorded in his service book is treated as leave as admissible under the rules.*
  4. *His pay should be link with the satisfactory performance of regular duty at his school on monthly basis.*
  5. *SDEO concerned is directed to keep the official concern under observation random and frequent observation is made to ensure his regular attendance."*
07. Firstly, the impugned order has been issued while referring to the order of the Tribunal, whereas, there was no mention in the judgment regarding adjustment. Secondly, basic issue in this case was not of adjustment, rather the grievance of the appellant for which he had filed appeal, was stoppage of his salary. Perusal of impugned order shows that intervening period has been treated as leave and the respondents had no justification in this regard whether the leave was applied by the appellant or otherwise.
08. The order dated 30.11.2018 was passed in the light of an enquiry conducted by the respondents in the matter. The findings of the enquiry being worth perusal, are reproduced below:

**"Findings:**

*It is evident that the appellant was appointed as Chowkidar at GPS Gara Kalender D.I.Khan vide Endst No.6093-96 dated 15.03.2007 by the EDO D.I.Khan on contract basis as per policy of Government of Khyber Pakhtunkhwa and later on regularized vide No.B-01/1-22/2007 FD dated 29.01.2008.*

*Afterwards, due to mal-administration the appellant was adjusted on 21.04.2010 as PST at a Ghost School naming GPS Nasir*

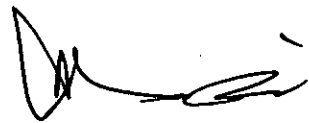


*Bagh distt: D.I.Khan i.e. there was no building, no establish school but Dy: DEO fictitiously named it as GPS Nasir Bagh, D.I.Khan. As such due to non-availability and existence of any school physically, was directed to serve in the office of Dy: DEO D.I.Khan till further order. Resultantly, he was receiving salary as PST (BPS-07) up to February 2011, and subsequently his pay was stopped w.e.f March 2011 till to date, without any preliminary/formal enquiry and without any show cause notice served upon the Classs-IV Mr. Liaqat Ullah S/O Sona Khan.*

*The appellant was suffered due to mal-administration of the department. He has performed the duties according to the desire/direction of his high ups.*

*As such actual status of the appellant was Chowkidar because he was adjusted as PST in his own pay and scale. But wonderful to say that the post vacated by the appellant at GPS Garah Kalender, from where he was transferred, was filled by another person named Rafi Ullah, the son of the head master of the school concerned. It seems the whole drama was played only to vacate the post held by the appellant and just to oblige the person mentioned above."*

The findings show that the appellant had suffered due to mal-administration of the department. That he had performed the duties according to the desire/direction of his high ups. This being so, there remains no question that the appellant had not performed duties for the



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period his salary was stopped nor is there any justification with the department to do so.

09. Therefore, the impugned order has no legal footings, is thus, set aside and the appeal of the appellant is accepted with direction to respondents to release the salary of the appellant. Consign.

10. *Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 21<sup>st</sup> day of November, 2023.*



**KALIM ARSHAD KHAN**  
Chairman  
Camp Court D.I.Khan



**MUHAMMAD AKBAR KHAN**  
Member (Executive)  
Camp Court D.I.Khan


*\*Mutazem Shah\**


S.A #. 1478/2023

**ORDER**

21<sup>st</sup> Nov. 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file the impugned order has no legal footings, is thus, set aside and the appeal of the appellant is accepted with direction to respondents to release the salary of the appellant. Consign.
3. *Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 21<sup>st</sup> day of November, 2023.*

  
(Muhammad Akbar Khan)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman  
Camp Court, D.I.Khan

\*Mutazem Shah\*