

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CAMP COURT SWAT.

Service Appeal No. 431/2016

Date of Institution ... 21.04.2016

Date of Decision ... 03.10.2018

Aminullah Chowkidar, Government Higher Secondary School, Fateh Pur District Swat. ... (Appellant)

VERSUS

1. The Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar and another. ... (Respondents)

MR. IMDADULLAH,
Advocate

--- For appellant.

MR. USMAN GHANI,
District Attorney

--- For respondents

MR. AHMAD HASSAN,

--- MEMBER (Executive)

MR. SUBHAN SHER

--- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. Brief facts of the case are that the appellant was appointed as Chowkidar vide dated 09.07.2011. That due to frequent transfers from one station to another he was unable to resume charge at the place of his postings. That he filed service appeal no. 1303/2013 before this Tribunal which was decided on 12.01.2016 wherein apart from reinstatement in service, the respondents were also directed that departmental appeal dated 18.05.2013 be decided by the appellate authority including payment of salaries. That the departmental authority decided the departmental appeal vide order dated 31.03.2016, hence, the present service appeal.

ARGUMENTS

3. Learned counsel for the appellant argued that he was transferred from one school to another and made a rolling stone. Transfer order dated 11.2.2013 was cancelled for the reason that one Muhammad Jan, Chowkidar was working against the said post. Through another order dated 15.4.2013 he was transferred to GHSS Madayn but the Headmaster was not ready to allow him to perform duty. His salary was stopped but on the intervention of this Tribunal the same was released with immediate effect vide order dated 21.11.2013. That vide judgment of this Tribunal dated 12.01.2016 the case was remanded back to the respondents to decide his departmental appeal dated 18.05.2013 alongwith issue pertaining to payment of salary. Through impugned order dated 21.03.2016 the period w.e.f 01.08.2012 to 31.10.2013 on account of absence from duty was treated as leave without pay. Before passing this order opportunity of showing cause/hearing was not afforded to him which was a basic right not only under the relevant rules but was also against the principle of natural justice. Action of the respondents was illegal/unlawful.

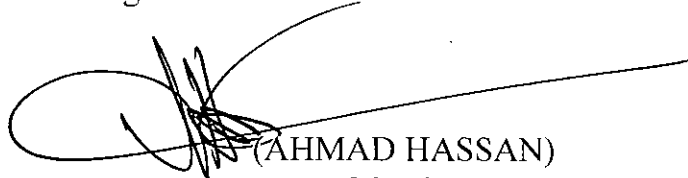
4. Learned District Attorney argued that he was absent from duty so the respondents conducted an enquiry in which the charge of absence w.e.f. 01.08.2012 to 31.10.2013 was proved against him. Thereafter the impugned order was passed in accordance with law and rules. .

CONCLUSION.

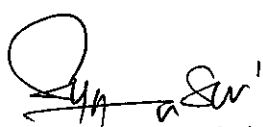
5. We have gone through the record and it was established that through frequent transfers the appellant was made a rolling stone. As transfer orders were issued by the respondents so the onus of his non-adjustment could easily be attributed to them. Our view point is further substantiated by the parawise comments of the respondents where they have admitted lapses on their part. On the other hand non-assumption of charge by the appellant at the place of new posting as

alleged by the respondents also holds water. The main controversy which has made the order illegal is that it was issued on the basis of fact finding enquiry. Punishment to a delinquent government servant can be awarded on the basis of enquiry to be conducted strictly laid down in accordance with the procedure laid down in E&D Rules 2011. Due to this lacuna action taken by the respondents is not tenable in the eyes of law.

6. As a sequel to above, the appeal is accepted. Impugned order dated 31.03.2016 is set aside. Respondents are directed to conduct de-novo enquiry strictly in accordance with law and rules and concluded within a period of 90 days and thereafter may pass order as deemed appropriate. The issue of back benefits shall be subject to the final outcome of ^{the} de-novo enquiry. In the circumstances, parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
Member
Camp court Swat



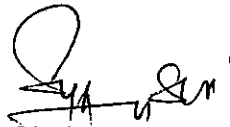
(SUBHAN SHER)
Chairman
ANNOUNCED 3.10.2018
03.10.2018

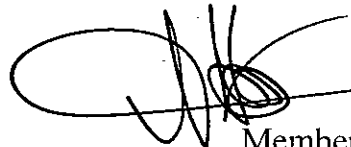
ORDER

03.10.2018

Appellant in person alongwith his counsel and Mr. Usman Ghani, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today placed on file, the appeal is accepted. Impugned order dated 31.03.2016 is set aside. Respondents are directed to conduct de-novo enquiry strictly in accordance with law and rules and concluded within a period of 90 days and thereafter may pass order as deemed appropriate. The issue of back benefits shall be subject to the final outcome of ht de-novo enquiry. In the circumstances, parties are left to bear their own costs. File be consigned to the record room.


Chairman 3/10/2018


Member
Camp Court Swat

ANNOUNCED

03.10.2018

05.04.2018

Appellant with counsel and Mr. Usman Ghani, District Attorney alongwith Bakht Rehman, Litigation Officer for the respondents present. Counsel for the appellant seeks adjournment on the ground that no enquiry report was supplied to him. Copy of the same is given to him. To come up for arguments on 07.06.2018 before the D.B at camp court, Swat.



Member


Chairman
Camp court, Swat

07.06.2018

Appellant Aminullah in person alongwith Mr. Imdadullah, Advocate present. Mr. Usman Ghani, District for the respondents present. Both the learned counsel requested for adjournment. Granted. To come up for arguments on 08.08.2018 before the D.B at camp court, Swat.


Member


Chairman
Camp Court, Swat

08.08.2018

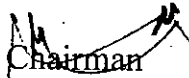
None for the appellant. Due to summer vacation the case is adjourned to 03.10.2018 for the same at camp court Swat.


Reader

05.10.2017

Counsel for the appellant and Mr. Muhammad Zubair, District Attorney alongwith Muhammad Saeed, SS for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for final hearing before the D.B on 01.1.2018 at camp court, Swat.


Member


Chairman
Camp court, Swat

1.1.2018

Counsel for the appellant and Addl. AG alongwith Muhammad Saeed, SS for the respondents present. Learned AAG seeks adjournment. To come up for arguments on 06.03.2018 before the D.B at camp court, Swat.



Member


Chairman
Camp Court, Swat

06.03.2018


Counsel for the appellant and Addl. AG alongwith Muhammad Saeed, SS for the respondents present. Representative of the department seeks adjournment to produce record. Adjourned. To come up for record and arguments on 05.04.2018 before D.B at camp court Swat.


Member


Chairman
Camp court, Swat


07.12.2016


Appellant with counsel and Mr. Shafiqur Rahman, ADO alongwith Mr. Muhammad Zubair, Sr.GP for respondents present. Due to non-submission of rejoinder and incomplete bench arguments could not be heard. To come up for rejoinder and final hearing on 05.4.2017 before D.B at camp court, Swat.


Chairman
Camp court, Swat

05.04.2017

Appellant alongwith his counsel present. Mr. Muhammad Saeed, Subject Specialist with Mr. Muhammad Zubair, Senior Government Pleader for respondents also present. Rejoinder submitted. To come up for arguments on 08.08.2017 before D,B at Camp Court Swat.



(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
Camp Court Swat.

08.08.2017

Clerk of counsel and Mr. Muhammad Zubair, District Attorney alongwith Mr. Muhammad Saeed, Subject Specialist for the respondents present. Clerk of counsel for the appellant seeks adjournment as his counsel is not in attendance due to strike of the bar. Adjourned. To come up for arguments on 5.10.2017 before the DB at camp court, Swat.


Member


Chairman
Camp court, Swat

04.05.2016

Counsel for the appellant present. Learned counsel for appellant argued that the appellant was appointed as Chowkidar vide order dated 09.7.2011. That due to frequent transfer orders he was not in a position to resume charge on certain stations of his postings constraining him to file service appeal No. 1303/2013 before this Tribunal which was decided on 12.1.2016 wherein apart from reinstatement him in service, it was also directed that departmental appeal dated 18.05.2013 be decided by the appellate authority and issue relating to salary and payment thereof be also decided in the said departmental appeal. That the departmental authority decided the departmental appeal vide order dated 31.3.2016 by referring to recommendations of the enquiry committee which was neither constituted nor any recommendation given.

That the appellant is entitled to the arrears of salaries and the impugned order is against facts and law.


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 03.08.2016 before S.B at camp court, Swat.

Appellant Deposited
Security & Process Fee


Chairman
Camp Court, Swat

03.08.2016




Counsel for the appellant and Mr. Muhammad Saeed, SS alongwith Mr. Muhammad Zubair, SGP for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 07.12.2016 at camp court, Swat.


Chairman
Camp court, Swat,

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 431/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21.04.2016	<p>The appeal of Mr. Aminullah presented today by Mr. Aziz-Ur-Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2.	25-04-2016	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up thereon <u>04-05-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p style="text-align: right;"></p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 431 of 2016

Aminullah Chowkidar Government Higher Secondary School Fath Pur, District Swat.

...Appellant

Versus

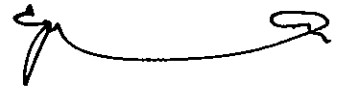
The Director Elemnetary and Secondary Education Government of Khyber Pakhtunkhwa, Peshawar and Other.

.... Respondents

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7.	Copy of the Order dated 15-04-2013	D	13
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Appellant Through



Aziz-ur-Rahman
Advocate, Swat.
Office, Gulshan Chowk Khan Plaza,
G.T. Road Mingora Swat.
Cell # 0333-9297746

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 431 of 2016

Aminullah Chowkidar Government Higher Secondary
School Fateh Pur, District Swat.

H.W.P. Province
Service Tribunal

Diary No. 403

...Appellant dated 21-4-2016

VERSUS

1. The Director Elementary and Secondary Education
Khyber Pakhtunkhwa, Peshawar.
2. The District Education Officer (Male) at Gulkada,
District Swat.

...Respondents

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order Endst: No. 967-72/C-IV/P/File dated 31-03-2016 (received on 09-04-2016), whereby the departmental appeal of the appellant was decided in the compliance of the judgment dated 12-01-2016 (wherein directions were given to decodded the appeal of the appellant along with the issue of salary) appellant was denied back benefits /salaries and his period from 01-08-2012 to 31-10-2013 (456 days) was illegally converted into leave without pay against the law, rules, principles of natural justice and facts and is liable to be set aside.

Handwritten signature and date:
21/4/16

Prayer:

That on acceptance of this appeal the order impugned may very kindly be set aside and the period from 01-08-2012 to 31-10-2013, total of 456 days, be

considered as in service and the salaries of the period be paid to the appellant along with other consequential benefits.

Respectfully Sheweth:

Facts:

- 1. That the Appellant was appointed as Chowkidar at Government Higher Secondary School Fatehpur vide order Endst: No. 10402-12C IV Appointment/2011 dated 09-07-2011 against the 25% reserved quota of retired employees Children and till date is performing his duties efficiently, without any complaints either by the locals or the competent authorities. Copy of the order is enclosed as Annexure "A".*

- 2. That the Appellant was transferred from Government Higher Secondary School Fatehpur to Government Girls Primary School Fatehpur vide order Endst: No. 1605-6/A-12/Class-IV dated 06-11-2012. In compliance of the said order the Appellant took charge at the said school on 10-11-2012. Copy of the order is enclosed as Annexure "B" and that of the charge report is enclosed Annexure "C" respectively.*

- 3. That the transfer order of the Appellant was cancelled vide order Endst: No. 314-17/Class-IV/F dated 11-02-2013 due to the reason that one Mr. Muhammad Jan Chowkidar was at the verge of his retirement and could not be disturbed as per the Government policy.*

4. That the Appellant once again reported to his original school, but he was refused the handing over of the charge for reasons best known to the worthy Headmistress.

5. That on reporting the situation to the competent authority the Appellant was transferred to Government Higher Secondary School Madyan vide order Endst: No. 8522-25 dated 15-04-2013, but again the Headmaster was resolute of not handing over the charge to the Appellant without any reasons, whatsoever. Copy of the order is enclosed as Annexure "D".

6. That the Appellant has been shuttled between various schools without letting him complete his tenure in violation of the law for the reasons best known to the authorities.

7. That the Appellant complied with the orders of the authorities without any ifs and buts yet still he made to suffer for no fault of his.

8. That presently the Appellant was employee of the respondent, but without any posting, in violation of the mandate of law. Moreover to add fuel to fire the pay of the Appellant was also been stopped for more than 10 months in blatant violation of the Constitutional rights of the Appellant.

9. That the Appellant preferred a departmental appeal to the respondent No. 2, but the same was not responded to and thus the appellant filed Service

Appeal No. 1303/2013. That while pending disposal of the service appeal the respondent No. 2 made an order whereby the salary of the appellant was released and he was adjusted against the present post, but with immediate effect vide order Endst No. 1298-99 dated 21-11-2013, against the law, rules and policy. Copy of the order 21-11-2013 is enclosed as Annexure "E"

10. The this Honourable Tribunal was pleased to accept the service appeal on terms that the departmental appeal of the appellant be decided along with the issue of the salaries and payment thereof. Copy of the appeal is enclosed as Annexure "F" and that of the judgment dated 12-01-2016 is enclosed as Annexure "G".

11. That the respondent No. 2 decided the appeal of the appellant in light of the judgment of this Honourable Tribunal vide order Endst No. 967-72/C-IV/P/File dated 31-03-2016, received on 09-04-2016, and converted the period from 01-08-2012 to 31-10-2013 as leave without pay against the law rules and facts. Copy of the order dated 31-03-2016 is enclosed as Annexure "H".

12. That the appellant feeling aggrieved of the same again resorted to this Honourable tribunal on the following grounds.

Grounds:

- a. That the Appellant is being made to suffer without any reasons whatsoever.

- b. *That the Appellant was not handed over the charge of his new assignment and he was deliberately kept away from performing his duties in utter violation of the law and rules on the subject.*
- c. *That no inquiry has ever been conducted to sift out the facts, neither has the appellant been afforded any opportunity nor associated with any inquiry, thus all the codal formalities are bulldozed.*
- d. *That the fundamental rights of the Appellant are being violated.*
- e. *That mandatory provisions of law have been done away with.*
- f. *That this is a classic case of abuse of official powers and colorful use of the same, which is always discouraged by the law.*
- g. *That the appellant has never been employed anywhere else being a civil servant and was kept away from the performance of his duties*

It is, therefore, very respectfully prayed that on acceptance of this appeal the order impugned may very kindly be set aside and the period from 01-08-2012 to 31-10-2013 may be ordered to be considered as on duty and the salary of the same period be paid to the appellant along with all the consequential benefits.

Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted.

Appellant

Aminullah
Aminullah

Through Counsels,

Aziz-ur-Rahman
Aziz-ur-Rahman

Imdad Ullah
Imdad Ullah

Advocates Swat

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2016

Aminullah Chowkidar Government Higher Secondary
School Fateh Pur, District Swat.

...Appellant

VERSUS

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

...Respondents

AFFIDAVIT

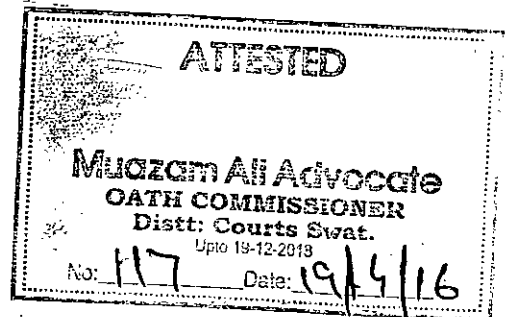
It is solemnly sated on Oath that all the contents of
this appeal are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or concealed before this Honourable
Tribunal.

Deponent
Aminullah
Aminullah

Identified By:

Imdad
Imdad Ullah

Advocate Swat



BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2016

Aminullah Chowkidar Government Higher Secondary
School Fateh Pur, District Swat.

...Appellant

VERSUS

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

...Respondents

ADDRESSES OF THE PARTIES

Appellant:

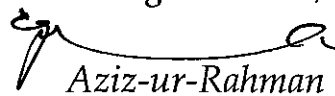
Aminullah Chowkidar Government Higher Secondary
School Fateh Pur, District Swat.

Respondents:

1. The Director Elementary and Secondary Education
Khyber Pakhtunkhwa, Peshawar.
2. The District Education Officer (Male) at Gulkada,
District Swat.

Appellant

Through Counsel,


Aziz-ur-Rahman

Advocate Swat

OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY & SECONDARY EDUCATION
DISTRICT SWAT

OFFICE ORDER

In pursuance to the meeting of Departmental Selection Committee held on 09/07/2011 as contained in the minutes of the meeting issued vide this Office Lndst No 10339-45 dated 9.7.2011

The competent authority is pleased to order the appointment of the following candidates against the post and School mentioned to their names in BPS-01 (4800-150-9300) plus usual allowances as admissible under the rules except section 19 Khyber Pakhtun Khwa rules 1973 subject to the terms and conditions given at the end from the date of their taking over charge in the best interest of public services.

DECEASED SONS IN PK -85

S.No	PK	Name /Parentage	Post where vacant	Post	Date of death	Remarks
1	85	Ashraf Ali S/O Said basher Mian R/O Pia	GPS Pia	Chow	18.10.2009	Deceased son
2	85	Zafar Ali S/O Muhammad Amin R/O kalam	GHSS Kalam	-N.Qasid	26.08.2010	Deceased Son

RETIRED 25% QUOTA PK-85

S.No	PK	Name /Parentage	Post where vacant	Post	D/O retirement	Remarks
1	85	Amin Ullah S/O Amin Khan R/O Fatehpur	GHSS Fateh Pur	Chow	10.09.2006	Retd:
2	85	Shamsul Hadi S/O Nawshad R/O Areen	GPS Kalagay	Chow	1.11.2008	Retd:
3	85	Sher Ali S/O Shah Zada R/O Chikrai	GPS Qila Dherai	Chow	18.2.2009	Retd:
4	85	Abdul Satar Khan S/O Sajad Khan R/O Usho	GHS Qandil	Chow	05.05.2009	Retd:
5	85	Fazal Rabi S/O Abdul Qayum R/O Chail	GHS Chail	Chow	12.4.2010	Retd:

LAND DONER IN PK -85

S.No	PK	Name /Parentage	Post where vacant	Post	Remarks
1	85	Suhrab Khan S/O Shedar Khan R/O Bahrain	GPS Bar Kidam	Chow	land doner
2	85	Mohammad Bashar S/O Shah zada R/O Utror	GGMS Utror	Sweeper	land doner
3	85	Zia Ullah S/O Shah zada R/O utror	GGMS Utror	N.Q/	land doner
4	85	Ihsan Ullah S/O Faqir Zada R/O Pishmal	GHS Pishmal	Chow	land doner

OPEN MERIT IN PK -85

S.No	PK	Name /Parentage	Post where vacant	Post	Remarks
1	85	Madani Sahib S/O Ahmad Sahib R/O terat	GGPS Morpandai	Chow	Open
2	85	Sher Rahman S/O Mir Gifazan R/O Pirpatay	GPS Pirpatay	Chow	Open
3	85	Shahid S/O Muhammad Zahir Shah	GPS Kidam	Chow	Open
4	85	Khalid S/O Ajmali Khan R/O Bayun Kalam	GGPS Bayun	Chow	Open
5	85	Mahmood Khan S/O dunja Khan R/O Garai	GMS Cham Gharrai	Sweeper	Open
6	85	Khanadan S/O Sahib Zada Kolakarin	GPS Kulakarin	Chow	Open
7	85	Muhammad darwishi S/O Abdul gayum R/O bar Alar	GPS Bar Alar	Chow	Open
8	85	Muhammad Salim S/O Bahrobar Mian R/O Shahgram	GPS Pardeshah	Chow	Open
9	85	Rauf Ahmad S/O Muhammad Yousaf R/O Bahrain	GHS Bahrain	N.Qasid	Open
10	85	Zafar Ali S/O said zafar R/O Zoor Cham Fateh pur	GMS Jaray	Chow	Open
11	85	Muzaffar Hussain S/O Malak Muhammad zarin R/O gabral	GMS Gabral	Behishti	Open

ATTESTED
Advocate

ATTESTED
Advocate

10

12	85	Abdur Rahim S/O Gul Nabi R/O Utror	GHIS Utror	N.Qasid	Open
13	85	Muhammad Zeh S/O Alamzeb S/O Rahim R/O Mankial	GHSS Mankial	N.Qasid	Open
14	85	Sher Ali S/O zarin R/O Shalidar Bahrain	GPS Shalidar	Chow	Open
15	85	Sajjad Ahmad S/O Sher zada R/O laikot	GPS Laikot	Chow	Open
16	85	Hayat Ahmad S/O Ghulam Muhammad R/O Terat	GPS Terat	Chow	Open

TERMS & CONDITIONS

- 1). No TA/DA is allowed
- 2). Charge report should be submitted to all concerned
- 3). Their Appointment is purely made on contract basis and liable to termination at any stage/time with out Assigning any notice.
- 4). Their posts are not pension able.
- 5). They will produce health & Age certificate from the Medical Superintendent DHQ Hospital Swat.
- 6). They will not be handed over charge if their age is less than 18 years and above 45 years.
- 7). In case of resignation they will have to give one month prior notice to the Department or forfeit one Month pay in lieu thereof to the Government.
- 8). They will be governed by Rules and Regulations issued by the Govt. from time to time.

(Sultan Mehmood Mian)
 Executive District Officer
 Elementary & secy: Edu:Swat

Endst: No 10402-12 C/ IV Appointment/2011 dated 09.07.2011
 Copy forwarded to:-

- 01). The Secretary Govt. of Khyber Pakhtunkhwa Elementary & Secy: Education Peshawar.
- 02). The Directress Elementary & Secy: Education Khyber Pakhtunkhwa Peshawar.
- 03). The District coordination Officer Swat.
- 04). The District Accounts Officer Swat
- 05). The DO(M/F) E&SE Swat.
- 06-7). The DDO(M/F) E&SE Swat.
- 08). The Budget & Accounts Officer(E&SE) local Office.
- 09). The Principals/ Head Masters/Head Mistresses concerned
- 10). The Official Concerned
- 11). P.A. local Office

Executive District Officer
 Elementary & secy: Edu:Swat

ATTESTED

ADVOCATE

ATTESTED

Advocate

OFFICE ORDERX:-.

Annexure "B"

Annexure B

Consequent upon the complaint received from the staff of GGPS Fatehpur, swat. The following class-IV servant are hereby transferred to the schools noted against each on their own pay and scale from the date of their taking over charge in the best interest of public service.

S.No.	Name of Class-IV:-	From:-	To:-	Remarks
01.	Mr, Muhammad Ali Jan Chow:	GGPS Fatehpur.	GHSS Fatehpur	V.S.No.2 U/Report.
02.	Mr Aniullaha Chow:	GHSS Fatehpur	GGPS Fatehpur	V.S.No.1 U/Report.

Note: 1 No TA/DA is allowed.
2. Charge report should be submitted to all concerned.

Executive District officer
E&S Education swat.

Inst: No. 160576 / R-12/Class-IV Dated the 6-11 / 2012:-.

Copy forwarded to:-

- 01. The DDO (F) Prg: Swat.
- 02. The Prl: GHSS Fatehpur, swat.
- 03. The D.A.O, Swat.
- 04. The official concerned.

Executive District officer
E&S Edu: Swat.

ATTESTED
Advocate

ATTESTED

Advocate

سوات

Annexure

جناب عالی

Signature

12

10

سرڈبانہ گزارش کی جاتی ہے کہ

مورخہ 11-11-2012 کو عین نے گورنمنٹ گزٹڈ

پرائمری سکول فٹہ پور مسلم بازار میں

پارچہ 1-1-1

ایک فرمائندہ ڈائریکٹوریٹ میں

B. Mahal
Head mistress,
Govt. Girls Primary School,
FATEHPUR, Swat.

Signature

ATTESTED
Signature
Advocate

ATTESTED

Signature
ADVOCATE

[Handwritten signature]

(13)

OFFICE ORDER

Annexure "D"

Mr Aminullah chowkidar GHSS Fatehpur swat is hereby transferred to GHSS Madyan swat against lab Atendent vacant post on his own pay and scale from the Date of his taking over charge in the best interest of public service.

Note: No TA/DA is allowed

Charge report should be submitted to all concerned:

(GUL ZAMAN KHAN)
DISTRICT EDUCATION OFFICER
MALE SWAT

Endst: No. 8522-25 dated the 15/4 2013

Copy forwarded to:

- 01 The principal concerned schools
- 02 The District Accounts officer. swat.
- 03 The officials concerned
- 04 P.A to the DEO(M) swat.

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DISTRICT EDUCATION OFFICER
MALE SWAT

ATTESTED

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ADVOCATE

ATTESTED
[Handwritten signature]
Advocate

~~Annexure~~
~~Annex~~
"G"

(14)
Annexure "E"
[Signature]

OFFICE OF THE DISTRICT EDUCATION OFFICER MALE SWAT.

REVISED OFFICE ORDER

Consequent upon the decision of the service tribunal Peshawar Mr. Aminullah chowkidar awaiting for posting is hereby adjusted at GHSS Fatehpur swat against vacant chowkidar post with immediate effect on his own pay And scale in the best interest of public service. He is directed to be careful with regard to his duty in future. Moreover his absence period w.e.f 1-8-2012 to 31-10-2013(456) days is hereby converted into leave without pay to regularize his service.

Necessary entry to this effect should be made in his Original service Book accordingly.

(ABDULLAH)

DISTRICT EDUCATION OFFICER
MALE SWAT AT GULKADA.

Endst: No. 1298-88 / dated the 21/11/2013

Copy forwarded to:

- 01. The Principal GHSS Fatehpur swat.
- 02. The District Accounts officer, swat.
- 03. The official concerned.
- 04. P.A to the DEO (M) local office.

[Signature]
DISTRICT EDUCATION OFFICER
MALE SWAT AT GULKADA.

ATTESTED

Annex G

[Signature]
ADVOCATE

To

Annexure F
Annexure F

(15)

The District Education Officer
Gulkada, Swat.

Subject: Appeal for handing over the charge and releasing of the pay.

Respected Sir,

The Appellant submits as under:

1. That the Appellant was appointed as Chowkidar at Government Higher Secondary School Fatehpur vide order Endst: No. 10402-12C IV Appointment/2011 dated 09-07-2011 against the 25% reserved quota of retired employees Children and till date is performing his duties efficiently, without any complaints either by the locals or the competent authorities.
2. That the Appellant was transferred from Government Higher Secondary School Fatehpur to Government Girls Primary School Fatehpur vide order Endst: No. 1605-6/A-12/Class-IV dated 06-11-2012. In compliance of the said order the Appellant took charge at the said school on 10-11-2012.
3. That the transfer order of the Appellant was cancelled vide order Endst: No. 314-17/Class-IV/F dated 11-02-2013 due to the reason that one Mr. Muhammad Jan Chowkidar was at the verge of his retirement and could not be disturbed as per the Government policy.

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Adv

4. That the Appellant once again reported to his original school, but he was refused the handing over of the charge for reasons best known to the worthy Headmistress.
5. That on reporting the situation to the competent authority the Appellant was transferred to Government Higher Secondary School Madyan vide order Endst: No. 8522-25 dated 15-04-2013, but again the Headmaster is resolute of not handing over the charge to the Appellant without any reasons, whatsoever.
6. That the Appellant has been shuttled between various schools without letting him complete his tenure in violation of the law for the reasons best known to the authorities.
7. That the Appellant complied with the orders of the authorities without any ifs and buts yet still he made to suffer for no fault of his.
8. That presently the Appellant is seroing nowhere in violation of the mandate of law. Moreover to add fuel to fire the pay of the Appellant has also been stopped for more than 7 months in blatant violation of the Constitutional rights of the Appellant.

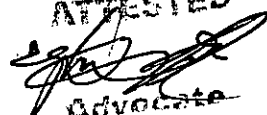
It is, therefore, very humbly prayed that on acceptance of this application the authorities may either be ordered to hand over the charge to the

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Appellant and his pay shall also be ordered to be released forthwith.

Yours Obediently

Amin Ullah

Amin Ullah

18-05-2013

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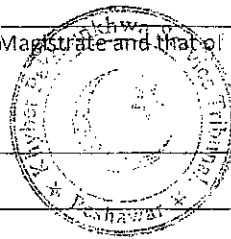
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Advocate

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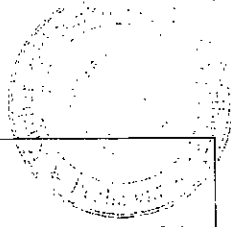
(18)

Date of Order or proceedings.	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
12.01.2016	2	3 <p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u> <u>CAMP COURT SWAT</u></p> <p style="text-align: center;"><u>SERVICE APPEAL NO.1303/2013</u></p> <p>(Aminullah-vs- Director Elementary and Secondary Education, Peshawar and 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>Appellant with counsel and Mr. Muhammad Saeed, S.S alongwith Mr. Muhammad Zubair, Senior Government Pleader for respondents present.</p> <p>Aminullah hereinafter referred to as the appellant has preferred the instant appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against non-disposal of his departmental appeal and non-payment of salary and thus infringing the fundamental rights of the appellant constraining him to prefer the instant service appeal.</p> <p>Brief facts of the case of the appellant are that the appellant was appointed as Chowkidar vide order dated 09.07.2011 at GHSS, Fatehpur and thereafter transferred to various places from time to time and, meanwhile, his salary was allegedly stopped for no fault of appellant and thus constraining him to prefer departmental appeal which was not responded and hence the instant service appeal.</p> <p>We have heard arguments of the learned counsels for the parties and perused the record.</p>



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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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ADVOCATE
[Signature]



Learned counsel for the appellant argued that on the strength of the order of this Court dated 08.10.2013 the appellant was adjusted and his pay released thereafter while the pay of the appellant in respect of the earlier period has not been paid to the appellant.

Learned Sr. GP argued that the appellant remained absent from duty from time to time and, therefore, his absence was converted into leave without pay for 456 days.

We are unable to determine as to whether the appellant has performed his duty or remained absent as the said orders, if any, passed in respect of the absence of the appellant and treating the absence period as leave without pay are not impugned before us. Apart from the above the prayer of the appellant is focused on the disposal of departmental appeal which has not been decided by the respondents despite lapse of mandatory period prescribed for disposal of the same.

We, therefore, deem it more appropriate to accept the appeal and direct that the departmental appeal of the appellant addressed to DEO, Gulkada Swat dated 18.05.2013 be decided by the relevant authority and issues relating to the salary and payment thereof be decided in the said departmental appeal expeditiously but not later than one month from the date of receipt of this judgment. The appeal is accepted in the above terms.

No order as to costs. File be consigned to the record room.
Self-Muhammad Azim Khan Afridi, Chairman
Self- Abdul Latif, Member

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ANNOUNCED
12.01.2016

Date of Presentation of Application 25-01-2016
Number of Words 800
Copying Fee 6
Urgent 2
Total 8
Name of Copyist R.M.
Date of Completion 25-01-2016
Date of Delivery of Copy 25-01-2016

Attested to
ADVOCATE
Indef
Adv



~~Annexure "H"~~

Annexure "H"

20

OFFICE OF THE
DISTRICT EDUCATION OFFICER
(MALE) SWAT

OFFICE ORDER.

Consequent upon the recommendation of the enquiry committee constituted as a result of court decision, the leave with out pay has correctly been given.

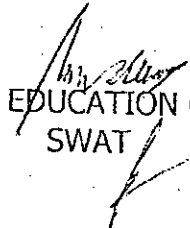
The said leave sanctioned vide this office order No. 1298-99 dated 21-11-2013 therefore stand.

(Hafiz Dr. Muhammad Ibrahim)
DISTRICT EDUCATION OFFICER (M)
SWAT

Endst: No. 967-72 / C-IV / P/File Dated. 31/3/ /2016.

Copy of the above is forwarded:-

1. The Director of Elementary and Secondary Education Khyber PukhtunKhwa, Peshawar.
2. The District Comptroller of Accounts Swat at Saidu Sharif.
3. The Principal GHSS: Fateh Pur District Swat.
4. Mr Muhammad Saeed SS litigation Branch local office.
5. P.A to the District Education Officer (M) Swat local office.
6. The Official Concerned.


DISTRICT EDUCATION OFFICER (M)
SWAT

ATTESTED



ADVOCATE

بعدالت خیدر تھمبوخوا سروس ٹراپونل، پشاور



مورخہ ۱۹ اپریل ۲۰۱۶ء منجانب ایڈوانٹ
مقدمہ امین اللہ بنام حکومت ک.پ. وغیرہ

دعویٰ سروس اپیل
جرم باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام کیسٹ کورٹ سوات کا ریٹ سزیز الرحمن، امیر اللہ ایڈووکیٹس مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زرا اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برواختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دوزہ ہر ہویا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم ۱۹ ماہ اپریل ۲۰۱۶ء

العبد گد واہ شدہ العبد

Attested and receipted by

بمقام کیسٹ کورٹ سوات کے لئے منظور ہے

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(1)

BEFORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO 431/2016

AMINULLAH CHOWKIDAR GHSS FATHPUR, SWAT.

..... APPELLANT

VERSUS

THE DIRECTOR ELEMENTARY AND SECONDARY EDUCATION PESHAWAR &

OTHERS.

..... RESPONDENTS

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO 1 & 2

RESPECT FULLY SHEWETH:

PRELIMINARY OBJECTIONS:

- 1- The appellant is estopped by his own conduct to file the instant appeal.
- 2- The instant appeal is time-barred.

FACTUAL OBJECTIONS:

1-That the Para No 1 is correct to the extent that the appellant was appointed as chowkidar at GHSS Fatehpur, Swat against the reserved quota of retired employee's children on 09/07/2011. The Principal GHSS Fatehpur under reported the appellant, on the reasons of maltreatment & rude behavior on 01/08/2012. (Copy of report is appended Annex E&F)

2- That on the written complaint of the Principal GHSS Fatehpur, the appellant was under report transferred to GMS chamgarai vide order No 8183-86 dated 01/09/2012. Than the appellant was transferred to GGPS Fatehpur swat, vide order Endst No 1605-6/A-12/class-IV dated 06/11/2012. (Copy of under report transfer is appended Annex G&H)

3 -That the Para No 3 is correct and admitted. DEO Female swat vide order No 314-17/C-IV/F dated 11/02/2013 cancelled the order of GGPS Fatehpur. (Cancellation order is appended as Annex I)

4- Incorrect and not admitted, that the appellant was not given charge because Muhammad Ali Jan chowkidar was performing his duty at GGPS Fatehpur. Moreover the transfer order of the appellant was cancelled by DEO (F) Swat vide order No 314-17/C-IV/F dated 11/02/2013. (Cancellation order is already appended as Annex I)

5-That the appellant was transferred to GHSS Madyan swat vide order No 8522-25 dated 15/04/2013 on his own request. The appellant submitted his arrival report to the principal GHSS Madyan swat without LPC & relieving chit. The appellant had been directed by the Principal GHSS Madyan vide order No783 dated 08/10/2013 to provide the relevant documents but the appellant failed to provide the required documents. (Order copy & principal letter is appended as Annex J)

6- That the appellant was transferred on the written complaints of the principal as clarified in Annex F.

7- Incorrect and not admitted. That the appellant was transferred to GHSS Madyan swat vide order No 8522-25 dated 15/04/2013 on his own request. The appellant submitted his arrival report to the principal GHSS Madyan swat without LPC & relieving chit. The appellant had been directed by the Principal GHSS Madyan vide order No783 dated 08/10/2013 to provide the relevant documents but the appellant failed to provide the required documents.

8- That the appellant has been adjusted as chowkidar vide order No 674-77 Dated 31/10/2013. That the appellant salary was stopped w.e.f 01/08/2012 Up to 31/10/2013, because he remained absent from duty. The appellant did not perform his duty consequent upon the decision of the Honorable Service Tribunal; the appellant was adjusted at GHSS Fatehpur against the vacant post of chowkidar. The absence period of the appellant w.e.f 01/08/2012 Up to 31/10/2013 (456 days) have been converted to leave without pay in order to regularize his service vide order No 1298-99 dated 21/11/2013 (Order copy is appended as Annex K)

9. That the appellant has neither preferred a departmental appeal to respondent No 2 nor followed the directions of the principal GHSS Madyan but remained Absent from duty.
10. The Departmental Appeal Dated 18/03/2013 of the appellant has already been decided by the respondents in the service appeal No 1303/2013 in the light of the judgment dated 12/01/2016 passed by the Honorable service Tribunal, wherein period of absence was considered as leave without pay and departmental appeal rejected.
11. That the respondents decided the appeal of the Appellant in the light judgments dated 31/03/2016 & 12/01/2016 passed by the Honorable Service tribunal and converted the absence period from 01/08/2012 to 31/10/2013 (456 Days) to leave without pay. (Copies Annex K, L&M)
12. Incorrect & not admitted that the appellant is not aggrieved by the same as Clarified in paras no 10&11.

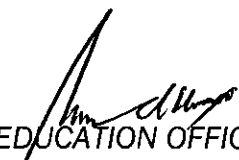
GROUND:


- A- That the appellant remained absent from his duty as clarified in Para No 8 of Facts.
- B- That the appellant has not reported for his duty.
- C- Incorrect & not admitted that proper inquiry was conducted to sift out the facts. The appellant has been afforded proper opportunity of personal hearing. (Copy Annex B)
- D- That the fundamental rights of the appellant are not violated rather, he is treated according to law.
- E- That the mandatory provisions of law have not been done away with.
- F- That the orders of the Respondents are legal, lawful, and according to rules.

G- Incorrect & not admitted that the appellant himself admitted in his application dated 04/08/2014 that the grievance of the appellant to the extent of posting / Adjustment has been redressed. (Copy Annex C)

That the absent period from 01/08/2012 to 31/10/2013 (456 Days) cannot be considered as on duty it has already been converted into leave without pay in the light of inquiry report.

It is therefore very respectfully prayed that the instant appeal may kindly be dismissed with cost in favor of respondents.


DISTRICT EDUCATION OFFICER (M)
(E&SE) SWAT


DIRECTOR
ELEMENTARY AND SECONDARY
EDUCATION
PESHAWAR.

Y