

16.09.2020


Nemo for appellant.

Mr. Kabirullah Khattak learned Additional Advocate General for respondents present.

Case was called time and again but none appeared on behalf of appellant. Consequently, the present service appeal is dismissed in default. No order as to costs. File be consigned to the record room.

Announced

16.09.2020



(Atiq ur Rehman Wazir)
Member (E)




(Rozina Rehman)
Member (J)

7.5 2020

Due to COVID19, the case is adjourned to


27/7/2020 for the same as before.


Reader

27.07.2020

Counsel for the appellant and Addl. AG for the respondents present.

Former requests for adjournment in order to seek fresh instructions from appellant. Adjourned to 16.09.2020 for hearing before the D.B.


(Attiq-ur-Rehman)
Member


Chairman

17.01.2020

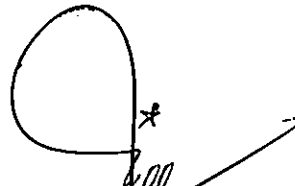
Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, instant appeal is adjourned to 06.03.2020 for further proceedings/arguments before D.B.


Member


Member

06.03.2020

Counsel for the appellant present. Addl: AG alongwith Mr. M. Arshad, ADEO for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 07.05.2020 before D.B.


Member


Member

12.09.2019

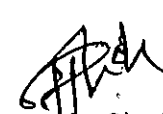
Counsel for the appellant and Addl. AG alongwith Arshad Ali, ADEO for the respondents present.


Written reply on behalf of respondent No. 2 furnished. Representative of the respondents states that respondents No. 1 & 3 rely on the written reply submitted by respondent No. 2. The appeal is posted to D.B for arguments on 19.11.2019. The appellant may submit rejoinder, within a fortnight, if so advised.


Chairman

12.11.2019

Junior to counsel for the appellant present . Mr. Riaz Paidakhel learned Assistant Advocate General for the respondents present. Junior to counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourned. To come up for arguments on 17.01.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

17.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, instant appeal is adjourned to 06.03.2020 for further proceedings/arguments before D.B.

Member

Member

30.05.2019

Counsel for the appellant present.

Contends that the departmental proceedings against the appellant were undertaken under the provisions of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 while the suspension order of appellant was made on 08.07.2009. By dint of the said fact, the respondents were obligated to have proceeded under the provisions of Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000 against the appellant. The culmination of departmental proceedings into impugned order dated 24.09.2013 was, therefore, void. Speaking about the delay in submission of departmental appeal learned counsel contended that as the appeal was decided on merits, therefore, any delay in filing of the same was impliedly condoned.

In view of the arguments of learned counsel, instant appeal is admitted for regular hearing but subject to all just exceptions taken from other side. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 24.07.2019 before S.B.

Appellant Deposited
Security & Process Fee

3/6/19


Chairman

24.07.2019

Counsel for the appellant and Mr. Usman Ghani
District Attorney for the respondents present.

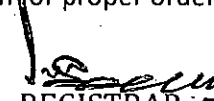

Learned District Attorney requests for time to procure written reply of the respondents. Adjourned to 12.09.2019 for submission of written reply/comments of the respondents.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 531/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	25/04/2019	<p>The appeal of Mr. Muhammad Ziaullah resubmitted today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 25/4/19</p>
2-	26/04/19.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>30/05/19</u></p> <p> CHAIRMAN</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No 531 /2019

Muhammad ZiaUllah.....Appellant



V E R S U S

Director and others.....Respondents

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-4
2.	Application for condonation of delay with affidavit		5
3.	Copy of FIR	A	6
4.	Copies of Applications & Suspension Order dated 08-07-2009	B & C	7-9
5.	Copy of Notification dated 24-09-2013	D	10
6.	Copy of Acquittal Order dated 16-01-2019	E	11-12
7.	Copy of departmental appeal	F	13
8.	Copy of letter dated 27-03-2019	G	14-15
9.	Wakalat Nama		16

Dated:-21-04-2019.


Appellant
Through 
Fazal Shah Mohmand
Advocate, Peshawar

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar. Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

- 1 -

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No 531/2019

Muhammad Zia Ullah S/O Rizwan Ullah Ex Primary School Teacher,
Govt. Primary School Mohalla Islamabad, Mian Gujar, Tehsil and
District Peshawar.....**Appellant**

**Khyber Pakhtunkhwa
Service Tribunal**

V E R S U S

Diary No. 664

Dated 25/4/2019

1. Director Elementary and Secondary Education, Govt. of KPK Peshawar.
- ✓ 2. District Education Officer (Male) Peshawar.
3. Secretary, Elementary and Secondary Education, Govt. of KPK Peshawar.**Respondents**

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER COMMUNICATED VIDE LETTER NO
/F.No. 162/Vol-XII KC Appeal of PST (M) General DATED
27-03-2019 WHEREBY DEPARTMENTAL APPEAL OF THE
APPLANT FILED AGAINST THE ORDER DATED 24-09-2013
HAS BEEN REJECTED.**

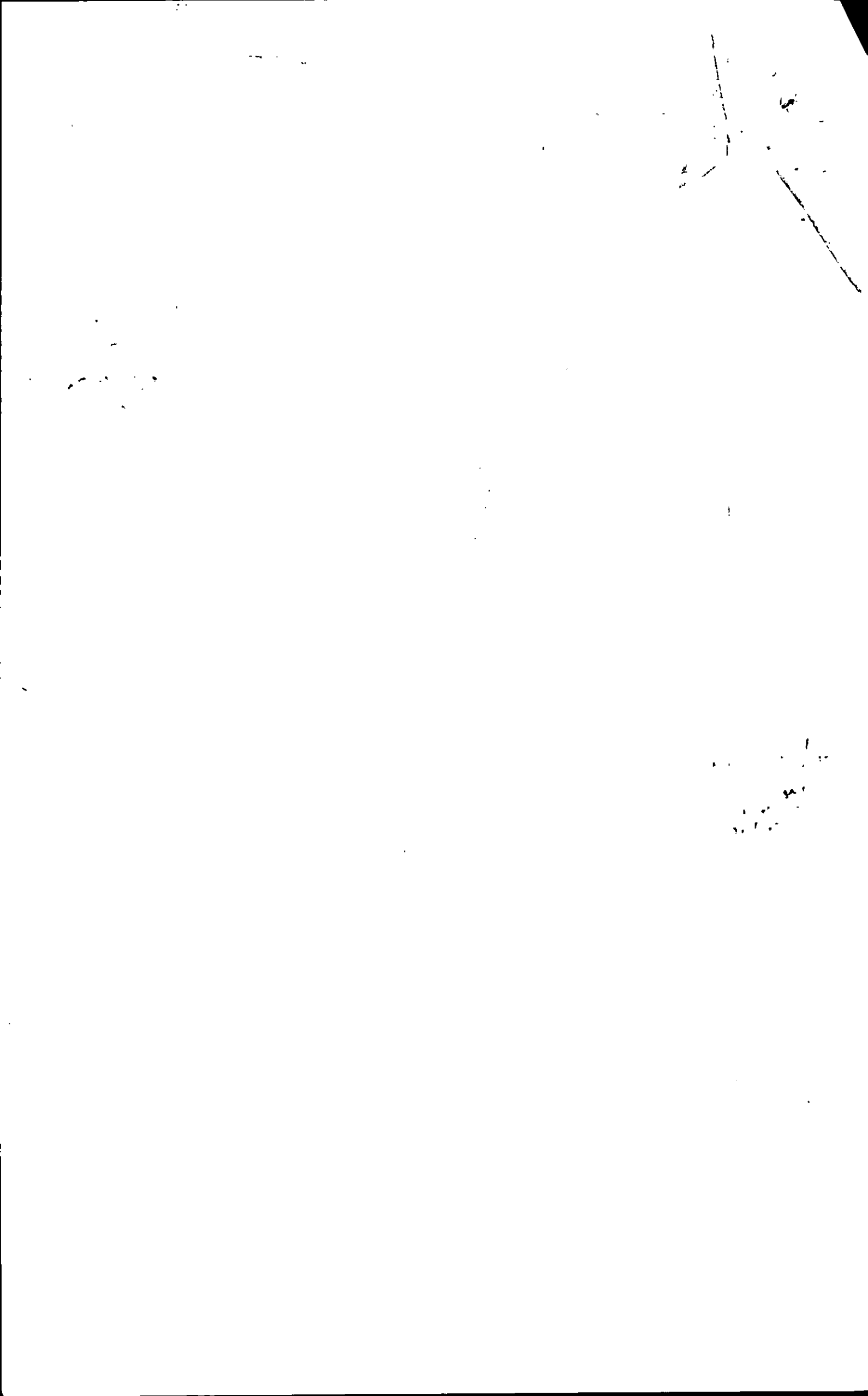
PRAYER:-

Filed to-day On acceptance of this appeal the impugned Order communicated vide **LETTER NO /F.No. 162/Vol-XII KC Appeal of PST** dated 27-03-2019 and Order dated 24-09-2013 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Registrar
25/4/19

Respectfully Submitted:-

1. That the appellant was appointed as PTC on 01-10-1990 remained posted to various Schools and since then he performed his duties with honesty and full devotion with spotless service career which was later on named as Primary School Teacher herein after referred to as P.S.T.
2. That in the year 2009, the appellant was involved in a false murder case vide FIR No 346 dated 27-05-2009 U/Ss 302/324/34PPC of Police Station Chamkani. **(Copy of FIR is enclosed as Annexure A).**



- 2 -
3. That in the circumstances and the appellant in order to save his life, was unable to have performed his duties, on the following day the appellant informed the respondent vide Application dated 28-05-2009 and 09-06-2009, upon which the appellant was suspended vide Order dated 08-07-2009. **(Copies of Applications and Order dated 08-07-2009 is enclosed as Annexure B & C).**
 4. That inspite of this, the appellant was removed from service by respondent No 2 vide Notification dated 24-09-2013 from the date of absence. **(Copy of Notification dated 24-09-2013 is enclosed as Annexure D).**
 5. That the appellant was acquitted from the charges by the Court of competent jurisdiction vide Order/Judgment dated 16-01-2019. **(Copy of Order/Judgment is enclosed as Annexure E).**
 6. That the appellant preferred departmental appeal before respondent No 1 which was rejected and communicated to the appellant vide letter No F.No. 162/Vol-XII KC Appeal of PST (M) General dated 27-03-2019 **(Copy of Departmental Appeal and letter dated 27-03-2019 is enclosed as Annexure F & G).**
 7. That the impugned orders dated 27-03-2019 of respondent No 1 and Order dated 24-09-2013 of respondent No 2 are against the law, facts and principles of justice on grounds inter alia as follows:-

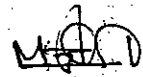

GROUND S:-

- A. That the impugned orders are illegal and void ab-initio.
- B. That the impugned orders are void being passed under the law which is not applicable in case of the appellant.
- C. That the appellant had duly informed the respondents upon which he was suspended but even then respondents instead of waiting for the decision of the criminal case removed the appellant from service.
- D. That the malafide of the respondents is proved from the fact that the appellant was suspended on the ground of involvement in criminal case while he was removed on the ground of absence and even the involvement in case was not even mentioned in the impugned order.
- E. That no Charge Sheet and Show Cause Notice was communicated to the appellant.

- F. That no inquiry was conducted in the matter to have found out the true facts and circumstances, which is mandatory in case of major penalty.
- G. That the appellant was not afforded the opportunity of personal hearing.
- H. That even otherwise the period of absence was regularized by treating the same as without pay and penalizing the appellant on the same ground amount to double jeopardy.
- I. That even otherwise the absence from duty was not willful and deliberate rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- J. That even the brother of co-accused serving in the same department and involved in the like case after acquittal, was reinstated while the appellant is denied such treatment.
- K. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules.
- L. That there is no omission or commission on part of the appellant, thus the appellant was illegally removed from service.
- M. That ex parte action has been taken against the appellant and he has been condemned unheard in violation of the principles of natural justice.
- N. That the appellant has about 23 years of service with unblemished service record.
- O. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:-21-04-2019.


Appellant
Through 
Fazal Shah Mohmand
Advocate, Peshawar

- 4 -

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2019

Muhammad ZiaUllah.....**Appellant**

V E R S U S

Director and others.....**Respondents**

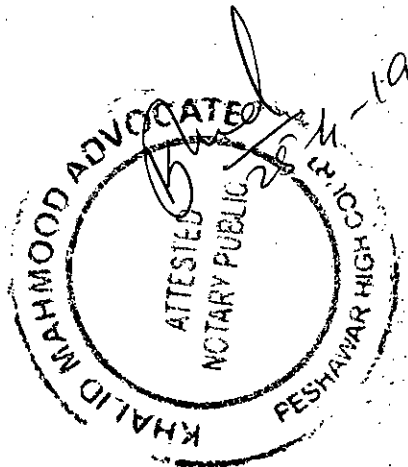
A F F I D A V I T

I, Muhammad Zia Ullah S/O Rizwan Ullah Ex Primary School Teacher, Govt. Primary School Mohalla Islamabad, Mian Gujar, Tehsil and District Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT

Identified by

**Fazal Shah Mohmand
Advocate Peshawar**



-5-

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No _____/2019

Muhammad ZiaUllah.....**Appellant**

V E R S U S

Director and others.....**Respondents**

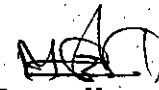

Application for the condonation of delay if any.

Respectfully submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That the impugned order being void ab-initio, illegal and time factor becomes irrelevant in such cases.
4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit rather on technicalities.

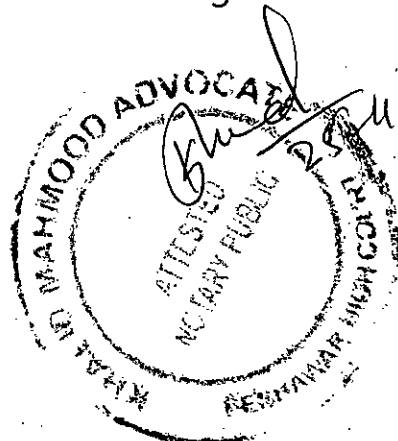
It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.

Dated:-21-04-2019.

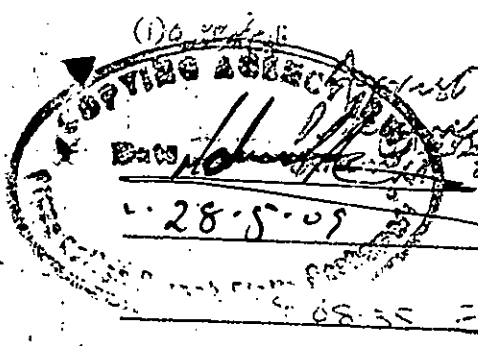

Appellant
Through 
Fazal Shah Mohmand
Advocate, Peshawar

A F F I D A V I T

I, Muhammad Zia Ullah S/O Rizwan Ullah Ex Primary School Teacher, Govt. Primary School Mohalla Islamabad, Mian Gujar, Tehsil and District Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.




DEPONENT



ابتدائی اطلاع ثبت جرم قابل دست اندازی پر
ابتدائی اطلاع ثبت جرم قابل دست اندازی پر
28-5-06

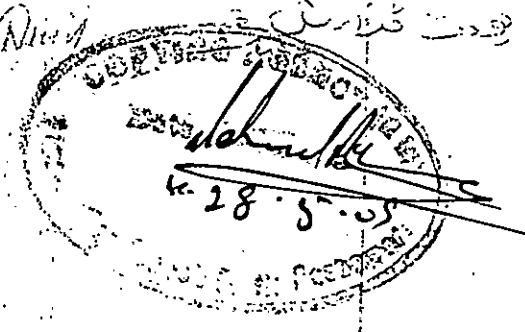
تاریخ	27	27
وقت	09:30	10:30
مقام	لاہور	لاہور
ذمہ دار	پولیس	پولیس
مذکورہ واقعہ	پولیس	پولیس
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ابتدائی اطلاع نیچے درج کرو۔

خان بیگم کا ایک بچہ 2 سال کی عمر میں تھا اور وہ لاہور میں مقیم ہے۔ بچہ نے اپنے پاس ایک گناہی موبائل فون رکھی ہے جس پر اس کی والدین نے ایک کالڈ ریفرنگ نمبر لگا رکھا ہے۔ یہ موبائل فون بچہ کے پاس تھا اور وہ اسے اپنے دوستوں کو دکھا رہا تھا۔ اس کے والدین کو پتہ چلا اور انہوں نے اسے اپنے پاس رکھ لیا۔

اس واقعہ کی اطلاع لاہور پولیس کو دی گئی اور پولیس نے تفتیش شروع کر دی۔ پولیس نے بچہ کے والدین سے بات کی اور انہوں نے بتایا کہ بچہ کو یہ موبائل فون اپنے دوستوں سے مل گیا تھا۔ پولیس نے بچہ کو تلاش کیا اور اسے اپنے والدین کے پاس لے گیا۔

پولیس نے بچہ کے والدین سے بات کی اور انہوں نے بتایا کہ بچہ کو یہ موبائل فون اپنے دوستوں سے مل گیا تھا۔ پولیس نے بچہ کو تلاش کیا اور اسے اپنے والدین کے پاس لے گیا۔



Attested

رٹ (دوسرے طرف ٹوٹ دیکھو)

کاؤنٹر فائل

ابتدائی اطلاعی رپورٹ

فارم نمبر ۲۳-۵ (۱)

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

تھانہ: چکنی

ضلع: پشاور

علت نمبر: 346

تاریخ وقت وقوعہ: 27/05/2009

وقت: 08:35 بجے

1	تاریخ وقت رپورٹ: 27/05/2009 وقت 09:30 بجے	چا کیدگی پرچہ 27/05/2009 وقت 10:30 بجے
2	نام و سکونت اطلاع دہندہ مستغیث	جان سید ولد ملک سید بہر 18 سال قوم غلیل مومند ساکن محمد زئی کندے موسیٰ خیل
3	مختصر کیفیت جرم (معدہ دفعہ) حال اگر کچھ لیا گیا ہو۔	302/324/34 PPC
4	جائے وقوعہ فاصلہ تھانہ سے اور سمت:-	سڑک روندہ نزد مکان مدی واجد دیہہ محمد زئی کندے موسیٰ خیل
5	نام و سکونت ملزم	
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	تحریری مراسلہ پر مقدمہ قائم کیا جاتا ہے
7	تھانہ سے روانگی کی تاریخ وقت	بطور پیش رپورٹ

ابتدائی اطلاع نیچے درج کرو۔

ایک تحریری مراسلہ منجانب خان عباس خان SI آن ڈیوٹی کچولٹی LRH پشاور موصول ہو کر بہ مضمون ذیل ہے، بخدمت آفیسر انچارج تھانہ چکنی مجروح جان سید بھائی درست ہوش و حواس بمقام کچولٹی LRH رپورٹ کرتا ہے کہ میں معہ چچازاد بھائی برکت علی ولد ملک اسد ساکن دیہہ ام شرننگ کام کیلئے نکل کر بوقت وقوعہ جائے وقوعہ بالا پر پہنچے تو مسماں خانم اللہ ولد فوجی (2) ضیاء ولد رضوان اللہ (3) حمید ولد رحمان گل (4) و سیم ولد نصیب ساکنان دیہہ ام مسلح بہ اسلحہ آتشین کھڑے تھے، ہمیں دیکھتے ہی ہم پر اسلحہ آتشین سے بہ ارادہ قتل فائرنگ کیں، جو نتیجہ کے طور پر میں دائیں ران پر لگ کر زخمی ہوا جبکہ برکت علی لگ کر ہسپتال لاتے وقت راستہ میں جاں بحق ہوا، واقعہ ہذا میرے علاوہ برادر ام حضرت علی اور چچازاد بھائی راحت علی اور دیگر موجودگان کا چشم دید ہے، وجہ عناد سابقہ دشمنی ہے، علاج معالجہ کیلئے مجھے نیاز علی ولد سلیمان خان ساکن دیہہ ام نے ہسپتال LRH پہنچایا، علاج معالجہ کی بندوبست کیا جاوے، میں اپنی مجروحیت اور چچازاد بھائی برکت علی کے قتل کرنے کا برخلاف میاں خانم اللہ ضیاء، شہین اور و سیم ساکنان دیہہ ام دعویدار ہوں، العبد حسب گفتہ سائل رپورٹ درج بالا ہو کر پڑھ کر سنایا سمجھایا جا کر درستی کا انگوٹھا ثبت کیا جس کی میں تصدیق کرتا ہوں، مجروح کا نقشہ ضرر مرتب کر کے حوالہ CMO صاحب کیا گیا، برکت علی ولد سیف اللہ ساکن دیہہ ام ہسپتال لاتے وقت راستہ میں جاں بحق ہونا بیان ہوا، مضمون رپورٹ سے صورت جرم بالا پائی جا کر مرستہ معہ نقشہ ضرر بھجوا یا جاتا ہے، افسران بالا کو بطور پیش رپورٹ اطلاع دی جا کر کسی تفتیش افسر کو مامور تفتیش کیا جاوے، دستخط انگریزی، خان عباس خان SI آن ڈیوٹی کچولٹی LRH پشاور مورخہ 27/05/2009 کارروائی تھانہ آمدہ تحریری مراسلہ پر مقدمہ درج رجسٹر کر کے افسران بالا کو بطور پیش رپورٹ اطلاع دی گئی، نقل پرچہ جات بغرض تفتیش عقب شاہین اللہ خان CIO چکنی بھجوا یا جاتا ہے، پرچہ بطور پیش رپورٹ گزارش ہے، دستخط انگریزی

Rahmat

کونسل کے (3) اراکے کے حلقوں کے لئے

نمبر (10)

تاریخ 27.5.2009 سے قبل کسی
(302) کے لئے اراکے کے لئے
عہدہ پان کو ختم ہے اس سے قبل ان کے لئے

انعام نہیں دیا گیا

ان کے لئے - اراکے کو فائدہ مند بنانے کے لئے

کنڈر کاٹوں کی مارشل کے لئے اطلاع عرض ہے

28/5/2009

اس کے لئے (00025442) نمبر

28.5.2009
جی۔ اے۔ ایس۔ اے کے لئے

Handwritten signature

بھنور صاحب اے ڈیٹ اور صاحب سہرنگل جیلپورہ لپ سٹار

منا عیال

تزارش ہے کہ گورنمنٹ پرائمری سکول محلہ اسلام آباد کے

تذریس علیٰ منہ سے محمد ضیاء اللہ صاحب بی ایچ ای

کے مورخہ 27.5.2019 سے متعلق کیس 302 کا ایف آئی آر

درج ہے اور مدرسے بڑا مورخہ 28.5.2019 سے تحریر ہے

ایف آئی آر کے فوٹو کا ایک درخواست کے ساتھ

منسلک ہے لیکن مناسب جا رہی ہے لے اطلاع پر عمل

پرسنل ایف محمد ضیاء اللہ 0254112

الرقی (099-66)

الف

آپ پتالاج فرمان اول مدرسہ انبیا صین گورنمنٹ پرائمری سکول 13

HEAD MASTER
G.P.S Mohallah Islamabad
Mian Gujar.

HEAD MASTER
G.P.S. Mohallah Islamabad
Mian Gujar

Attested

9 - 11 C 11

SUSPENSION.

Under the provision of PR-54 Mr. Muhammad Lia Ullah PST GRS Mohallah Islamabad (Mian Gujar) Peshawar involved FPO/302/344/PPC Vide FIR No. 346 dated 27-05-2009 is hereby suspended from Govt. Service w.e.f 27-05-2009 till the decision of the case.

- Notes: 1- Necessary entry to this effect should be made in his S/Book.
- 2- No is allowed to draw suspension allowance as admissible under the rules if not absconder.

(SAID REHMAN)
EXECUTIVE DISTRICT OFFICER
ELEMENTARY & SECY: EDU: PESHAWAR.

Endst: No. 238-40 / P.No. 14 / Khalid Khan PST / dated / 27 / 2009.

Copy of the above is forwarded for information to the:

- 1- District Account Officer Peshawar.
- 2- Dy: District Officer (Male) Primary Peshawar w/r. a. his No. 1926 dt: 12/6/2009
- 3- ~~Original of the above teacher's letter No. 238 dated~~
- 4- Superintendent Local.
- 5- Teacher concerned.

Handwritten notes:
DACAASHI?
Entry made in his S/Book
1174
9/10/09

District Officer (Male)
Elementary & Secy: Edu: Peshawar.

Handwritten signature:
H. H. H. H. H.

"D" 10

DISTRICT EDUCATION OFFICER (MALE) PESHAWAR.

NOTIFICATION:-

WHEREAS Sub Divisional Education Officer (SDEO) Male, Peshawar reported vide memo No. 3196 dated 11/12/2012 and memo No. 3316 dated 19/12/2012 at S. No. 33 that Mr. Muhammad Zia Ullah PST, Government Primary School Islamabad Mian Gujjar Peshawar was involved in a criminal case and was suspended from service vide this office No. 838-40 dated 08/07/2009; and that he was absent from duty with effect from 27/05/2009.

2. AND WHEREAS Mr. Muhammad Zia Ullah PST, Government Primary School Islamabad Mian Gujjar Peshawar was proceeded against under Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules 2011, for the charge of misconduct/willful absence from duty with effect from 27/05/2009 as mentioned in the show cause notice served upon him under registered post at his home address vide No. 11856/Absent/Absconder dated 28/3/2013.

3. AND WHEREAS the accused official did not submit his reply to the show cause notice

4. AND WHEREAS absentee notices were served upon Mr. Muhammad Zia Ullah PST, Government Primary School Islamabad Mian Gujjar Peshawar through daily newspapers "MASHRIQ" and "JIDDAT" on 10/7/2013 to attend the office and explain his absence period but he remained absent and did not report for duty in response to the above mentioned notices.

5. AND WHEREAS the competent authority, District Education Officer (Male) Peshawar, after having considered the charges, evidence on record, and facts of the case is of the view that the charge of misconduct/willful absence from duty against the accused official has been proved.

6. NOW THEREFORE, In exercise of the Powers conferred under Rules-4 (b) (iii) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, the competent Authority, District Education Officer (Male) Peshawar, is pleased to impose major penalty of "Removal from Service" upon Mr. Muhammad Zia Ullah PST, Government Primary School Islamabad Mian Gujjar Peshawar with immediate effect.

The period of his absence with effect from 27/05/2009 till 23/09/2013 is hereby treated as unauthorized absence from duty without pay

ABDUL BASIT
District Education Officer
(Male) Peshawar.

Endst: No. 3647-53 / Dated Peshawar the 24/9 /2013

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. PS to Secretary E&SED Khyber Pakhtunkhwa Peshawar.
3. PA to Director E&SE Khyber Pakhtunkhwa Peshawar.
4. Sub Divisional Education Officer (Male) Peshawar with the remarks that necessary entry to this effect should be made in his service book.
5. ASDEO (Male) Chughal Pura Circle Peshawar.
6. PA to District Education Officer (Male) Peshawar.
7. Official Concerned.

Attested
ed

Dy: District Education Officer
(Male) Peshawar.

FORM OF ORDER SHEET

Court of _____
Case No. _____ of _____

11 E
11-1-19

Serial No. of Order or Proceeding	Date of Order or Proceeding	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order.....1	11 / 1 / 2019	<p>State...Versus... <u>Ziaullah</u></p> <p>Complete challan received. Entrusted to the Court of learned Additional Sessions Judge <u>Ull</u> Peshawar for disposal.</p> <p>_____</p> <p>[MUHAMMAD YOUNAS] District & Sessions Judge Peshawar 11-1-19</p> <p>ATTESTED</p> <p>18 JAN 2019 (Examiner) Court Peshawar</p> <p>Attestal cell</p>

11/A
IN THE COURT OF AZIMULLAH MISHWANI
ADDITIONAL SESSIONS JUDGE-VIII, PESHAWAR

Case No : 7/SC of 2018
Date of Decision : 16/01/2019

STATE -VERSUS- ZIA ULLAH

FIR No. 346
Dated: 27/05/2009
U/S 302/324/34 of PPC
P.S Chamkani, Peshawar

ORDER
16/01/2019

Case file received from the court of worthy District & Sessions Judge, Peshawar. It be registered in the relevant register.

On perusal of record it transpired that the complainant and legal heirs of the deceased i.e. Mst. Zakia. w/o Zahid, Mst. Kifayat Bibi w/o Raees Khan (sisters of deceased), Mst. Mehra w/o Saifullah (mother of deceased), Rahat Ali and Farhad Ali both sons Saifullah (brothers of deceased) have already effected compromise with the accused facing trial namely Zia-Ullah. The factum of compromise is also palpable from the

ATTESTED

18 JAN 2019

(Examiner)
Session Court, Peshawar

STATE -VERSUS- ZIA ULLAH

-12-

bail order of the then learned ASJ-II, Peshawar dated 02/02/2018 and learned ASJ-XI, Peshawar dated 09/02/2018 wherein it has been mentioned that the complainant/legal heirs of the deceased by furnishing compromise/affidavit mentioned Ex.PA, Ex.PZ and proforma effecting compromise under Qisas and Diyat Ordinance Ex.PA/1 have patched up the matter with the accused facing trial and pardoned him by waiving of their right of Qisas and Diyat. *Copy of the referred order are available on record.*

In wake of the peculiar facts and circumstances of the case as referred to in the afore lined discourse, no case is made out against the accused facing trial Zia Ullah to justify summoning the accused or framing of charge against him. Hence, the court is of the considered view that holding trial against the accused in the background of the case as dilated upon will serve no purpose to the cause of justice. The ultimate result of the case is the acquittal of the accused as

ATTESTED

18 JAN 2018

(Examined)
Session Court PeshawarAttested
[Signature]

- 12/A -

STATE - VERSUS - ZIA ULLAH

the complainant/legal heirs of the deceased have no interest to prosecute the accused.

The offence with which the accused facing trial is charged is compoundable while the perpetrator/complainant of the case having pardoned the accused is no more interested to proceed against him. In peculiar circumstances, by accepting the compromise already effected between the complainant and accused, he is hereby acquitted on the basis of compromise in absentia.

The accused is on bail; his bail bonds stand cancelled and his sureties are absolved from the liabilities of bail bonds.

Case property be kept intact till the arrest and trial of other PO i.e. Khanimullah. Requisitioned record be returned alongwith copy of this order while instant file be consigned to record room after necessary completion and compilation.

*Arrested
eff*

No:	1362
Dated of issue:	18/1/19
Name of accused:	Zia Ullah
Case No.:	2000-5
Police Station:	X
Date of issue:	18/1/19
Date of filing:	18/1/19

(Azimullah Mishwani)

Add: District & Sess. Judge-VIII, Peshawar.

Azimullah
AZIMULLAH MISHWANI

Announced:

Dated: 18/01/2019

ASJ-VIII, Peshawar

CERTIFIED TO BE TRUE COPY

18 JAN 2019

(Examiner)
Copying Agency Session Court
Peshawar

کونوی قیام ناظم لغیرات و تالیفی لکچر جسیر بختیاری لکھنؤ
عنوان! ایمل دوبارہ بحال ملدزفت

- 13 -

گزارشیں نمبر ۲۰۰۹-۲۰۱۰ اور ۲۰۱۰-۲۰۱۱ کے دوران کے مابین کسی بات سے
جھوٹا سراہا ایسی ریسرچرز کے علاوہ کچھ اور بھی صورت

۲۰۰۹-۲۰۱۰ اور ۲۰۱۰-۲۰۱۱ کے دوران کے مابین کسی بات سے
جو نیکر سائل کو جان کا خطرہ تھا اس لیے بدلت اور جان بچانے کا خاطر
سائل کو درپوش ہونے سے ڈرا ممبری غیر حاضر کیوں ہے جاہ لفظوں کا لکھنا

صور نمبر ۲۰۱۳-۲۰۱۰ کو بھی ملدزفت سے فارغ کر دیا گیا

انہو سائل کو عدالت عمارت کے باعدت طور پر ممبری کر دیا ہے اور سائل کو
مشکل حل ہونے سے

اے صاحبان سے التماس ہے کہ ان کے ساتھ عدالت سے بھی ملدزفت
بحال کر دیا جائے

23/1/2019

الغایہ
ادیتا نا لیدر محمد فیاض اللہ (برنسٹن نمبر 25442000) کو ایمل سے
صور

Attested
[Signature]



**DIRECTORATE OF ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA, - 14 -
PESHAWAR**

No. _____ / F.No. 162/Vol-XII KC
Appeal of PST(M) General
Dated: 27/3 /2019.

To

The District Education Officer
(Male) Peshawar.

Subject: - **APPEAL**

I am directed to refer to your letter No. 15823 dated 20/02/2019 on the subject cited above and to ask you that the case/appeal in respect of Muhammad Zia Ullah PST GPS Islamabad Mian Gujjar Peshawar has been examined/analyzed by this office. Hence inform the appellant concerned that his appeal has been rejected by the competent authority.

Deputy Director Estab (Male)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endst No. 7948

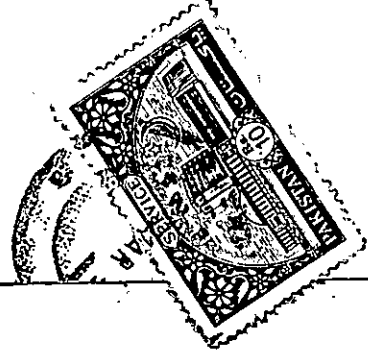
Copy of the above is forwarded to:-

1. Muhammad Zia Ullah PST GPS Islamabad Mian Gujjar Peshawar
2. PA to Director E&SE local Office.
3. Master File.

(Signature) 26/3/19
Deputy Director Estab (Male)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

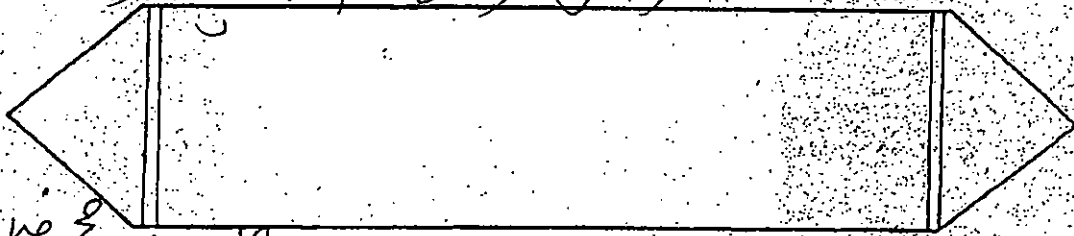
20/3/2019

DESPATCHER
(E&SE)
Director (E&SE)
KPK Peshawar



*Attested
Cell*

بعدالت سرویس ٹریبونل K.P. لسٹڈ



محمد ضیاء اللہ

2019ء

محمد ضیاء اللہ

بنام

مورخہ
مقدمہ
دعویٰ
جزم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ
آن مقام لکھنؤ کے لیے محمد ضیاء اللہ صاحب کو مقرر کیا جاتا ہے۔

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور صولی چیک رو پیسہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور منسوخی

نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور

کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ

برداشت منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جہانہ التوائے مقدمہ کے سبب سے رہوگا۔

کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سند ہے۔

الرقوم 22/12/2019

واہ النیب

مقام کے لئے منظور ہے۔

Attested and Accepted (Adm)

P-1

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

SERVICE APPEAL NO.531/2019

Muhammad Zia Ullah

V/S

Director (E &SE) & others

REPLY ON BEHALF OF RESPONDENTS. NO.1, 2 & 3.

Respectfully sheweth:

The Respondents submits bellow:

PRELIMINARY OBJECTIONS:

1. That the Appellant has got no cause of action /locus standi.
2. That the Appellant has concealed material facts from this Hon,ble Tribunal.
3. That the Appellant has been estopped by his own conduct to file the instant appeal before this Hon'ble Tribunal.
4. That the instant Appeal is badly time barred.
5. That the instant Appeal is not maintainable in its present form.
6. That the instant Appeal is bad for mis- joinder and non- joinder for the necessary parties.
7. That the Appellant has not come with clean hands to this Hon'ble Tribunal.
8. That the instant Appeal is barred by law.
9. That the Appellant does not fall within the ambit of aggrieved person.

ON FACTS.

1. That Para No.1 pertains to record.
2. That in reply to Para No.2, it is submitted that the Appellant was willful abs from 27-05-2009 till 23-09-2013 without any information and he violated law & rules.
3. That in reply to Para No.3, it is submitted that the Appellant was willful a from his duty and the SDEO(M) Peshawar informed the DEO(M) Peshawar letter No.024 dated 03-07-2013 regarding the Appellant absentee w recommendation to take disciplinary action against the Appellant District Education Officer (Male) issued him show cause notice on dat 2013 through register post at his home address and the Appellant did not give his reply to the show cause notice then the competent authority served notice to the Appellant through daily news paper Mashriq and Jiddat 2013 to attend the office and explain his absences period but he was absent and did not report for duty in response to above mentioned notice (Copy of letter of SDEO(M), Show cause notice and Publication are attached as Annex: A,B & C) (10)
4. That Para No. 4 is incorrect, misleading and against the facts and law. The authority fulfilled all the codel formalities and the Appellant was in his service by the Respondent No.2 according to law & rules.

5. That in reply to Para No.5, it is submitted that the Appellant pardoned on the bases of compromise by the complainant. Copy of order/judgment of court has already annexed with the instant appeal as Annex: E)
6. That in reply to Para No.6, it is submitted that the Appellant removed from his service on 24-09-2013 and he filed departmental appeal on 23-01-2019 which is badly time barred. The instant Departmental appeal is already annexed as Annex: F of the instant appeal.
7. That in reply to Para No7., it is submitted that the said order is according to law and rules. Furthermore, the Appellant has no cause of action to file the instant appeal in this Hon'ble Tribunal.

GROUND

- A. That Ground – A is incorrect, misleading and against the facts. The said order is according to law, rules and policy.
- B. That Ground – B is incorrect, misleading and against the facts. Detail reply has been given in the above Para.
- C. That Ground – C is incorrect, misleading and against the facts. The Respondent Department acted according to law, rules and policy.
- D. That Ground – D is incorrect. Detail reply has been given in the above Para.
- E. That Ground – E is incorrect, misleading and against the facts. The Respondent issued him show cause notice on the home address of the Appellant and also publication in the daily news papers.
- F. That Ground – F is incorrect, misleading and against the facts. The Respondent Department fulfill all the codal formalities according to law.
- G. That Ground – G is incorrect, misleading and against the facts. Detail reply has been given in the above Para.
- H. That Ground – H is incorrect, misleading and against the facts.
- I. That Ground – I is incorrect, misleading and against the facts. Detail reply has already been given in the above Para.
- J. That Ground – J is incorrect.
- K. That Ground – K is incorrect, misleading and against the facts. The Respondent Department acted according to law, rules and policy.
- L. That Ground –L is incorrect, misleading and against the facts.
- M. That Ground – M is incorrect, misleading and against the facts.
- N. That Ground-N pertains to record.
- O. That respondent also seek leave of this Hon'ble Tribunal to present case law and to raise additional grounds at the time of arguments.

It is therefore, very humbly prayed that on acceptance of this reply, the instant appeal may very kindly be dismissed with cost.

**District Education Officer
(Male) Peshawar**

Annex (A)

P-3

197
(192)

Sub Divisional Education Officer
(Male) Peshawar.

No. 024 / 1

Dated 3/7 /2013.

To

The District Education Officer
(Male) Peshawar.

SUBJECT: SHOW CAUSE NOTICE/ABSENT ABSCONDER

Memo: Ref: your letter No.38 dated 2-7-2013 on the subject noted above.

The father names of the following absent absconders PSTs (Male) who have recommended by this office for disciplinary action is submitted for further necessary action as desired.

Sr.No.	Names	Father name	Name of school
1.	Naeem Khan	Payao Khan	GPS.Arat Baba
2.	Rehmat Sher	Kachkol Khan	GPS. Pir Bala
3.	Arshad Khan	Abdus Sadiq	GPS.Maghdar Zai
4.	Muhammad Raiz	Muhammad Qayum	GPS.Khazana Sugar Mill.
5.	Zulfiqar Ali	Farhad Ali	GPS. Jatti Payan
6.	Sarfaraz Khan	Said Muhammad	GPS. Larama.
7.	Abbas Khan	Shamandroz Khan	GPS. Shaghali payan
8.	Salim Khan	Feroz Khan	GPS. Zirat Koroona
9.	Sajjad Ullah	Rizwanullah	GPS.Seithian Peshawar
10.	Muhammad Raaz	Shamsher Khan	GPS.Zargar Abad Peshawar
11.	Nadeem Niazi	Siddiq Niazi	GPS. Akhoon Abad Peshawar
12.	Mukhtiar Gul	Akbar Khan	GPS. Peshawar cantt/
13.	Saleem Khan	Abdus Sadiq Buro Khan	GPS. Haidi Muhammad Noor killi.
14.	Zia Ullah	Rizwanullah	GPS. Islam Abad Mian Gular Peshawar.

15x

[Signature]
Sub Divisional Education Officer
(Male) Peshawar.

[Signature]

Annex B

P-4

25/99

REGISTERED POST.

DISTRICT EDUCATION OFFICER,
(MALE) PESHAWAR.
NO. 11856 /Absent
/Absconder
Dated 28/3 /2013

To,

Mr.M. Ziaullah,
PST GPS Islamabad Mian Gujjar,
Moh.Islamabad Mian Gujjar,Chughal Pura Peshawar.

Subject SHOW CAUSE NOTICE ON ACCOUNT OF WILFUL ABSENCE FROM DUTY.
Memo:

I am directed to refer to the subject noticed above and forward herewith show cause notice in duplicate duly signed by the competent authority for necessary action with the remarks that one copy of the same may be returned to this office duly acknowledged by you as token.

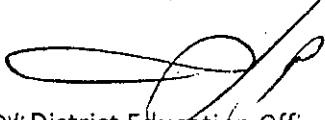
Encl:-as above.

Dy. District Education Officer
(Male) Peshawar.

Endst: No. 11857-58
Copy for information to the :-

1. Sub Divisional Education Officer (Male) Peshawar.
2. Assistant Sub Division Education Officer (Male) circle Chughal Pura.

o/c


Dy. District Education Officer
(Male) Peshawar.

P-5

98

SHOW CAUSE NOTICE.

I, (Mr. Sharif Gul, DEO (MALE) Peshawar, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr. Ziaullah, PST GPS Islamabad Peshawar as follows:

Your immediate officer has reported that you have been willful absent from duty since 27-05-2009 till date.

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

(a) Absent from duty since 27-05-2009.

1. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the major penalty of removal from service under rule 4 of the said rules.
2. You are, thereof, required to show cause as to why the aforesaid penalty should not be imposed upon you.
3. 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 defiance to put in and in that case an ex-parte action shall be taken against you.

07
12
(SHARIF GUL)
DISTRICT EDUCATION OFFICER,
(MALE) PESHAWAR

کوشش کریں کہ اس کی قیمت 385 ٹریلر ڈالاج
(Hydraulic Loader) (Troffay) (T) (E)
سائز 2.25x11.5x11.5
دور 15.5 گھنٹہ
12 گھنٹہ

CADET COLLEGE RAZMAK
Manki Road, Nowshera Cantt.

TENDER NOTICE

Sealed Tenders are invited from the experienced contractors on the "Tender Form" for the Canteen Contract of Cadet College Razmak at AEMSD Manki Road, Nowshera Cantt.

The contract will be awarded to the successful tender for the period from 1st September 2013 to 31 Aug 2014, extendable subject to the performance of the contractor.

The tender must reach the Office of the undersigned by 30 Jul 2013 and will be opened on 13 Aug 2013.

The Principal of the College reserves the rights for rejecting one or all the tenders without any reason.

Administrator
Cadet College Razmak

206

206

Wheel Excavator
Dosan/Dx-14 W (T) (E)
Specification
Emission (EPA) Interim Tier 4 (T 4)
HP, Sale Net 132hp @ 2,000 rpm
Weight 30,314 lb
Digging Depth 15'0"
Dump Height 19'1"
Swing Torque 24,187 ft lb
Arm Breakout Force 16,137 ft lb
Bucket Breakout Force 19,003 ft lb

(1) کوشش کریں کہ اس کی قیمت 385 ٹریلر ڈالاج ہے۔
(2) کوشش کریں کہ اس کی قیمت 385 ٹریلر ڈالاج ہے۔
(3) کوشش کریں کہ اس کی قیمت 385 ٹریلر ڈالاج ہے۔
(4) کوشش کریں کہ اس کی قیمت 385 ٹریلر ڈالاج ہے۔
(5) کوشش کریں کہ اس کی قیمت 385 ٹریلر ڈالاج ہے۔
(6) کوشش کریں کہ اس کی قیمت 385 ٹریلر ڈالاج ہے۔

ایجنٹ: ایف بی سی
پتہ: ایف بی سی

اشتہار نیلامی تیسری بار

ایم ایس ڈی کی اطلاع کیلئے پیش کیا گیا ہے کہ اس کی قیمت 385 ٹریلر ڈالاج ہے۔
30-06-2014
10-01-2013
2013-14
15-7-13(I)
26-7-13(II)
29-7-13(III)

نمبر	تاریخ	رقم	موضوع	حصہ	تعداد	تاریخ	رقم	موضوع	حصہ	تعداد
1	15-7-13(I)	10,000	240000	ایچ ایم	1	25-7-13(I)	10,000	240000	ایچ ایم	1
2	26-7-13(II)	150000	150000	ایچ ایم	2	29-7-13(III)	150000	150000	ایچ ایم	2
3	29-7-13(III)	20000	20000	ایچ ایم	3					
4		5000	5000	ایچ ایم	4					
5		3000	3000	ایچ ایم	5					
6		10000	10000	ایچ ایم	6					
7		5000	5000	ایچ ایم	7					
8		10000	10000	ایچ ایم	8					
9		10000	10000	ایچ ایم	9					

تعدادی اشتہار نیلامی تیسری بار

نمبر	تاریخ	رقم	موضوع	حصہ	تعداد	تاریخ	رقم	موضوع	حصہ	تعداد
1	31/5/2012									
2	1/8/2012									
3	1/8/2012									
4	3/9/2010									
5	12/11/2007									
6	7/12/2011									
7	14/3/2011									
8	1/1/2011									
8	1/9/2012									
10	1/9/2010									
11	27/5/2009									

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District Education Officer
(Male) Peshawar
No. 11200
Dated 9/5/2018

293

To,

The Director
(E&SE) Khyber Pakhtunkhwa Peshawar.

Subject: DEPARTMENTAL APPEAL.

Memo:

Reference your letter No.4434/F.No.162/KC/Removal from Service/Kohistan dated 26/02/2018.

I am directed to refer to the subject cited above and it is submitted that Sub Divisional Education Officer (Male) Peshawar had reported vide memo No.3196,dated 11/12/2012 and Memo No.3316,dated 19/12/2012 that Mr.Muhammad Zia Ullah PST,Government Primary School Islamabad Mian Gujjar Peshawar was involved in a criminal case and was suspended from service vide this office No.838-40,dated 08/07/2009 and that he was absent from duty with effect from 27/05/2009.

Mr.Muhammad Zia Ullah PST,GPS Islamabad Mian Gujjar Peshawar was proceeded against under Khyber Pakhtunkhwa Govt: Servant (Efficiency & Discipline) Rules 2011, for the charges of misconduct/Willful absence from duty with effect from 27/05/2009 as mentioned in the Show cause notice which was served upon him under registered post at his home address vide No.11856/Absent/Absonder dated 28/03/2013.

The accused official did not submit his reply to the show cause notice.

Absentee notice was served upon Mr.Muhammad Zia Ullah PST,Government Primary School Islamabad Mian Gujjar Peshawar through daily newspapers "MASHRIQ" and "JIDDAT" on 10/07/2013 to attend the office and explain his absence period but he remained absent and did not report for duty in response to the above mentioned notices.

The competent Authority ,District Education Officer (Male) Peshawar after having considered the charges ,evidence on record and facts of the case,was of the view that the charges of misconduct/willful absence from duty against the accused official had been proved.

In exercise of the powers conferred under Rules-4(b) iii of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, the competent authority District Education Officer (Male) Peshawar has imposed major penalty of "Removal from Service" upon Mr.Muhammad Zia Ullah PST,GPS Islamabad Mian Gujjar Peshawar with immediate effect vide Endst No.3647-53,dated 24/09/2013. The period of his absence with effect from 27/05/2009 till 23/09/2013 was treated as unauthorized absence from duty without pay. It is also worth mentioning that the appeal of the teacher concerned is badly time bard.

Report is submitted for perusal and further orders please.

Dy: District Education Officer
(Male) Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 531/2019

Muhammad Zia UllahAppellant.

V E R S U S

Director & Others.....Respondents

REPLICATION ON BEHALF OF THE APPELLANT.

REPLY TO PRELIMINARY OBJECTIONS.

All the objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action and locus standi to bring the present appeal, which is well within time, not bad in law and in instant appeal all necessary parties have been impleaded. The appellant has come to this honorable tribunal with clean hands and the appellant is not estopped by his conduct to file instant appeal which appeal is maintainable and liable to be accepted.

REPLY TO FACTS/GROUNDS:

Comments of the respondents are full of contradictions, rather amounts to admissions and are based on malafide. Respondents have failed to show that the version of the appellant is incorrect. Even respondents have failed to show and substantiate their version referring to any law and rules. In the circumstances the appellant has been deprived of her rights without any omission or commission on his part and he has been deprived of his rights guaranteed by the Constitution and law of the land. The appellant has been punished without adopting due course of law, and as such the appellant has been denied treatment according to law being his fundamental right as per the Constitution and law of law. The absence was not willful and deliberate rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.

The appellant has acquitted of the charges by the competent Court of law and as such he is entitled to be reinstated in service. Even the period of absence has been regularized thus the appellant cannot be punished on

this ground again which amounts to double jeopardy and is in violation of the law of land.


In the circumstances the appellant has not been treated according to law and rules being his fundamental right. The impugned order is in total disregard of the law and rules and as such alien to law which cannot be maintained, the appellant as such entitled to be reinstated in service with all consequential benefits.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for.

Dated:-19-11-2019.


Appellant

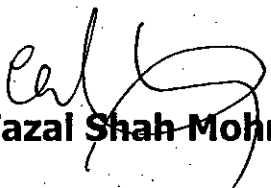
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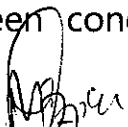

Fazal Shah Mohmand
Advocate Peshawar

A F F I D A V I T

I, Muhammad Zia Ullah S/O Rizwan Ullah Ex Primary School Teacher Govt. Primary School Mohalla Islamabad, Mian Gujjar, Tehsil and District Peshawar, (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by


Fazal Shah Mohmand
Advocate Peshawar.


DEPONENT