

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

S.A No. 569/2014

Bahadar Zaman

Versus

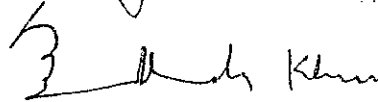
Chief Minister & others

**I N D E X**

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Appellant

Through



Dated: 10.03.2014

(Saadullah Khan Marwat)  
Advocate  
21-A Nasir Mension,  
Shoba Bazar, Peshawar.  
Ph: 0300-5872676

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A No. 569 /2014

Bahadar Zaman S/o Akber Zaman,  
Senior Clerk, Office of DEO (Female)  
Lakki Marwat . . . . . Appellant

Versus

1. Chief Minister, Govt. of KP, through Chief Secretary, Govt. of KP, Civil Secretariat, Peshawar.
2. Secretary, Government of KP, Elementary & Secondary Education Department, Peshawar
3. Director of Education, Directorate of Elementary & Secondary Education, KP, Peshawar
4. District Education Officer (Female), Elementary & Secondary Education, Lakki Marwat . . . . . Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST OFFICE NOTIFICATION NO. SO(S/M) E&SED/4-17/2012, DATED 26.12.2013 OF R. NO. 1 WHEREBY MINOR PENALTY OF WITHHOLDING OF TWO INCREMENTS FOR TWO YEARS WAS IMPOSED BY APPELLANT FOR NO LEGAL REASON.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**Respectfully Sheweth:**

Short facts giving rise to the present appeal are as under:-

1. That appellant was appointed initially as Junior Clerk on 21.11.1988 and on dedicated performances, he was promoted to the post of Senior Clerk on 15.02.2010.

2. That on 31.12.2012, appellant was served with Charge Sheet & statement of allegations to the effect:-

"Committed gross negligence, supporting and assisting the Ex-EDO in making illegal appointments in violation of merit, Govt. policy and procedures in the office of EDO, E&SE, Lakki Marwat". (Copy as annex "A")

Here it is not out of place to mention that the Charge Sheet was served directly by R. No. 2 upon appellant and not by the Inquiry Officer.

3. That on 08.01.2013, Inquiry Officer issued subsequent Charge Sheet / Statement of allegation on the same charges.(Copy as annex "B")
4. That the Charge Sheet of 31.12.2012 was replied on 14.01.2013 by the appellant by denying the allegations. (Copy as annex "C")
5. That perhaps inquiry in the matter was initiated but the same was not conducted as per the mandate of law because neither any statement of any witness(s) was recorded in presence of appellant nor he was afforded opportunity of cross examination, being mandatory, yet report was submitted to the authority for onward action.
6. That on 17.04.2013, appellant was served with Show Cause Notice on the aforesaid allegations to reply the same which was replied on 16.05.2013 in the aforesaid manner. (Copies as annex "D" & "E")
7. That on 26.12.2013, minor penalty of withholding of two increments for two years was imposed by R. No. 1 upon appellant which order was issued by R. No. 2. (Copy as annex "F")
8. That on 10.01.2014, appellant submitted representation before R. No. 1 to review the aforesaid punishment which met dead response till date. (Copy as annex "G")

Hence this appeal, inter alia, on the following grounds:-

**GROUND S:**

- a. That appellant has no concern, whatsoever, with the subject matter as he is simple Assistant and routed out the case as per procedure.

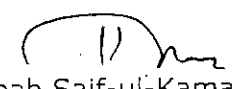
- b. That appointments were made by the Ex-EDO, E&SE who was competent to do so. Appellant was no authority to look into the matter as to whether the orders of appointment were legal or illegal.
- c. That inquiry was not conducted as per the mandate of law. Neither any statement of any witness(s) was recorded in presence of appellant nor he was afforded opportunity of cross examination.
- d. That procedure lapses took place in dealing with the matter, so on this score alone, he was not liable to any punishment.
- e. That personal hearing, being mandatory, was not afforded to appellant what to speak of providing him opportunity of self defence.
- f. That the Show Cause Notice did not bear complete inquiry proceeding which was mandatory to reply the Notice as per the mandate of law.
- g. That appellant, being low paid employee, was not amenable to any panel action, so the impugned order is based on ulterior motive.

It is, therefore, most humbly prayed that on acceptance of the appeal, the order dated 26.12.2013 of R. No. 1 be set aside, with such other relief as may be deemed proper and just in circumstances of the case.

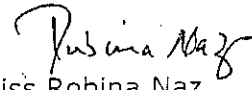
Through

  
Appellant

Saadullah Khan Marwat

  
Arbab Saif-ul-Kamal

&

  
Miss Robina Naz,  
Advocates,

Dated: .03.2014

A

CHARGE SHEET

4

31-12-12

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa as Competent Authority, hereby charge you, Mr. Bahadur Zaman, Senior Clerk (BS-09) Office of the EDO E&SE Lakki Marwat, as follows:-

That you, while posted as Senior Clerk (BS-09) Office of the EDO E&SE Lakki Marwat committed the following irregularity:

**“Committed gross negligence, supporting and assisting the Ex-EDO in making illegal appointment in violation of merit, Government Policy and Procedures in the Office of EDO E&SE Lakki Marwat.”**

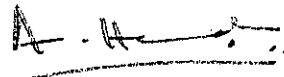
2- By reason of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules ibid.

3- You are, therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the inquiry officer/ inquiry committee, as the case may be.

4- Your written defence, if any, should reach the inquiry officer/ inquiry committee within specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

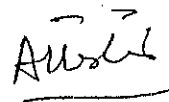
5- Intimate whether you desire to be heard in person.

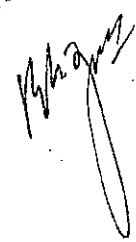
6- A Statement of Allegations is enclosed.



(AMIR HAIDER KHAN HOTI)  
CHIEF MINISTER KHYBER PAKHTUNKHWA  
COMPETENT AUTHORITY

Mr. Bahadur Zaman, Senior Clerk (BS-09),  
Office of the EDO Elementary & Secondary Education,  
Lakki Marwat.





DISCIPLINARY ACTION

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa as Competent Authority, am of the opinion that Mr. Bahadur Zaman, Senior Clerk (BS-09) Office of the EDO E&SE Lakki Marwat, has rendered himself liable to be proceeded against, as he committed the following acts/ omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

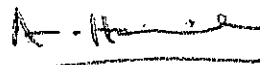
“Committed gross negligence, supporting and assisting the Ex-EDO in making illegal appointment in violation of merit, Government Policy and Procedures in the Office of EDO E&SE Lakki Marwat.”

2- For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry officer/ inquiry committee, consisting of the following, is constituted under Rule 10(1)(a) of the ibid Rules:

- i. Mr. Muhammad Hamayun (B-21) Chairman P.T
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

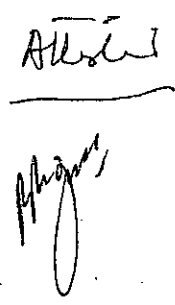
3- The inquiry officer/ inquiry committee shall, in accordance with the provisions of the ibid Rules, provide reasonable opportunity of hearing to the accused, record its findings and make within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4- The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry officer/ inquiry committee.



(AMIR HAIDER KHAN HOTI)  
CHIEF MINISTER KHYBER PAKHTUNKHWA  
COMPETENT AUTHORITY

Mr. Bahadur Zaman, Senior Clerk (BS-09),  
Office of the EDO Elementary & Secondary Education,  
Lakki Marwat.





6

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT**

**NOTIFICATION**

Dated Peshawar the December 31, 2012

NO.SO(S/M)E&SED/4-17/2012/Noor Hassan Khan Ex-EDO Lakki: The Competent Authority is pleased to appoint Mr. Muhammad Humayun, Chairman (BS-21) Provincial Inspection Team, Khyber Pakhtunkhwa, Peshawar to conduct enquiry against Mr. Noor Hassan Khan, Ex-Executive District Officer (BS-19) E&SE Lakki Marwat (Now Principal GHSS Kheshgi Payan District Nowshera) and others to probe into the allegations leveled against them in the Charge Sheets and Statements of Allegations with immediate effect.

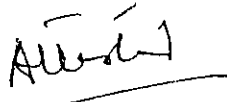
2. The enquiry officer shall submit recommendations/ report to the Competent Authority within thirty (30) days. (Copies of charge sheets & statements of allegations are enclosed).

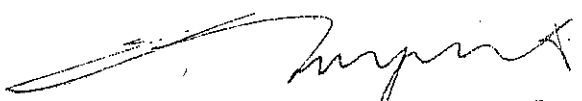
**SECRETARY**

Endst: of even No. & Date

Copy forwarded to the:

1. Mr. Muhammad Humayun, Chairman (BS-21) Provincial Inspection Team, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Mr. Noor Hassan Khan, Ex-Executive District Officer (BS-19) E&SE Lakki Marwat (Now Principal GHSS Kheshgi Payan District Nowshera).
4. Mr. Muhammad Ayub, District Officer (Male) E&SE Lakki Marwat (Copies of Charge Sheet & statement of allegations are enclosed).
5. Mr. Noorani Shah, Deputy District Officer (M/P), E&SE Lakki Marwat (Copies of Charge Sheet & statement of allegations are enclosed).
6. Mr. Amanullah, Head Clerk Office of the EDO E&SE Lakki Marwat (Copies of charge sheet & statement of allegations are enclosed).
7. Bahadur Zaman, Senior Clerk Office of the EDO E&SE Lakki Marwat (Copies of charge sheet & statement of allegations are enclosed).
8. Mr. Haroon Badshah, Junior Clerk Office of the EDO E&SE Lakki Marwat (Copies of charge sheet & statement of allegations are enclosed).
9. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
10. PS to Additional Secretary, E&SE Department, Khyber Pakhtunkhwa.
11. Office order file.



  
(MUJEEB-UR-REHMAN)  
SECTION OFFICER (SCHOOLS/MALE)





7 8-1-13  
**Provincial Inspection Team K.P**

Block No. 15, Attached Department Complex,  
Khyber Road, Peshawar Cantt.

Tele: 9210956-9212270

No. 1519-25/INSP/ PIT/2013

Dated: January 08, 2013

To

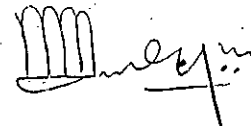
1. Mr. Noor Hassan Khan,  
Ex-Executive District Officer (BS-19) E&SE Lakki Marwat  
(Now Principal GHSS Kheshgi Payan District Nowshera).
2. Mr. Muhammad Ayub,  
District Officer (Male) E&SE Lakki Marwat.
3. Mr. Noorani Shah,  
Deputy District Officer (M/P), E&SE Lakki Marwat.
4. Mr. Amanullah,  
Head Clerk Office of the EDO E&SE Lakki Marwat.
- ✓ 5. Bahadur Zaman,  
Senior Clerk Office of the EDO E&SE Lakki Marwat.
6. Mr. Haroon Badshah,  
Junior Clerk Office of the EDO E&SE Lakki Marwat.

**Subject: Inquiry Regarding Irregular Appointments in Different Cadres in EDO (E&SE) Office Lakki Marwat.**

Memo;

According to Elementary and Secondary Education Department Notification No. SO(S/M) E&SED/4-17/2012/Noor Hassan Khan, Ex-EDO, Lakki dated 31-12-2012 the Chief Minister Khyber Pakhtunkhwa has been pleased to appoint the undersigned as Inquiry Officer. I have been asked to conduct inquiry regarding irregular appointments in different cadres & other irregularities mentioned in the charge sheets and statement of allegations and submit report within one month. A copy of charge sheet and statement of allegation is attached.

2. You are directed to submit your written reply within seven days failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you. You are also asked to intimate whether you desire to be heard in person or otherwise.

  
8.1.13


**MUHAMMAD HUMAYUN  
INQUIRY OFFICER  
CHAIRMAN,  
PROVINCIAL INSPECTION TEAM**

Encl as above.

Endorsement No & Date of Even:

Copy forwarded to.

- 1). The Secretary, to Govt. of Khyber Pakhtunkhwa, E&SE Department with the request that a departmental representative may be nominated to assist and appear before the inquiry officer along with relevant record.

  
**INQUIRY OFFICER**



8

CHARGE SHEET

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa as Competent Authority, hereby charge you, Mr. Bahadur Zaman, Senior Clerk (BS-09) Office of the EDO E&SE Lakki Marwat, as follows:-

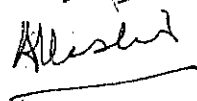
That you, while posted as Senior Clerk (BS-09) Office of the EDO E&SE Lakki Marwat committed the following irregularity:

**“Committed gross negligence, supporting and assisting the Ex-EDO in making illegal appointment in violation of merit, Government Policy and Procedures in the Office of EDO E&SE Lakki Marwat.”**

- 2- By reason of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules *ibid*.
- 3- You are, therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the inquiry officer/ inquiry committee, as the case may be.
- 4- Your written defence, if any, should reach the inquiry officer/ inquiry committee within specified period, failing which it shall be presumed that you have no defence to put in and in that case *ex-parte* action shall be taken against you.
- 5- Intimate whether you desire to be heard in person.
- 6- A Statement of Allegations is enclosed.

  
(AMIR HAIDER KHAN HOTI)  
CHIEF MINISTER KHYBER PAKHTUNKHWA  
COMPETENT AUTHORITY

Mr. Bahadur Zaman, Senior Clerk (BS-09),  
Office of the EDO Elementary & Secondary Education,  
Lakki Marwat.





9

**DISCIPLINARY ACTION**

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa as Competent Authority, am of the opinion that Mr. Bahadur Zaman, Senior Clerk (BS-09) Office of the EDO E&SE Lakki Marwat, has rendered himself liable to be proceeded against, as he committed the following acts/ omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

**STATEMENT OF ALLEGATIONS**


"Committed gross negligence, supporting and assisting the Ex-EDO in making illegal appointment in violation of merit, Government Policy and Procedures in the Office of EDO E&SE Lakki Marwat."

2- For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry officer/ inquiry committee, consisting of the following, is constituted under Rule 10(1)(a) of the ibid Rules:

- i. Mr. Muhammad Hamayun (B-21) Chairman PIT
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

3- The inquiry officer/ inquiry committee shall, in accordance with the provisions of the ibid Rules, provide reasonable opportunity of hearing to the accused, record its findings and make within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4- The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry officer/ inquiry committee.

  
(AMIR HAIDER KHAN HOTI)  
CHIEF MINISTER KHYBER PAKHTUNKHWA  
COMPETENT AUTHORITY

Mr. Bahadur Zaman, Senior Clerk (BS-09),  
Office of the EDO Elementary & Secondary Education,  
Lakki Marwat.

Attested  


C

10

14-1-13

To

Mr. Muhammad Humoyun  
Provincial inspection team, Khyber Pakhtun Khwa  
Peshawar.

W  
16/1/13

Subject: CHARGE SHEET/STATEMENT OF ALLEGATIONS.

Respected sir,

Kindly refer to Govt. of Khyber Pakhtun Khwa elementary & secondary education Department Peshawar, notification No. SO (S/M) E&SED/4-17/2012/ Noor Hassan Khan EX-EDO lakki dated 31/12/2012, received on 08/01/2013 the required replies to the charge sheet /statement of allegation are being submitted to your good self, as directed in the same notification, as under:

1. I have committed no irregularity or illegality because I have no concern with the appointment orders made during the incumbency of the then EDO, E & SE, lakki Marwat. I never supported and assisted the said EDO in making illegal appointment in violation of merit, Government policy and procedure in the office.  
The files dealt with were in a routine manner and being no authority, I have no concern with the appointments made, if any.
2. by reason of the above, I do not appear to be guilty of misconduct under the quoted law, being defective and am not liable to any penalty specified in the Rules.
3. Written reply is submitted within stipulated period of time to the inquiry Officer/Inquiry committee.
4. As directed written reply is submitted within specified period to the inquiry officer.
5. I wish to be heard in person.

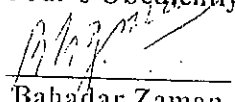
6. Needs no comments.

It is therefore, most humbly requested that the charge sheet/statement of allegations may kindly be dropped by keeping in view the aforesaid submissions and I be exonerated of the same forever.

Thanking You Sir.

Date 14/01/2013

Your's Obediently



Bahadar Zaman  
Senior Clerk  
District Education (Female)  
Lakki Marwat

Attested



D

12

17-4-13

**SHOW CAUSE NOTICE**

I, Justice (R) Tariq Pervez Khan, Chief Minister, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Bahadur Zaman, Senior Clerk (BS-09) Office of the DEO (Male) Lakki Marwat as follows:-

- (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer/ inquiry committee for which you were given opportunity of hearing; and
- (ii) on going through the findings and recommendations of the inquiry committee, the material on record and other connected papers including your defence before the inquiry officer/ inquiry committee:-

2. I am satisfied that you have committed the following acts/omissions specified in Rule-3 of the said rules:

(b) Guilty of Misconduct

3. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Withholding of two increments under Rule-4 of the said Rules.   
*for two years*

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

5. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6. A copy of the findings of the inquiry officer/ inquiry committee is enclosed.

*Attested*

*M. Bahadur Zaman*

(JUSTICE (R) TARIQ PERVEZ KHAN)  
CHIEF MINISTER KHYBER PAKHTUNKHWA  
COMPETENT AUTHORITY

*17.4.2013*

Mr. Bahadur Zaman, Senior Clerk (BS-09),  
Office of the DEO (Male) Lakki Marwat.

13

REGISTERED / AD

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT



No. SO(S/M)E&SED/4-17/2012/Noor Hassan Ex-DEO Lakki Marwat  
Dated Peshawar the April 23, 2013

To


Mr. Bahadur Zaman,  
Senior Clerk, Office of the District Education Officer (Male),  
Lakki Marwat.

Subject: - SHOW CAUSE NOTICE

I am directed to refer to the subject noted above and to enclose herewith a copy of the Show Cause Notice wherein the Competent Authority (Chief Minister Khyber Pakhtunkhwa) has tentatively decided to impose the Minor Penalty of "Withholding of Two Increments for Two Yeras" under Rule-4 of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 in connection with the charge leveled against you.

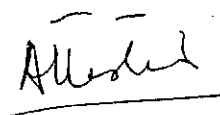
2. You are therefore directed to furnish your reply to the Show Cause Notice as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
3. Your reply should reach to this Department within Seven (07) days of the delivery of this letter otherwise ex-parte action shall be taken against you.

Encl: As Above:

  
(MUJEEB-UR-REHMAN)  
SECTION OFFICER (SCHOOLS/MALE)

Endst: of even number & date:

Copy of the above is forwarded to PS to Secretary E&SE Department Khyber Pakhtunkhwa.

  
SECTION OFFICER (SCHOOLS/MALE)



E

14

16-5-13

Reg. No. 517

24/5/2013

The Hon'ble Chief Minister,

Khyber Pakhtunkhwa, Peshawar.

Through: Secretary to Government of Khyber Pakhtunkhwa  
Elementary & Secondary Education Department, Peshawar.

SUBJECT REPLY TO THE SHOW CAUSE NOTICE

Respected Sir,

Kindly refer to the Govt. of Khyber Pakhtunkhwa Elementary & Secondary Education Department No SO(S/M) E&SED/4-17/2012/Noor Hassan Ex-DEO Lakki Marwat dated Peshawar the April 23, 2013, received on 13/05/2013 at 12:30 PM, the required replies to the Show Cause Notice are being submitted to your good self, as directed in same Notification, as under:

Sir,

1. I have no concern with the appointment orders made during the incumbency of the then EDO (E&SE) Lakki Marwat. I never supported & assisted him in making the appointments in violation of merit, policy and procedures.

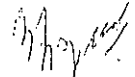
2. I am dealing matters in routine, I am no authority to make any appointment.

3. I am not guilty of any misconduct, so the show cause notice may kindly be dropped and I may be exonerated of the baseless charges.

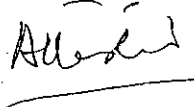
I may be heard in person.

Dated: 16/5/2013

Yours obediently,

  
Bahadar Zaman

Senior Clerk office of the  
District Education Officer, (F)  
Lakki Marwat







F 15 26-12-13  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT.

Dated Peshawar the December 26, 2013

**NOTIFICATION**

**NO.SO(S/M)E&SED/4-17/2012/ Noor Hassan & others:** WHEREAS Mr. Bahadur Zaman, Senior Clerk (BS-09) office of District Education Officer Male Lakki Marwat was proceeded against under the Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet and statement of allegations.

2. **AND WHEREAS** Mr. Muhammad Humayun, Chairman (BS-21) Provincial Inspection Team, Khyber Pakhtunkhwa Peshawar was appointed as Inquiry Officer to conduct formal Inquiry against the accused official, for the charges leveled against him in accordance with the rules.

3. **AND WHEREAS** the Inquiry Officer after having examined the charges, evidence on record and explanation of the accused official has submitted the report.

4. **AND WHEREAS** a show cause notice was served upon Mr. Bahadur Zaman, Senior Clerk (BS-09) office of District Education Officer Male Lakki Marwat dated 17-04-2013.

5. **AND WHEREAS** the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) after having considered the charges and evidence on record, inquiry report, explanation of the accused official in response to the Show Cause Notice is of the view that the charges against the accused official have been proved.

6. **NOW, THEREFORE**, in exercise of the powers conferred under section 14 of Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules, 2011, the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) is pleased to impose minor penalty of "Withholding of two increments for two years" upon Mr. Bahadur Zaman, Senior Clerk (BS-09) office of District Education Officer Male Lakki Marwat.

SECRETARY

**Endst: of Even No. & Date:**

Copy forwarded to the: -

- 1- Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2- PSO to Chief Minister Khyber Pakhtunkhwa Peshawar.
- 3- Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 4- District Education Officer (Male), Lakki Marwat.
- 5- District Accounts Officer, Lakki Marwat.
- 6- Mr. Bahadur Zaman, Senior Clerk (BS-09) office of District Education Officer Male Lakki Marwat
- 7- PS to chief Secretary Khyber Pakhtunkhwa Peshawar.
- 8- PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
- 9- PA to Additional Secretary, E&SE Department, Khyber Pakhtunkhwa.
- 10- Office order file.

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(MUJEEB-UR-REHMAN)  
SECTION OFFICER (SCHOOLS/MALE)



G

16

10-1-14

To

The Hon'ble chief Minister  
Khyber Pakhtunkhwa  
Peshawar.

Through: Proper Channel:

Representation against office Notification No. SO(S/M) E& SED / 04-17-2012/ Noor Hassan & others , dated 26-12-2013, received on 01-01-2014, of the authority issued by Secretary Government of Khyber Pakhtunkhwa , E&SED, Peshawar whereby minor penalty of " withholding of two increments for two years" was imposed for no legal reasons.

Respected Sir,

1. That appellant was appointed as junior Clerk on 21-11-1989 and since then he is performing duties with devotion.
2. That during the incumbency of the then EDO, E&SED, Lakki Marwat illegal appointments of PTC & CT (M&F) were made, so enquiry was initiated against appellant and others. On 31-12-2012 he was served with charge Sheet / statement of allegations by the then chief Minister Khyber Pakhtunkhwa Peshawar. The charge was,

"Committed gross negligence, supporting & assisting the Ex-EDO in making illegal appointment is in violation of merit, Government Policy and procedures in the office of EDO, E&SE, Lakki Marwat"

3. That on 14-01-2013 reply to the said charge sheet was submitted by denying the allegation that I never facilitated the then EDO in this respect as I was no authority.
4. That self made report was furnished by the Inquiry officer as appellant was never associated with the same nor any statement of any witness (s) was recorded in his presence nor he was given opportunity of cross-examination what to speak of affording his opportunity of self defense & personal hearing.

5. That on 23-04-2013, appellant was served with show cause notice without supply of enquiry proceedings which was replied on 16-05-2013 in the aforesaid manner.
6. That on 26-12-2013 appellant was awarded with his aforesaid punishment by my honour

Hence, this appeals, inter alia, on the following grounds:-

**Grounds:**

- f. That appellant is simple Senior Clerk and is confined to the said task and has no concern with the appointment.
- g. Those appointments were made by the Ex-EDO, E&SE, Lakki Marwat who is competent to do so. The same were legal or illegal waPs the responsibility of the then authority
- h. That enquiry was not conducted as per the mandate of law. No statement of any witness (s) was recoded in presence of appellant nor was he afforded opportunity of cross-examination.
- i. That appellant was not provided opportunity of personal hearing, being mandatory, so the impugned order is of no legal effect.
- j. That procedural lapses exists in the matter, so the impugned order in not based on legal footing, but is otherwise.

It is, therefore most humbly requested that the impugned order dated 26.2-2013 be reviewed / set aside and the with holding of the increments be restored without any encumbrance thereupon.

Dated: 12/01/2014

Appellant

(Baháder Zaman)

Senior Clerk

Office of the DEO (Female) Lakki Marwat

Attest



*Versus*

1. Chief Minister Govt. of Khyber Pakhtunkhwa through Chief Secretary Govt. of Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa Elementary & Secondary Education Deptt: Peshawar.
3. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
4. District Education Education Officer (Female) Elementary & Secondary Education Lakki Marwat.

Respondents.

Subject:- PARA WISE COMMENTS/REPLY ON BEHALF OF RESPONDENT NO.1 TO 4.

Respectfully Sheweth:

PRELIMINARY OBJECTION:-

1. The present appellant has no cause of action.
2. The present appeal has been filed on malafied motives.
3. The appellant has not come to this Honourable Tribunal with clean hands.
4. The appellant has filed the instant appeal just to pressurize the respondents.
5. The present appeal is against the prevailing law, rules on the subject.
6. The present appeal is bad for non-joinder/mis-joinder of necessary parties.
7. The appellant has been estopped by his own conduct.
8. The present appeal is not tenable/maintainable in the eyes of law.

COMMENTS TO THE FACTS:-

1. This para is related the service record of the appellant, however the appellant has not annexed any documentary proof with appeal in hand.
2. In reply to Para No. 2 it submitted that the appellant has committed gross negligence, supporting and assisting the Ex-EDO in making illegal appointment in violation of merit, Govt. policy and procedure in the office and the same was proved through impartial and fair inquiry where by all codal formalities were fulfilled according to prevailing law and rules on the subject.

- 2/3
3. As replied in Para No. 2 above.
  4. Incorrect, the said reply was a found unsatisfactory and against the facts and material on record.
  5. Incorrect, the inquiry was conducted to in accordance with law, rules on the subject. The appellant was provided a chance of defence and appellant was badly failed to defend himself hence, whole para is denied.
  6. The appellant was served with the show cause notice according to law and rules on the subject while the reply of the appellant was being devoid of merit and the appellant was proved guilty of the above mentioned charges.
  7. Correct and the mentioned penalty was according to the law, rules and natural justice.
  8. incorrect, the competent authority after having considered the charges and evidence on record, inquiry report, explanation of the accused official in response to the show cause notice was of the view that the charges against the appellant has been proved. Hence, this appeal is liable to be dismissed inter alia on the following grounds.

**COMMENTS TO THE GROUNDS:-**

- A. Incorrect. The appellant has signed the appointment documents without any authority and facilitated the Ex-EDO in illegal appointment intentionally.
- B. Incorrect. The statement of the appellant in this para has no connection with the charges leveled against the appellant. The appellant has never denied the charges of support and assistance to Ex-EDO in making illegal appointments, hence denied.
- C. Incorrect, the inquiry was conducted as per mandate of law and the appellant was provided/afforded every chance of defence according to law.
- D. Incorrect, no procedure lapses took place in dealing with the matter, hence denied.
- E. Incorrect. A chance of personal hearing was provided to the appellant.
- F. Incorrect and not admitted, the statement of the appellant in this para is false, baseless, with out any cogent legal proof, against the facts, material on record and documentary evidence, hence, denied.
- G. Incorrect. The said order is according to the norms of justice. Moreover, the respondent seek the permission of this Honourable Tribunal to adduce more grounds and proof at the time of hearing.

*no denial  
in appeal  
of fact  
on  
despite appeal*

*where are  
the appointed  
order  
How can  
the order be  
signed*

*When  
and  
where  
process  
has  
been  
provided*

It is, therefore, requested that the instant appeal may kindly be dismissed.

Dated \_\_\_\_\_/2014

Secretary to Govt. of  
Khyber Pakhtunkhwa  
Elementary & Secondary  
Education Deptt: Peshawar

Director  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar.

District Education Officer  
(Female) Lakki Marwat

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A No. 569/2014

Bahadar Zaman                      Versus                      Chief Minister & Others

**REJOINDER**

**Respectfully Sheweth,**

**PRELIMINARY OBJECTION.**

All the (8) preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why appellant has no cause of action, malafide motives, unclean hands, pressurizing the respondents, against the prevailing law and rules, non-joinder/mis-joinder of necessary parties, estopped by his own conduct and not tenable/maintainable in the eyes of law.

**ON FACTS**

1. Admitted correct by the respondents. Documentary proof is available with the department.
2. Not correct. Appellant is no authority to extend / assist Ex-EDO in making illegal appointments. It was the job of the Committee / Authority to scrutinize the record as per merit list.
3. In response to para, it is submitted that there is no scope of issuing double charge sheets on the same allegation in service law.
4. Not correct. The standard of satisfaction and unsatisfaction is not formulated / fixed either by the law or by the authority.
5. Not correct. The para of the appeal is correct. The para of the reply is without proof regarding conduct of enquiry.

6. Not correct. Show cause notice shall be supported with the enquiry report, if made / conducted by the respondent / authority.
7. Admitted correct but the punishment is against law, rules and natural justice.
8. Not correct. The matter was not dealt with as per the mandate of law, so the action taken against the appellant is unwarranted and illegal.

**GROUND S:**

- a. Not correct. The then authority was neither blind nor illiterate to do something with closed eyes.
- b. Not correct. The ground of the appeal is correct.
- c. Not correct. The ground is without proof and the enquiry was not conducted as enunciated in the rules.
- d. Not correct. No statement of any witness in presence of appellant was recorded nor he was afforded opportunity of cross examination.
- e. Not correct. The ground of the appeal is correct.
- f-g. As above.

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.

  
Appellant

Through

Saadullah Khan Marwat

Dated: .02.2015

Arbab Saif UI Kamal

Miss Rubina Naz  
Advocates,

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A No. 569/2014

Bahadar Zaman

Versus

Chief Minister & Others

**AFFIDAVIT**

I, the undersigned appellant, do hereby solemnly affirm and declare that contents of **Rejoinder** are true and correct to the best of my knowledge and belief.

  
DEPONENT