

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 226/2018

Date of Institution ... 27.12.2018

Date of Decision ... 28.01.2022

Muhammad Ashraf Khan SST (Science) GHS Hibbak Sehzaz Khan District Bannu.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber
Pakhtunkhwa Peshawar and others. ... (Respondents)

Yasir Saleem,
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...

...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

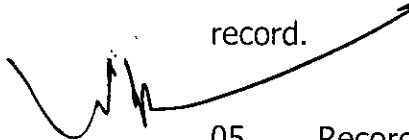
case are that the appellant was appointed as SST vide order dated 30-12-2011. During the course of his career, it was found that the appellant is also doing his MPhil as well as performing another duty simultaneously, hence he was proceeded against and was ultimately dismissed from service vide order dated 26-09-2016. Feeling aggrieved, the appellant filed departmental appeal followed by service appeal No 09/2017, which was decided vide judgment dated 08-11-2017 and the appellant was re-instated in service with direction to respondents to conduct de-novo inquiry. Because of de-novo proceedings, the appellant was re-instated in service, but the impugned order dated 31-07-2018 was issued, thereby imposing minor penalty of withholding of two consecutive annual increments and treating

the intervening period as leave without pay. Besides, recovery of an amount of Rs. 160000/ has also been ordered against the appellant, against which the appellant filed departmental appeal dated 28-08-2018, which was not responded, hence the instant service appeal with prayers that the impugned order dated 31-07-2018 may be set aside to the extent of minor penalty of withholding of two increments and treatment of the intervening period as leave without pay.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the law has badly been violated; that no procedure has been followed before imposition of the impugned penalty; that the appellant has not been served with any show cause notice, thus the impugned order is defective in the eye of law; that the appellant has not been afforded appropriate opportunity of personal hearing before awarding him penalty, hence he has been condemned unheard; that the appellant has not committed any act or omission, which can be termed as misconduct; that the mistake committed by appellant though was bonafide, but after realizing it, the appellant even much prior to the initiation of the previous departmental proceedings, approached the district account office for reimbursement of the salary, which clearly suggest that no malafide or ill intention was involved on part of the appellant, rather it was a bonafide mistake committed due to ignorance of rules; that even after the impugned order, the appellant deposited the remaining amount in government treasury; that the impugned order is un-constitutional as well because more than one penalty has been imposed upon the appellant for one cause; that it is worth to mention that during the period of 2013 till his dismissal, keeping in view his best performance, the director education awarded cash prize worth Rs. 50000/ to the appellant; that the appellant has at his credit a spotless service career and the penalty so imposed is harsh and liable to be set aside.

03. Learned Additional Advocate General for the respondents has contended that the appellant has been found guilty of dual services in EPA as well as in Education department alongwith his regular admission in MPhil in Gomel University DIKhan; that the appellant was proceeded against for the mentioned charges and was dismissed from service vide order dated 26-09-2016; that the appellant filed service appeal in this tribunal and in pursuance of judgment, the appellant was subjected to de-novo proceedings and was re-instated into service, but minor penalty of withholding of two increments, treating his intervening period as leave without pay and recovery of the amount was awarded against the appellant vide the impugned order dated 31-07-2018; that the appellant has been treated in accordance with law, hence his present appeal being devoid of merit may be dismissed.

04. We have heard learned counsel for the parties and have perused the record.



05. Record reveals that the appellant was earlier dismissed from service on the charges of dual service as well as his admission in MPhil on regular basis. This Tribunal vide judgment dated 08-11-2017 in his service appeal No 09/2017 had pointed out that the appellant was not treated in accordance with law, hence he was re-instated in service, respondents however, were placed at liberty to conduct inquiry. The respondents re-instated the appellant for the purpose of de-novo inquiry vide order dated 19-01-2018 and de-novo inquiry was conducted, but the appellant was not associated with proceedings of the de-novo inquiry. Neither the appellant was issued fresh charge sheet/statement of allegation nor any showcause notice was served upon the appellant, hence the respondents skipped a mandatory step as prescribed in law. Moreover, the inquiry officer in his report has stated that the allegation of dual salary has already vanished away; as the appellant has voluntarily deposited such amount before his dismissal. The

inquiry officer appreciated his work and remarks of the inquiry officer about the appellant is reproduced as under:


"He performed his duty with zeal & spirit at GHS Hibak Sherza Khan and showed best results in the subject taught during his stay at the school i.e. from taking over charge till his dismissal and the concerned principal also appreciated his work. He is MPhil Chemistry and well qualified official and more beneficial for both the students as well as the institution."

06. The inquiry officer exonerated him of the charges, despite he was recommended for minor penalty, which however was not warranted as a civil servant once exonerated of the charges cannot be penalized, even minor penalty cannot be imposed upon him without any justification. We are of the considered opinion that the appellant has not been treated in accordance with law, as de-novo inquiry was not conducted in the manner and mode as prescribed in law. The appellant was not served with fresh charge sheet/statement of allegation nor any show cause notice was served upon him, thus deprived him of the opportunity to defend his cause.

07. In view of the foregoing discussion, the instant appeal is accepted. The impugned order dated 31-07-2018 is set aside to the extent of minor penalty of withholding of two increments as well as to the extent of the intervening period as leave without pay. Increments of the appellant are restored with all back benefits and intervening period is treated as on duty. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
28.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

ORDER

28.01.2022


Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Deputy District Attorney for respondent present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned order dated 31-07-2018 is set aside to the extent of minor penalty of withholding of two increments as well as to the extent of the intervening period as leave without pay. Increments of the appellant are restored with all back benefits and intervening period is treated as on duty. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

28.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

22.06.2021

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present.

Former made a request for adjournment on the ground that he is not feeling well today. Adjourned to 17.08.2021 for arguments before the D.B.


Chairman


(Atiq-Ur-Rehman Wazir)
Member (Executive)

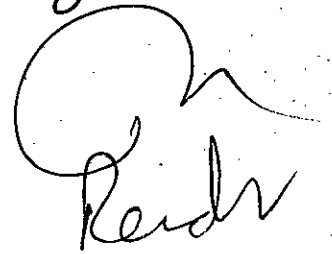
17.08.2021

Since 17.08.2021 has been declared as Public holiday on account of Moharram, therefore, case is adjourned to 29.12.2021 for the same as before.


Reader

29/12/2021.

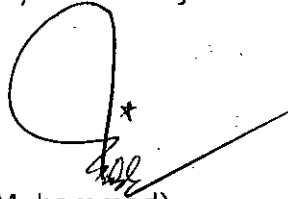
Due to winter vacations the case is adjourned to 28/01/2022 for the same as before.


Reader

22.12.2020

Counsel for the appellant and Asstt. AG alongwith Abdul Wahid, Litigation Officer for respondents present.

Representative of respondents has submitted parawise comments on their behalf. Learned counsel requires time to go through the same. Adjourned for arguments to 22.03.2021 before the D.B. The appellant may furnish rejoinder within one month, if so advised.



(Mian Muhammad)
Member(E)



Chairman

22.03.2021

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

Former requests for adjournment due to his engagement in Peshawar High Court in various cases today. Adjourned to 22.06.2021 for hearing before the D.B.



(Atiq-ur-Rehman Wazir)
Member(E)



Chairman

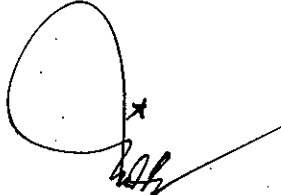
16.06.2020

Counsel for the appellant and Asst: AG for respondents

present.

Learned Asst: AG states that instant matter was assigned to the Learned Addl: AG who is not available today due to demise of a colleague. Adjournment requested.

Adjourned to ~~26.08~~ 26.08.2020 before D.B.



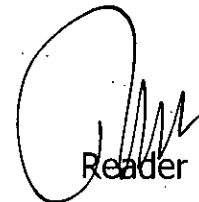
MEMBER



CHAIRMAN

26.08.2020

Due to summer vacation case to come up for the same on 02.11.2020 before D.B.

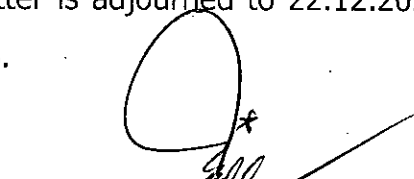


Reader

02.11.2020

Junior to counsel for the appellant and District Attorney for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 22.12.2020 for hearing before the D.B.



(Mian Muhammad)
Member



Chairman

226/19

04.12.2019

Junior to counsel for the appellant present. Nemo for the respondents.

Fresh notices be issued to the respondents by way of last chance. To come up for written reply/comments on 16.01.2020 before S.B.


Chairman

16.01.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

Respondents have not furnished reply/comments despite last opportunity. The matter is posted to D.B for arguments on 26.03.2020.


Chairman


26.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 16.06.2020 before D.B.


Reader

05.09.2019

None for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Written reply on behalf of respondents not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 03.10.2019 before S.B.


(Ahmad Hassan)
Member

03.10.2019

Appellant in person and Mr. Kabirullah Khattak, Additional AG for the respondents present.

Learned Additional AG requests for further time to furnish written reply/comments. Adjourned to 30.10.2019 before S.B.


CHAIRMAN

30.10.2019

Junior to counsel for the appellant and Addl. AG present. Nemo on behalf of the respondents.

Fresh notices be issued to the respondents for submission of reply/comments on 04.12.2019 before S.B.


Chairman

27.06.2019

Appellant absent. Learned counsel for the appellant absent. Security and process fee not deposited. Notice be issued to appellant and his counsel. Adjourn. To come up on 15.07.2019 before S.B.



Member

15.07.2019

Counsel for the appellant present.

The appellant submitted an application for extension of time to deposit the process fee and security. It is contended by learned counsel that due to some misunderstanding regarding the date of hearing the requisite deposit could not be made in time.

Application is allowed. Security and process fee shall positively be deposited within three days. Thereafter, notices be issued to the respondents for submission of reply/comments on 05.09.2019 before S.B.

Appellant Deposited
Security & Process Fee

22/7/19



Chairman

29.04.2019

Counsel for the appellant present.

Learned counsel for the appellant argued that the judgment by this Tribunal was passed on 08.11.2017 in Service Appeal No. 09/2017, wherein, the denovo enquiry against the appellant, if conducted, was to be concluded within a period of six months. On the other hand, the said proceedings were concluded by way of impugned order dated 31.07.2018. In the said manner, the period of six months was clearly overlooked by the respondents. Further argued that no show cause notice was served upon the appellant and till the passing of impugned order dated 31.07.2018 the earlier order of dismissal of appellant from service was converted into minor penalty of withholding of two consecutive annual increments. In the said manner, it is apparent on the face of impugned order that the penalty against the appellant, already set aside by this Tribunal by deciding Appeal No. 9/2017, was kept alive by the respondents till the passing of impugned order. Besides, the appellant was practically reinstated into service after the order dated 31.07.2018 which was not the spirit of judgment earlier passed by this Tribunal.

In view of the above, the appeal in hand is admitted for regular hearing. 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 27.06.2019 before S.B.





Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 226/2019


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19.2.2019	<p>The present appeal was received on 27.12.2018 which was returned to the counsel for the appellant for completion and resubmission within 15 days. Today i.e. on 19.02.2019 he resubmitted the same late by 38 days. The same may be entered in the institution register and put up to the Worthy Chairman for appropriate order please.</p> <p style="text-align: right;">  REGISTRAR - 19/2/19. </p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>28-3-19.</u></p> <p style="text-align: right;">  CHAIRMAN </p>
2	28.03.2019	<p>Lawyers community is on strike therefore the case is adjourned. To come up for preliminary hearing on 29.04.2019 before S.B.</p> <p style="text-align: right;">  Member </p>

The appeal of Mr. Muhammad Ashraf Khan SST GHS Hibbak Sehraz Khan District Bannu received today i.e. on 27.12.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- Annexures of the appeal may be flagged.
- 3- Copy of order dated 07.07.2013 mentioned in para-6 of the memo of appeal is not attached with the appeal which may be placed on it.
- 4- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2467 /S.T,

Dt. 28-12-2018.


REGISTRAR 28/12/18.
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Yasir Saleem Adv. Pesh.

Sir,

Due to some personal issues, the appeal could not be resubmitted in time.
Kindly condone the delay.
Re Submitted after completion

Please Refer in the
Court



1875

146

Dr. J. H. ...
...
...

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. 226/2018

Muhammad Ashraf Khan SST (Science) GHS Hibbak
Sehraz Khan District Bannu.

(Appellant)

VERSUS

Govt of Khyber Paktunkhwa through Chief Secretary, Khyber
Pakhtunkhwa, Peshawar and others.

(Respondents)

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4	Copy of letter dated 28.07.2015	E	14
5	Copy of show cause notice dated 01.04.2016 and reply dated 21.04.2016	F & G	15-16
6	Copy of Order dated 26.09.2016	H	17
7	Copies of departmental appeal dated 10.10.2016, rejection order dated 14.12.2016 and order and judgment dated 08.11.2017	I, J and K	16-29
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Appellant

Through

YASIR SALEEM

&

JAWAD UR REHMAN

JAWAD UR REHMAN
Advocates, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1809

Dated 27-12-2018

Appeal No. 226 /2018

Muhammad Ashraf Khan SST (Science) GHS Hibbak
Sehraz Khan District Bannu.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Secretary Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated: 31.07.2018, whereby though the major penalty of dismissal from service converted into the minor penalty of withholding of two consecutive annual increment however the intervening period has been treated as leave without pay besides this recovery of an amount of Rupees 160,000/- has also been ordered against the undersigned against which his departmental Appeal has not been responded despite the lapse of statutory period of 90 days.

Filed to-day

Registrar

27/12/18

Prayer in Appeal: -

**Re-submitted to -day
and filed.**

Registrar

19/12/18

On acceptance of this appeal impugned order dated 31/07/2018, may please be set-aside to the extent of minor penalty and treating the intervening period as leave without pay and increments may be restored to the undersigned and also may be allowed with full back wages and benefits of service of his intervening period.

Respectfully Submitted:

1. That in the year 2007/2008, the Khyber Pakhtunkhwa (then NWFP) Public Service Commission advertised the posts of SSTs. The appellant having the qualification of MSc Environmental Sciences, also applied for the post of SST (Science).
2. That in the meanwhile the appellant also applied for a project post of Assistant Director in the Environmental Protection Agency DI Khan. Accordingly after remaining successful in the selection process, the appellant was appointed as Assistant Director on 05.12.2009. The appellant joined service and started performing his duties. It is pertinent to mention here that the appellant also took admission in M.Phil at Gomal University D.I Khan.
3. That in the year 2011, the selection process for the post of SST was also completed by the Public Service Commission and after recommendation for appointment against the post of SST, accordingly the appellant was appointed as SST vide Notification dated 30.12.2011, and was posted at GHS Showaki District Kohat. He duly submitted his arrival report and started performing his duties.
4. That Ever since of his appointment the appellant had performed his duties as assigned with zeal and devotion and have never given any chance of complaint whatsoever regarding his performance.
5. That since the M.Phil Studies of the appellant at Gomal University were in progress, therefore he applied for Extra Ordinary Leave without Pay so that he could complete his Studies. The appellant was given verbal assurance that his leave would be sanctioned; therefore the appellant joined his studies at Gomal University DI Khan. Since his previous posting as Assistant Director in EPA project was also at DI Khan and the project was also in its ending days, therefore the appellant being unaware of the rules, continued his previous service along with

his Studies. *(Copy of leave application dated 19.04.2012 is attached as annexure A)*

6. That later the appellant was preceded departmentally by the Education Department and was served with a charge sheet and statement of allegations for absence from duty, the appellant duly replied the same and explained his position against the charges. After conducting inquiry, the appellant was exonerated from the charges and the period w.e.f 20.04.2012 to 06.03.2013, was treated as leave without pay vide order dated 27.09.2013. Thereafter the appellant regularly performed his duties as SST. *(Copies of charge sheet/ statement of allegations, reply dated 07.07.2013 and order dated 27.09.2013 are attached as annexure B, C & D)*
7. That in the year 2015, the appellant was again appointed as Assistant Director, however, at the time of joining the post, a complaint was filed by some ill wishers of the appellant regarding dual service, the appellant later refused to join the said post and preferred to continue his service as SST in the Education Department.
8. That later an inquiry was conducted regarding verification of salary by the EPA, it is pertinent to mention here that the appellant was never served with any notice, charge sheet or show cause nor he was properly associated with the said inquiry. The EPA forwarded the inquiry/verification to the Honorable Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar vide its letter dated 28.07.2015. *(Copy of letter dated 28.07.2015 is attached as annexure E)*
9. That thereafter without serving upon the appellant any charge sheet or statement of allegations, the Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar, issued the appellant a direct Show Cause Notice dated 01.04.2016, wherein certain allegations were leveled against the him. The appellant duly replied the show cause notice and explained his position against the charges. *(Copy of show cause notice dated 01.04.2016 and reply dated 21.04.2016 are attached as annexure F & G)*
10. That without considering reply to the show cause notice, the appellant has been awarded the major punishment of Dismissal from service vide notification dated 26.09.2016. *(Copy of Order dated 26.09.2016 is attached as annexure H)*
11. That the appellant also submitted his departmental appeal dated 10.10.2016, however the same has also been rejected vide order

14.12.2016, communicated to the appellant on 26.12.2016 which constrained the appellant to file service appeal No. 09/2019 before this honorable service tribunal. The honorable tribunal accepted the appeal vide order and judgment dated 08.11.2017 and re instated the appellant, however the department was left at liberty to conduct de-novo inquiry within period of six months from the receipts of the judgment. *(Copies of departmental appeal dated 10.10.2016, rejection order dated 14.12.2016 and order and judgment dated 08.11.2017 are attached as Annexure I, J and K)*

12. That thereafter the appellant was re instated for the purpose of conducting de-novo inquiry. Charge sheet was served upon the appellant to whom the appellant replied and explained the factual position.
13. That after conducting partial inquiry, without serving any show cause notice, vide office order dated 31.07.2018 minor penalty of withholding of two consecutive annual increments has been imposed and the interviewing period has been treated as leave without pay. Beside this recovery of an amount of Rs. 160,000/- has also been ordered against the appellant. *(Copy of office order dated 31.07.2018 is attached as annexure L)*
14. That the appellant, being aggrieved, filed departmental appeal dated 28.08.2018, however the same has not been responded within the statutory period of 90 days. Hence the instant service appeal. *(Copy of the departmental appeal dated 28.08.2018 is attached as annexure M)*
15. That the orders impugned are illegal, unlawful, against the law and fact, hence liable to set-aside inters alia on the following term.

GROUND OF APPEAL

- A. That the appellant has not been treated in accordance with law hence his rights secured and guaranteed under the law are badly violated.
- B. That no procedure has been followed before his issuance of impugned order dated 31.07.2018. The appellant has never been served any show cause notice before imposing the

penalty, thus the impugned order is defective in the eyes of law.

- C. That the appellant has not been provided proper opportunity of personal hearing before awarding him the penalty hence he has been condemned unheard.
- D. That it is the fundamental right of every citizen to be treated in accordance with law without any discrimination.
- E. That the appellant have never been committed any act or omission which could be termed as misconduct, after releasing mistake the appellant join the education department and started performing his duties with zeal and devotion till his dismissal which is quiet evident from the certificates given to him by the principle GHS Hibbak Sherza Khan Bannu, so keeping in view the above facts by treating the interviewing period as leave without pay. I have not treated fairly and justly. *(Copy of certificates is attached as annexure N)*
- F. That the mistake was though bonafide, but after realizing it, the appellant even much prior to the initiation of the previous departmental proceedings, approached to the District Accounts Officer for re-imbusement of the salaries of 5 months and 12 days (1.02.2012 to 19.04.2012 and 07.04.2013 to 30.06.2013) deduction from June 2015, which clearly suggests that no malafide or ill intention was involved on the part of the appellant rather it was only a bonafide mistake committed due to ignorance of rules. Even after the impugned order the undersigned has deposited the remaining amount in government treasury. *(Copy of the receipt attached as annexure O)*
- G. That impugned order is unconstitutional as well because more than one penalty has been imposed against the appellant for one cause.
- H. That it is worth to mention here that during the period of 2013 till dismissal, keeping in view his performance the appellant has been awarded incentive of Rs. 50,000/- by the director elementary and secondary education Khyber Pakhtunkhwa Peshawar. *(Copy of incentive award is attached as annexure P)*

- I. That the appellant has at his credit a spotless service career, the penalty imposed upon him is harsh and liable to be set aside. Moreover the penalty so imposed upon him also does not commensurate with the guilt.

It is therefore most humbly prayed that On acceptance of this appeal impugned order dated 31.07.2018 may please be set aside to the extent of minor penalty and treating his interviewing period as leave without pay and increments may also be allowed with full back wages and benefits of service of interviewing period

[Signature]
Appellant

Through

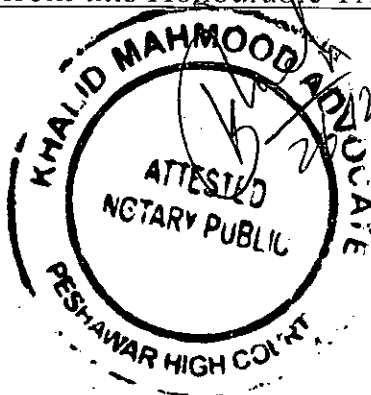
[Signature]
YASIR SALEEM

[Signature]
JAWAD UR REHMAN
Advocates, Peshawar

AFFIDAVIT

I, Muhammad Ashraf Khan SST (Science) GHS Hibbak Sehzaz Khan District Bannu, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.

[Signature]
Deponent



(7)

مختصر خط - EDO (Exs) انکریشن کرے گا -
بوساطت - ہیڈ ماسٹر صاحب GHS سترنگی (کوہاٹ)
صبا علی

موجودہ نہ گزارش ہے۔ کہ سائل کی تقریری آرڈر رفر Exs انکریشن مختصر خط
تیار اور فائل 4767-76 SETPSC AG مورخہ 30/12/2012 کے تحت سکول ہذا
میں بھیجی ہے۔ فزوں نے 01/02/12 کو سکول ہذا میں حورہ کے پاس
جو نہ سائل نے Pphil میں باقاعدہ طور پر داخلہ لیا تھا ہے
اور ابھی 12/4/2012 سے بیماری کلر میں باقاعدہ طور پر سیکھ رہی ہے
اور سائل سکول ہذا میں سکول ڈپٹی سرانجام دینے سے قاصر ہے۔
اس لیے آ - ماسن صاحبانی لڑکے بندہ کو مورخہ 12/4/2012 سے سکول
leave without pay کی منظوری عطا فرمائیں۔

میں گزارش ہوگی
حفظ ادب مورخہ 19/4/2012
ANOR (A)
19/4/12

الکائنات
مختصر خط SETSC سکول ہذا -

Enclt no 63 dt 19/4/2012
Recommended & Forwarded to the
EDO (Exs) Edn. Kohat for further action
Please

D.T.O.

Said Rehman
12
H.S. Sheer
(Kohat)

Signature

ANNEX B

(8)

5/7

CHARGE SHEET

I, Mr. Muhammad Rafiq Khattak Director Elementary and Secondary Education Khyber Peshawar, as competent authority, hereby charge you, Muhammad Ashraf Khan SST GHS Showeki Kohat, as follows:

That you, while posted as SST GHS Showeki Kohat committed to the following irregularities:-

- a. You took admission in M.Phil class at Gomal University D.I.Khan without prior permission of the competent authority.
- b. You have been absent from duty since 20-4-2012 and the students were badly been effected as per report of the Headmaster concerned dated 29-12-2012.
- c. You came ~~to~~ the school on 7-3-2013 after three notices issued to you (on your home address) by the Headmaster concerned and produced medical certificates that you met an accident and admitted in the Hospital on 11-2-2013.

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, as the case may be.

4. Your written defence, if any, should reach the inquiry officer within the 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.

(Competent authority)

Muhammad Ashraf Khan
SST GHS Showeki Kohat

Alleged

(9)

DISCIPLINARY ACTION

I, Mr. Muhammad Rafiq Khattak Director Elementary and Secondary Education Khyber Peshawar, as competent authority, am of the opinion that Muhammad Ashraf Khan SST GHS Showeki Kohat, 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

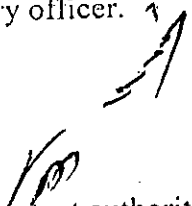
- i. He took admission in M.Phil class at Gomal University D.I.Khan without prior permission of the competent authority.
- ii. He has been absent from duty since 20-4-2012 and the students were badly been effected as per report of the Headmaster concerned dated 29-12-2012.
- iii. He came in the school on 7-3-2013 after three notices issued to him (on his home address) by the Headmaster concerned and produced medical certificates that he met an accident and admitted in the Hospital on 11-2-2013.

2. For the purpose of inquiry against the said accused with reference to the above allegations, the following officer is appointed as enquiry officer under rule 10 (1) (a) of the ibid rules:


- i. Mr. Moeen-ud Din
DEO (M) Charsadda

3. The inquiry officer shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record his 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.


(Competent authority)

Muhammad Ashraf Khan
SST GHS Showeki Kohat



(10)



ANNEX 'E'

Mr. Moeen-ud-Din
DEO (M) Chausada.

Subject: Reply to the Allegations

Reference to the letter of Director E&S Education
vide No. —/F.No 4155/vol-11/SST(M) dated Dushwar the
19/6/2013.

I, Muhammad Ashraf Khan SST GHS Showeki
Kohat submit the parawise reply to the
allegation framed against me.

- 1:- a: I have taken admission six (6) months
before my appointment I was already
enrolled and had completed one semester
ie. The process of M.Phil admission was
started in February 2011. I have submitted
fee on 04-6-2011 (Fee slips attached) Annex A
I was adjusted on 01/2/2012 (order attached
on Annex B). I performed duty upto 20/5/12
during this time I submitted application
for leave without pay on the direction
of Head Master (copy attached) on 19-4-12
Annex-C

PTO (contd)

Moeen

b: My leave application was duly recommended by the Head Master due to which I presumed that my application has been accepted. I appeared in second semester exam on 29/5/2012 upto 14/6/2012. After that there were summer vacations. After vacation I again joined my duty but the head Master did not allow me mark in the attendance register although I was regularly performing my duties. I performed my duties in September and October, I went for my final term exam in November 2012.

c: I came back home on 15/2/2013 after the meeting with an accident on 11/2/2013. I received two notices at once on 15/2/2013 but I could not move because of injuries. I came back to school on 07/3/2013 (Medical reports are attached on Annex 'D')

(Continue)

Atsena


2:- I was extremely puzzled, I knew nothing what to do? I had submitted huge amount in M.Phil, I had cleared GAT ~~subject~~ test. I need a job also, I am a father of two children, Therefore request for sympathetic considerations.

3:- I submitted this report based on facts.

4:- I submitted this report on 07/7/2013.

5:- I am ready for any kind of clarification, but I was facing embarrassing situation at that time.

6:- I declare that any kind of negligence from my side was due to my in-experience.

I solemnly declare that I will perform my duties with enthusiasm, devotion and dedication in future.

Dated: 07/7/2013

Ashraf

Ashraf 7/7/13.
Yours truly
Muhammad Ashraf Khan
SST, GHS Shewiki Khat

DIRECTORATE OF ELEMENTARY & SECY; EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR

NOTIFICATION

WHEREAS Muhammad Ashraf Khan SST (Science) GHS Showeki District Kohat was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, for the charges mentioned in the Charge Sheet & statement of allegations issued vide this office under Endorsement 2053-56 dated 19-06-2013.

2. AND WHERE AS, the competent authority has appointed Mr. Mozen-ud-Din DEO (M) Charsadda as enquiry officer to conduct formal enquiry against the accused teacher, for the charges leveled against him vide this office letter No. 2052 dated 19-06-2013.

3. AND WHERE AS, the enquiry officer after having examined the charges evidence on record has submitted the report vide letter No. 5192 dated 16-07-2013.

4. AND WHERE AS, the authority, after having considered the charge, evidence on the record, explanation of the accused SST, is of the view that the charges against him have not been proved.

5. NOW THEREFORE, in exercise of powers conferred by the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, Muhammad Ashraf Khan SST (Science) GHS Showeki District Kohat is hereby exonerated from the charges leveled against him and his absent period w.e.f. 20-04-2012 to 06-03-2013 is converted into extra ordinary leave without pay.

March - June

DIRECTOR

ELMENTARY & SECY EDUCATION
KHYBER PAKHTUNKHWA.

7299-7304
Endst No. _____ / F.No. 485/Val-II/SST (M) Complaint/Kohat/2013.

Dated Peshawar the 27/9/2013

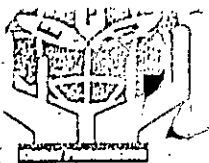
Copy of the above is forwarded to the:-

1. The District Education Officer (M) Kohat w/r to the letter No. 6470 dated 12-09-2013.
2. District Accounts Officer Kohat.
3. Headmaster GHS Showeki District Kohat.
4. SST concerned.
5. PA to Director (E&SE) !./Directorate.
6. Master File.

Attested.
Saied Rahman
Head Master
Govt. High School
Showeki (Kohat)

Deputy Director (Estab)
Elementary & Secy Education
Khyber Pakhtunkhwa, Peshawar

Mozen



No. EPA/001/L3wizy/K0/911

Date: 28-7-15

14

To,

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

Subject:- Varification of Salary.

It is to inform you that this office had a vacant post of Assistant Director under an ADP Project titled "Establishment of three Divisional Offices at Mardan, Kohat and Bannu" which was advertised in the National Dailies. 92Nos of applications were received. The Shortlisting meeting was held on 02-01-2015 and shortlisted 11 Nos applications. Then the Project Departmental Selection Committee meeting was held on 20-04-2015 under the Chairmanship of Special Secretary, Forestry, Environment & wildlife Department. Govt. of Khyber Pakhtunkhwa wherein Mr. Muhammad Ashraf Khan S/o Mr. Sher Ali Khan was recommended for appointment as Assistant Director Bannu and his appointment order was issued by the Administrative Department.

But before submitting arrival report for duty, this office received a complaint from Mr. Deedar Ahmed S/o Mr. Muhammad Ikram on 15-06-2015 that Mr. Muhammad Ashraf Khan was serving in Education Department Khyber Pakhtunkhwa as SET. Mr. Muhammad Ashraf Khan submitted his arrival report on 18-06-2015 which was not accepted in light of the above mentioned complaint and he was directed through this office letter No EPA/3DO/inquiry/583 dated 07-07-2015 to clarify his position. In response Mr. Muhammad Ashraf Khan submitted a written apology on 02-07-2015 that he can not join the subject post due to his domestic problem (Copy enclosed). In this regard a fact finding inquiry on the complaint of Mr. Deedar Ahmed is also being conducted at our own level.

Further the above mentioned officer was also appointed as Assistant Director (Regional Office D.I. Khan in the ADP Scheme Namely "Establishment of Three Regional Offices of Environmental Protection Agency (D.I. Khan, Mingora and Abbottabad) w.e.f. 05/012/2009 to 30/06/2013. During this period he performed the duty regularly and found no absent from the duty and this office was fully satisfied from the performance of the said officer.

During the above mentioned period he has got the salary from the Regional Office D.I. Khan regularly wherein as Muhammad Ashraf Khan has produced a letter of your office vide letter No. 7299-7304/F No.485/Vol-II/SST (M) complain/ Kohat/2013 dated: 27/02/2013 wherein he has got extra ordinary leave (without-pay) from your office where as the complainant produced the salary slip of Mr. Muhammad Ashraf Khan wherein he has drawn his double salary from your office from 05-12-2009 to 30-06-2013 (copy enclosed).

It is therefore requested to verify either the above mentioned officer has drawn the salary at once or otherwise. An early action in the matter will be highly appreciated please.

Handwritten notes: 27/7/2015, 27/7/15, 30/7/15

Mr. Sanoullah Khan
Deputy Director/Enquiry Officer

Mr. Sanoullah Khan
Deputy Director/Enquiry Officer

295
31/7

3rd Floor, Old Courts Building, Khyber Road, Peshawar Cantt.
Tel: 92(91) 9210263-9210148, Fax: 92 (91) 9210280

15 ANNEX 'F'

SHOW CAUSE NOTICE.

I Muhammad Rafiq Khattak Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar, as competent authority under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve, you Muhammad Ashraf Khan SST GHS, Hibbak Sheraz Khan Surani District Bannu as follows:-

- i. That you have been appointed as SST (Science) through public service commission Khyber Pakhtunkhwa, Peshawar and your services has been placed at the disposal of DEO (M) Kohat for further posting against vacant post of SST (Science) vide Notification No. 4767-76 dated 30-12-2011. Furthermore the DEO (M) Kohat posted you at GHS, Showaki District Kohat vide No.1545-49 dated 17-02-2012.
- ii. That prior to 17-02-2012 you have also been appointed as Assistant Director and posted at Regional Office of Environmental Protection Agency DIKhan on 2009, and you have been served as Assistant Director at Environment Protection Agency since 05-12-2009 to 30-06-2013. During the period w.e.f. 17-02-2012 to 30-06-2013 you have drawn double salaries from Government exchequer.
- iii. That on the eve of your appointment as SST (Science) at GHS, Showaki District Kohat dated 17-02-2012 you have neither produced relieving certificate from Environment Department nor resignation as per rules/policy.
- iv. That you have been drawn regular salary from Environmental since 05-12-2009 to 30-06-2013 meaning that you have neither taken over charge in E&SE Department as SST (Science) nor served in Education Department since 17-02-2012 to 30-06-2013. *admittedly L.W.P E.O.L*
- v. I am satisfied that you are guilty of misconduct and irregularities as specified in rule 3 of the said rules. Thus you have rendered yourself liable to be proceeded against under the said rules.

2. Therefore, in exercise of the powers conferred by the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011, I in the capacity of competent authority, is hereby dispense with the conduct of a formal enquiry and serve you with the instant show cause notice with the direction to submit your defense in writing within 7 (seven) days of the receipt of this Notice and I have tentatively decided, as to why one of the penalty specified in rules-4 of the said rules should not be imposed upon you and also intimate whether you desire to be heard in person.

3. In case you failed to submit your reply within the stipulated period, it will be presumed that you have no defense to offer and ex- parte decision will be taken against you.

Competent authority *21/1/2012*

Muhammad Ashraf Khan SST
GHS, Hibbak Sehras Khan District Bannu.

Ashraf

To,

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

Subject: REPLY OF SHOW CAUSE NOTICE

Reference to your letter No. 1062/F.No 490/Vol-01/SST (M) dated 06/04/2016

It is humbly stated that all the allegation framed against me are correct, I do confess the blunder, I have committed. But I have already appeared before the enquiry officer, the same allegation were framed vide NO. 4933 dated 28/6/2013 attached on Annex-A. Reply of that allegation attached on Annex-B.

After detailed enquiry by Mr. Moin-Ud-Din DEO (M) Charsada on the basis of that enquiry, I was issued orders in which my absence period was marked as "leave without pay" due to my M.Phil continued from Gomal University D.I Khan. I was already enrolled in M.Phil prior to my job. Decision of your good self is attached herewith as Annex-C.

M.Phil DMC is also attached on Annex-D.

After that enquiry, I had requested the district Accounts Officer for reimbursement of the salary I had draw from both departments.

I had drawn salary of 5 months and 12 days from education department amounting Rs. 130000. While I had drawn Rs. 270000 from EPA.

Now the accounts office have seen deducting Rs. 270000/- from me to education department. Statement of Accounts Office is attached on Annex-E.

Respected Sir,

Presently I am working as a SST (Science) at GHS Hibbak Sherza Khan and working devotedly up to the level of entire satisfaction of my superiors principal certificate attached on Annex-F.

I solemnly undue like that I will never do any minor mistake during of entire service and life with steamed regards.

You Obediently,



Muhammad Ashraf Khan
SST (Science)
GHS Hibbak Sherza Khan
Bannu

*Received
Reply of show
cause notice on
22/4/2016.*

*Amy
3
S/C*

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHWA, PESHAWAR

Notification

1. WHEREAS, the Deputy Director (Technical)/Enquiry Officer Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department has been conducted an enquiry against Muhammad Ashraf Khan SST GHS, Hibbat Sherza Khan District Bannu for the charges of performing of dual duty i.e. as Assistant Director at Regional Office of Environmental Protection Agency DIKhan as well as Secondary School Teacher (SST) Science BPS-16 regular at Elementary & Secondary Education Department during February, 2012 to 30-6-2013.
2. AND WHEREAS, Deputy Director (Technical)/Enquiry Officer Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department has sent the report to E&SE Department vide letter No. SO (Estb) PE&WD/IV-6/2K15 dated 22-02-2016.
3. AND WHEREAS, the Administrative Department has sent the enquiry report against Muhammad Ashraf Khan SST at Govt. High School, Hibak Sherza Khan District Bannu vide letter No. SO (S/M) E&SED/401/2018/M.Ashraf Khan SST dated 04-04-2016.
4. AND WHEREAS, the Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar has served a show cause notice upon the said SST through District Education Officer (Male) Bannu vide letter No. 1052 dated 06-04-2016.
5. AND WHEREAS, Muhammad Ashraf Khan SST at Govt. High School, Hibak Sherza Khan District Bannu has sent the reply of show cause notice through District Education Officer (M) Bannu vide letter No. 2559-60 dated 29-04-2016.
6. AND WHEREAS, the competent authority has called Muhammad Ashraf Khan SST GHS, Hibak Sherza Khan Bannu for personal hearing vide letter No. 4507 dated 19-05-2016,
7. AND WHEREAS, the competent authority having considered the enquiry report/evidence on record and given the opportunity of personal hearing to the accused SST is of the view that the charges leveled upon the said SST have been proved.
8. NOW THEREFORE, in exercise of powers conferred under the Government of Khyber Pakhtunkhwa, Government Servants (E&D) Rules, 2011, the major penalty of "Dismissal from service" is hereby imposed upon him with immediate effect.

DIRECTOR

Endst: No. WAS-SS /F.No.490/Vol-01/SST (M) Complaint/Kohat.

Dated Peshawar the 26.09 2016.

Copy of the above is forwarded for information & n/action to the:-

1. District Education Officer (M) Bannu.
2. District Accounts Officer Bannu.
3. Principal GHS, Hibak Sherza Khan District Bannu.
4. SST concerned.
5. PS to Secretary to Govt. of Khyber Pakhtunkhwa, E&SE Department w/r to the letter No. SO (S/M) E&SED/4-1/2016/M.Ashraf Khan SST dated 04-04-2016
6. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar
7. Master File.

Deputy Director (Estab)
 Elementary & Secondary Education
 Khyber Pakhtunkhwa

 27/9/16

Director

1

To

The Worthy Secretary,
Elementary and Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.

Subject: *Departmental Appeal against the Notification dated 26.09.2016, whereby the undersigned has been awarded the major punishment of dismissal from service.*

Prayer in Departmental Appeal.

On acceptance of this Departmental Appeal the Notification dated 26.09.2016, may kindly be set aside and the undersigned may be reinstated into service with all back benefits.

Respected Sir,

I very humbly submit the following few lines for your kind and sympathetic consideration:

1. That in the year 2007/2008, the Khyber Pakhtunkhwa (then NWFP) Public Service Commission advertised the posts of SSTs. I having the qualification of MSc Environmental Sciences, also applied for the post of SST (Science).
2. That in the meanwhile I also applied for a project post of Assistant Director in the Environmental Protection Agency DI Khan. Accordingly after remaining successful in the selection process, I was appointed as Assistant Director on 05.12.2009. I joined my service and started performing my duties. It is pertinent to mention here that I also took admission in M.Phil at Gomal University D.I Khan.
3. That in the year 2011, the selection process for the post of SST was also completed by the Public Service Commission and after recommendation for appointment against the post of SST, accordingly I was appointed as SST vide Notification dated 30.12.2011, and was posted at GHS Showaki District Kohat. I duly submitted my arrival report and started performing my duties. Ever since my appointment I had performed my duties as assigned with zeal and devotion and have never given any chance of complaint whatsoever regarding my performance.

517
10/4/2016

Arif

4. That since my M.Phil Studies at Gomal University were in progress, therefore I applied for Extra Ordinary Leave without Pay so that I could complete my Studies. I was given verbal assurance that my leave may be sanctioned, therefore I joined my studies at Gomal University DI Khan. Since my previous posting as Assistant Director in EPA project was also at DI Khan and the project was also in its ending days, therefore I being unaware of the rules, continued my previous service along with my Studies.
5. That later I was proceeded departmentally by the Education Department and was served with a charge sheet and statement of allegations for absence from duty, I duly replied the same and explained my position against the charges. After conducting inquiry, I was exonerated from the charges and the period w.e.f 20.04.2012 to 06.03.2013, was treated as leave without pay. That thereafter I regularly performed my duties as SST.
6. That in the year 2015, I was again appointed as Assistant Director, however, at the time of joining the post, a complaint was filed by some ill wishers of the undersigned regarding dual service, I later refused to join the said post and preferred to continue my service as SST in the Education Department.
7. That later an inquiry was conducted regarding verification of salary by the EPA, it is pertinent to mention here that I was never served with any notice, charge sheet or show cause nor I was properly associated with the said inquiry. The EPA forwarded the inquiry/verification to the Honorable Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar vide its letter dated 28.07.2015.
8. That thereafter without serving upon me any charge sheet or statement of allegations, the Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar, issued me a direct Show Cause Notice dated 01.04.2016, wherein certain allegations were leveled against me. I duly replied the show cause notice and explained my position against the charges.
9. That without considering reply to the show cause notice, I have been awarded the major punishment of Dismissal from service vide notification dated 26.09.2016.
10. That the impugned notification of dismissal from service is illegal unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:



GROUND OF DEPARTMENTAL APPEAL.

- A. That I have not been treated in accordance with law hence my rights secured and guaranteed under the law are badly violated.
- B. That no procedure has been followed before my dismissal from service. I have never been served any charge sheet and statement of allegations nor any regular inquiry has been conducted thus the impugned order is defective in the eyes of law.
- C. That I have not been provided proper opportunity of personal hearing before awarding me the penalty hence I have been condemned unheard.
- D. That no charge sheet or statement of allegations as prescribed under the law and rules has been served upon me hence I have not been provided fair opportunity to defend my self against the charges leveled. The impugned order is thus passed in violation of the principles of natural justice.
- E. That the impugned Order has been passed against the appellant without holding a regular inquiry which is violative to the principle / law and dictum declared by the august Supreme Court of Pakistan in its various judgments reported as:-

- i. 2002 - SCMR - 57
- ii. 2001 - SCMR - 1566
- iii. 2000 - SCMR - 1321
- iv. 1994 - PLC (CS) - 1717 (FST)
- v. 1993 - SCMR - 603

As such the impugned Order was passed in violation of the principle / law and dictum laid down by the august Supreme Court of Pakistan.

- F. That it is the fundamental right of every citizen to be treated in accordance with law without any discrimination, however I have not been treated in accordance with law and have been discriminated throughout.
- G. That I have never committed any act or omission which could be termed as misconduct, on a bonafide mistake such harsh penalty of dismissal from service could not be imposed.

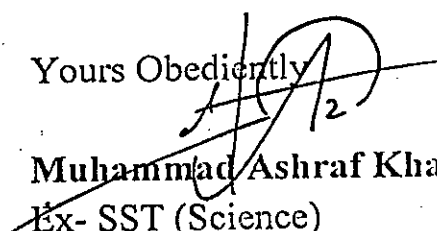
Alyan

(24)

- H. That the mistake was though bonafide, but after realizing it, I even much prior to the initiation of the instant departmental proceedings, approached myself to the District Accounts Officer for re-imburement of the salaries of 5 months and 12 days (1.02.2012 to 19.04.2012 and 07.04.2013 to 30.06.2013) deduction from June 2015, which clearly suggests that no malafide or ill intention was involved on my part rather it was only a bonafide mistake committed due to ignorance of rules. This fact was duly brought before the authority in my reply to the show cause notice, however this aspect of the case has completely been ignored while taking such harsh action against me.
- I. That it has consistently been held by the superior courts that major punishment could not be imposed without holding regular inquiry.
- J. That in the instant case dispensing with the regular inquiry and adopting shorter procedure of show cause notice is uncalled for and has greatly prejudiced the case of the undersigned.
- K. That I have at my credit a spotless service career, the penalty imposed upon me is harsh and liable to be set aside. Moreover the penalty so imposed upon me also does not commensurate with the guilt.
- L. That I have at my credit the qualification of MSc Environmental Sciences and have also completed my M.Phil, thus well qualified, gained sufficient experience and wants to serve for my department, albeit I have been dismissed from service.
- M. That I am jobless since my illegal Dismissal from Service.

It is, therefore, humbly prayed that on acceptance of this Departmental Appeal the impugned notification dated 26.09.2016, may kindly be set aside and the undersigned may be reinstated into service with all back benefits.

Yours Obediently


Muhammad Ashraf Khan
Ex- SST (Science)
GHS Hibbak Sehzaz Khan
District Bannu.

Dated: 10 /10/2016





(22) ANNEX J

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
No. SO(PE)E&SED/1-2/Bannu/2015
Dated Peshawar the 14-12-2016

To

Mr. Muhammad Ashraf Khan,
Ex-SST (Sc.), GHS Hibbak Sehraz Khan,
District Bannu

[Handwritten signature]
16/12

Subject: - **DEPARTMENTAL APPEAL AGAINST THE NOTIFICATION DATED 26.09.2016, WHEREBY THE UNDERSIGNED HAS BEEN AWARDED THE MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE**

I am directed to refer to your appeal on the subject noted above and to state that you have dismissed from service after observing all codal formalities, while you have been found guilty of violation of law/rules hence your appeal is hereby regretted.

[Handwritten signature]
14/12/16
(NOOR ALAM KHAN WAZIR)
SECTION OFFICER (PRIMARY)

Encls: of even number & date:

Copy to the:

1. Director Elementary & Secondary Education, Peshawar.
2. District Education Officer (Female), District Bannu.

[Handwritten signature]
14/12/16
SECTION OFFICER (PRIMARY)

[Handwritten signature]

93

Advised K

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 2708 /ST

Dated 19 /12/2017

To

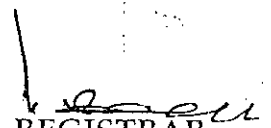
The Director Elementary and Secondary Education,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:

JUDGEMENT/ORDER IN APPEAL NO. 09/17, Mr. Dr. MUHAMMAD
ASHRAF KHAN.

I am directed to forward herewith a certified copy of Judgment/order
08/11/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

Received to day
Jund
22/12/17



Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL		
<p>Appeal No. 09/2017</p> <p>Date of Institution 05.01.2017 Date of Decision 08.11.2017</p>		
<p>Muhammad Ashraf Khan Ex-SST (Science) GHS Hibbak Sehras Khan District Bannu.</p> <p style="text-align: right;">Appellant</p>		
VERSUS		
<p>The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and 2 others.</p> <p style="text-align: right;">Respondents</p>		
<p>Mr. Yasir Saleem Advocate --- For appellant.</p>		
<p>Mr. Zia Ullah, Deputy District Attorney --- For respondents.</p>		
<p>MR. GUL ZEB KHAN --- MEMBER MR. MUHAMMAD AMIN KHAN KUNDI --- MEMBER</p>		
<p>08.11.2017</p> <p>ATTESTED</p> <p><i>[Signature]</i></p> <p>Khy. Service Tribunal, Peshawar</p>	<p>JUDGMENT</p>	
<p><u>GUL ZEB KHAN, MEMBER:</u> Learned counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for the respondents present.</p>		
<p>2. Appellant Falak Naz has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the office</p>		



[Handwritten signature]

order dated 26.09.2016 under which the appellant has been awarded the major punishment of dismissal from service. Appellant preferred the departmental appeal against the impugned order on 10.10.2016 which has been rejected on 14.12.2016. Appellant has filed instant service appeal on 05.01.2017.

3. Learned counsel for the appellant stated that in the first instance, the appellant applied in the year 2007/2008 to the Provincial Public Service Commission for the post of SST (Science) on the basis of acquiring M.Sc Environmental Science for which the selection was in process. That in the meanwhile appellant applied for a project post of Assistant Director in the Environmental Protection Agency D.I.Khan. That the appellant was first appointed by EPA as Assistant Director which he joined on 05.12.2009 accordingly. That historically the process of selection by the Public Service Commission is always slow and was completed in the instant case by issuance of notification dated 30.12.2011 against which the appellant took over charge on 01.02.2012. That in the meanwhile the appellant also got admission in M.Phil Studies at Gomal University D.I.Khan for which he applied for Extra Ordinary Leave without Pay on 19.04.2012 for the period from 12.04.2012 to 30.04.2013 so that he could complete his M.Phil Studies. That the appellant was given verbal assurance that his leave would be sanctioned in due course, therefore the appellant joined his studies at Gomal University D.I.Khan. Further argued that the appellant was proceeded departmentally by the Education

ATTESTED

K. S. Shwa
Secretary, Peshawar

(Signature)

26

Department on 02.07.2013 and was served with a charge sheet and statement of allegations for absence from duty. That the appellant duly replied the same on 07.07.2013 and explained his position against the charges. That the competent authority was kind enough to exonerate him and convert the absence period from 20.04.2012 to 06.03.2013 as extra ordinary leave without pay vide notification dated 27.09.2013. That later another inquiry was conducted by the Education Department on 01.04.2016 regarding verification of dual service and salary by EPA for the period from 17.02.2012 to 30.06.2013, but the appellant was never served with any charge sheet or statement of allegation nor he was properly associated with the said inquiry. That he was also not provided any opportunity of personal hearing or self-defence and thus it was an irregular enquiry due to which the impugned order is defective in the eyes of law. That the show cause notice was issued directly, with no proper/regular enquiry or any reason for dispensing regular inquiry which is violative of the principles of natural justice and law/rules on the subject and particularly the verdicts of the august Supreme Court as contained in 2002-SCMR Page-57, 2001-SCMR Page-1566, 2000-SCMR, 1321,1994 PLC(C.S) Page 1717. That on receipt of the impugned letter order dated 26.09.2016, regarding dismissal of the appellant from service the appellant submitted departmental appeal on 10.10.2016 which was rejected on 14.12.2016. That coming to know that dual service is against the government rules and realizing the mistake, the appellant himself approached the District Accounts

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K. J. ...
 Secretary, ...
 Peshawar

Alleged

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Office for return of the double salary of 5 months and 12 days (i.e. 01.02.2012 to 19.04.2012 and 07.04.2013 to 30.06.2013). The learned counsel also relied on 2002 SCMR 57 titled RASHID MEHMOOD---Appellant Versus Additional Inspector General of Police and 2 others---Respondents, that the penalty imposed upon the appellant is very harsh and liable to be set aside.

4. On the other side the learned Deputy District Attorney argued that the appellant has been served with formal show cause notice dated 01.04.2016 wherein the charge has been mentioned and on the basis of which the appellant has been awarded major penalty of dismissal from service. Further argued that the appellant has been found guilty of misconduct & willful concealment of facts regarding his dual service as project employee of EPA D.I.Khan & a regular employee of E&SE Department. Learned Deputy District Attorney argued that the present appeal may kindly be dismissed with cost in favor of the Respondent Department.

5. We have heard the learned counsel for the appellant and learned Deputy District Attorney for the respondents and have gone through the record available on file.

6. Perusal of the record reveals that the appellant was serving in Education Department as SST (Science). The record further reveals that during service the competent authority has issued a show-cause notice to the appellant on 01.04.2016 on the allegation of having drawn double salaries from Government exchequer during the period

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[Signature]

(28)

with effect from 17.02.2012 to 30.06.2013 for being posted in Education Department as well as Environmental Protection Agency and non-producing of relieving certificate from Environmental Department. The record further reveals that neither any charge sheet, statement of allegation was served upon him nor proper inquiry was conducted and ultimately the appellant was imposed major penalty and was dismissed from service on the basis of show-cause notice. It is also on the record that the appellant had also started/joined study of M. Phil in the Gomal University therefore, he had also applied for extra-ordinary leave without pay so that he could complete his study and ultimately the period with effect from 20.04.12 to 06.3.2013 was also treated as leave without pay vide order dated 27.09.2013 by the competent authority. It is also well settled law that in case of imposing a major penalty the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defence and personal hearing was to be provided to the civil servant proceeded against, otherwise the civil servant would be condemned unheard, but in the present case the appellant was dismissed from service by the competent authority without framing of charge sheet, serving statement of allegation upon the appellant conducting proper regular inquiry, opportunity of hearing and defence therefore, the impugned order of dismissal of the appellant is illegal and liable to be set-aside. In this regard reference is made to 2009 PLC (C.S) 19 [Supreme Court of Pakistan] wherein it was held that the provisions of Removal from service (Special Powers) Ordinance (XVII

ATTESTED

[Signature]
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

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2000)---

---S. 5---Misconduct---Dismissal from service--- Non-holding of departmental inquiry---Violation of principles of natural justice---Effect---Held, in case of imposing a major-penalty, the principles of natural justice required that a regular enquiry was to be conducted in the matter and opportunity of defence and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, ^{resulting in} ~~regulating~~ in manifest injustice.

7. In the light of the above discussion we accept the present appeal set-aside the impugned order and reinstate the appellant in service. However, the department is at liberty to conduct a de-novo inquiry with a period of six months from the receipt of this judgment in the mode and manner prescribed by law. The issue of back benefits of intervening period will be decided subject to the outcome of the de-novo inquiry proceedings. Parties are left to bear their own costs. File be consigned the record room.

Allesan

Certified true copy
 Punjab
 Service Tribunal
 Ferozpur

Announced
 08-11-2017

Sh. Gurbach Khan
 Member

Sh. M. Amin Khan Kund
 Member

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHAWA PESHAWAR**

NOTIFICATION.

30

ANNEX L

ISS: 02/18

1. WHEREAS, consequent upon finalization of disciplinary proceedings under Government of Khyber Pakhtunkhwa, Government Servants E&D Rules-201, major penalty of "Dismissal from Service" was imposed upon Mr. Muhammad Ashraf Ex-SST GHS, Hibbak Sherza Khan, District Bannu vide this office Notification issued under Endst: No. 4452-55 dated 26-09-2016 on charge of "dual job/service" in E&SE Department as well as in Environmental Protection Agency DIK.
2. AND WHEREAS, the aggrieved Ex-SST lodged a departmental appeal dated 10-10-2016 against the aforesaid major penalty. His said departmental appeal was rejected vide order dated 14-12-2016 communicated to the appellants on 26-12-2016
3. AND WHEREAS, in the wake of rejection of departmental appeal referred to above, the aggrieved Teacher (Mr. Muhammad Ashraf Ex-SST) filed a Service Appeal No. 09/2017 before the Khyber Pakhtunkhwa Service Tribunal, Peshawar against this office Notification dated 26-09-2016.
4. AND WHEREAS, the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar while deciding the Service Appeal under reference vide its Judgment dated 08-11-2017 decided that:-
"We accept the present appeal, set-aside the impugned order and reinstate the appellant in service. However, the department is at liberty to conduct a de-novo inquiry within a period of six months from the receipt of this judgment in the mode and manner prescribed by law. The issue of back benefits of intervening period will be decided subject to the outcome of the de-novo inquiry proceedings"
5. AND WHEREAS, in order to comply with the Judgment of Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar cited above, the major penalty (dismissal from service) order dated 26-09-2016 in respect of Mr. Muhammad Ashraf Ex-SST GHS, Hibbak Sherza Khan, District Bannu (appellant) was "withdrawn" and the appellant concerned was reinstated in service vide this office Notification issued under Endst: No. 5033 dated 19-01-2018 for the purpose of "de-novo inquiry"
6. AND WHEREAS, Mr. Muhammad Roothullah Principal, GHS Latamber, District Karak was appointed as Inquiry Officer to conduct de-novo inquiry in the service appeal of Mr. Muhammad Ashraf Ex-SST (appellant) in the light of Service Tribunal Peshawar judgment under reference.
7. AND WHEREAS, the concerned Inquiry Officer conducted the said de-novo inquiry and submitted report vide letter No. 8060 dated 05-06-2018 with the recommendations (on the basis of findings) that the appellant concerned may be "reinstated in service" subject to "withholding of 02 consecutive annual increments as minor penalty under E&D Rule-2011 besides recovery of remaining amount of Rs. 160000/- on account of double salaries"
8. AND WHEREAS, the respondents filed CPLA against the decision of Service Tribunal, Peshawar in the instant case. The Scrutiny Committee decided that the case in question is not "fit for CPLA" before the Supreme Court of Pakistan.
9. NOW THEREFORE, in pursuance of judgment of the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar, recommendations of the inquiry officer and decision of the Scrutiny Committee quoted above, this office Notification issued under Endst: No. 4452-55 dated 26-09-2016 is hereby "set aside". The major penalty of dismissal from service imposed upon Mr. Muhammad Ashraf Ex-SST GHS, Hibbak Sherza Khan, District Bannu vide order dated 26-09-2016 is hereby converted into "minor penalty of withholding of 02 consecutive annual increments". He is hereby "re-instated in service" subject to "recovery of remaining amount of Rs. 160,000/- on account of double salaries". The intervening period since his dismissal from service and reinstatement in service in respect of the appellant concerned may be treated as "leave without pay".

(DIRECTOR)

Endst: No. 7291-95 /F.No.65/SST (M) Complaint/Bannu Dated Peshawar the 31.7 2018

Copy for information and necessary action to:-

1. Registrant Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. District Education Office (Male) Bannu with the remark to keep a vigilant eye on the SST/appellant cornered and he should be kept under strict surveillance.
3. District Accounts Office Bannu
4. Mr. Muhammad Ashraf SST GHS, Hibbak Sherza Khan, District Bannu He is hereby warned to be more careful in future otherwise strict punitive action will be taken against him.
5. PA to Director E&SE Khyber Pakhtunkhwa Peshawar

Deputy Director (Estab)

Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

31/7/18

Attested

Me

To

The Secretary
Elementary and Secondary Education Khyber
Pakhtunkhwa, Peshawar

(3P)

ANNEXAM

Subject:- DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 31/07/2018, WHEREBY THROUGH THE MAJOR PENALTY OF DISIMISAL FROM SERVICE HAS BEEN CONVERTED INTO THE MINOR PENALTY OF WITHHOLDING OF TWO CONSECUTIVE ANNUAL INCREMENT HOWEVER THE INTERVENING PERIOD HAS BEEN TREATED AS LEAVE WITHOUT PAY. BESIDES THIS RECOVERY OF AN AMOUNT OF RS. 160,000/- HAS ALSO BEEN ORDERED AGAINST THE UNDERSIGNED.

through

Prayer in departmental appeal:

On acceptance of this appeal impugned order dated 31/07/2018 may please be set aside to the extent of minor penalty and treating the interviewing period as leave without pay and increments may be restored to the undersigned and also may be allowed with full back wages and benefits of service of my interviewing period.

Respected Sir,

1. That in the year 2007/2008, the Khyber Pakhtunkhwa (then NWFP) Public service Commission advertised the posts of SSTs. The undersigned having the qualification of MSc Environmental Sciences also applied for the post of SST (Science).
2. That in the meanwhile the appellant also applied for a project post of Assistant Director in the environmental protection agency D.I Khan.

Accepted
R

D. NO 2553
28/8/18

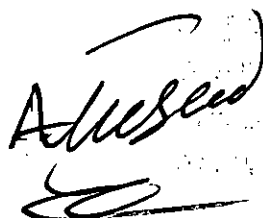
Accordingly after remaining successful in the selection process. I was appointed as Assistant Director on 05/12/2009. I joined the service and started performing my duties. It is pertinent to mention here that I had also taken admission in M.Phil at Gomal University D.I Khan.

3. That in the year 2011, the selection process for the post of SST was also completed by the public service commission and after recommendation for appointment against the post of SST vide notification dated 30/12/2011, and was posted at GHS showaki District Kohat. I duly submitted my arrival report and started performing my duties.

4. That ever since appointment I had performed my duties as assigned with real and devotion and had sever given any chance of compliant whatsoever regarding my performance.

5. That since my M.Phil studies at Gornal University were in progress, therefore I applied for extra Ordinary Leave without pay so that I could complete my studies. The undersigned was given verbal assurance that his leave would be sanctioned, therefore I joined my studies at Gonral University D.I Khan. Since my previous posting as Assistant Director in EPA project was also at D.I Khan and the project was also in its ending days, therefore I being unaware of the rules, continued my previous service alongwith my studies.

6. That later I was proceeded departmentally and was served with a charge sheet and statement of allegation for absence from the duty, I duty replied the same and explained my position against the charges. After conducting inquiry. I was exonerated from the charges and the period w.e.f. 2004.2012 to 06/03/2013 was converted into leave without pay, therefore the appellatnt reuglary performed his duties as SST.

Advised


7. That in the year 2015, I was again appointed as Assistant Director, however, at that time I refused to join the said post and preferred to continue my service as SST in the Education Department.
8. That later an inquiry was conducted regarding verification of salary by the EPA, it is pertinent to mention here that I was never served with any notice, charge sheet or show cause nor I was property associated with the said inquiry. The EPA forwarded the inquiry verification to the Hon'ble Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar vide its letter dated 28/07/2015.
9. That thereafter without serving upon me any charge sheet or statement of allegations, the Director issued a direct show cause notice dated 01/04/2016 wherein certain allegations were leveled against me. I duly replied the show cause notice and explained my position against the charges.
10. That without considering reply to the show cause notice. I was awarded the major punishment dismissal from service vide notification dated 26/09/2016.
11. That I submitted my departmental appeal dated 10/10/2016, however the same was rejected vide order 14/12/2016 which constrained the undersigned to file service appeal No. 09/2017 before the Khyber Pakhtunkhwa services tribunal, Peshawar. The Hon'ble Tribunal accepted the appeal vide order and judgment dated 08/11/2017 and re-instated the undersigned, however the department was left at liberty to conduct de-novo inquiry within period of six months from the receipts of the judgment. (Copy of judgment)

Attest


12. That thereafter the I was reinstated for the purpose of conducting de-novo inquiry. Charge sheet was served upon me to which I duly replied and explained the factual position.

13. That after conducting partial inquiry, without serving any show cause notice, vide office order dated 31/07/2018 minor penalty of withholding of two consecutive annual increments has been imposed and the interviewing period has been treated as leave without pay. Besides this recovery of an amount of Rs. 160,000/- has also been ordered against the undersigned.

14. That the impugned order is illegal unlawful, aignst the law and facts I pray for the acceptance of this appeal inter alia on the following grounds:

G R O U N D S O F A P P E A L :

A. That the undersigned has not been treated in accordance with law before this rights secured and guaranteed under the law are badly violated.

B. That no procedure has been followed before his issuance of impugned order dated 31/07/2018. I have not been served any show cause notice before imposing the penalty, thus the impugned order is defective in the eyes of law. P-7

C. That I have not been provided proper opportunity of personal hearing before awarding me the penalty hence I have been condemned unheard.

D. That it is the fundamental right of every citizen to be treated in accordance with law without any discrimination, however I have not been treated in accordance with law and has been discriminated throughout.

Attest

E. That I have never committed any actor or omission which could be termed as misconduct, after releasing mistake I joined the education department and started performing my duties with seal and devotion till my dismissal which is quite evident form the certificates given to me by the principal GHS Hibbak Sherza Khan Banm, so keeping in view the above facts by treating the interviewing period as leave without pay. I have not treated fairly and justly. **(Copy of certificate is attached herewith)** P# 8,9

F. That the mistake was though bonafide, but after realizing it, the appellant even much prior to the initiation of the previous departmental proceedings, approached to the District Accounts officer for re-imburement of the salaries of 5 months and 12 days (1.02.2012 to 19.04.2012 and 07.04.2013 to 30.6.2013 deduction from June 2015, which clearly suggest that no malafide or ill intention was involved on the part of appellant rather it was only a bonafide mistake committed due to ignorance of rules. Even after the impugned order the undersigned has deposited the remaining amount in Government treasury. **(Copy of the receipt is attached)** P# 10,11

G. That impugned order is unconstitutional as well because more than one penalty has been imposed against the undersigned for one cause.

H. That it is worth to mention here that during the period of 2013 till dismissal, keeping in view my performance the undersigned has been awarded incentive of Rs. 50,000/- by the Director elementary and secondary Education Khyber Pakhtunkhwa Peshawar. Copy attached P# 12,13,14

I. That the undersigned had at his credit spotless service career, the penalty imposed upon him is

Attesed


Harsh and liable to be set aside. Moreover the penalty so imposed upon him also does not commensurate with the guilt.

It is, therefore, most humbly prayed that on acceptance of this appeal impugned order dated 31.07.2018 may please be set aside to this extent of minor penalty and treating this intervening period as leave out pay and increments may be restrained to this undersigned and his may also be allowed with full back wages and benefits of service of my intervening period.

Your Obediently

A.A. 28/8/2018

Muhammad Ashraf Khan
BET (Science) GHS Hibtak Sherz Khan District Bannu.
Date: 28-August-2018

Attended

37
— Anwar Khan

OFFICE OF THE PRINCIPAL GHS HAIBAK SHERZA KHAN BANNU

TO WHOM IT MAY CONCERN

It is reported/certified on the basis of the previous record/service of Mr. **Mohammad Ashraf Khan** has worked/served in this school as an SST (Science) from 06/12/2013 to 26/09/2016. He had been teaching Chemistry and Biology to class 9th and 10th and English to class 9th.

During the stated period of his service he seemed to be regular, competent and assiduous person. He showed good results. He has amiable character and attractive personality and deserves to be in esteem and affection. He is highly qualified M.Phil (Chemistry) and M.ed. His way of teaching is extremely laudable.

To crown all these He was awarded incentive of Rs. 50,000/- by The Honorable Director Elementary and Secondary Education KPK in the year 2016.



PRINCIPAL NIAZ KHAN
G.H.S Hibak Sherza Khan
Surrani Bannu PRINCIPAL

38

Office of the Principal Government High School Hibbak Sherza Khan Surrani Bannu

No. 377

Dated. 29/5/18


TO WHOM IT MAY CONCERN

It is certified that Mr. Muhammad Ashraf Khan S/O Muhammad Sher Ali Khan has worked as an SST (science) in Government High School Hibbak Sherza Khan Surrani Bannu Education Department. During the period of his stay in this school w.e.f 06/12/2013 to 26/09/2016. During his stay he performed his duty regularly, he never showed any kind of negligence or laziness. He has been cooperative and obedient, the students progressed well, I never found any complaint against him from anyone.

He had been teaching Chemistry and Biology to class 9th and 10th and English to class 9th. He succeeded in achieving 100% results in these subjects from 2013 to 2016. He was awarded incentive of Rs 50,000/- by the Director Elementary and Secondary Education Khyber Pakhtunkhwa during the year 2016. He proved that he had high qualification M.Phil Chemistry and M.Ed, and has command on subject and teaching learning skills.

I am personally satisfied and wish him always be successful teacher like he has performed.

O.P.


Principal
Govt. High School Hibbak Sherza Khan
Surrani Bannu

PRINCIPAL
S Hibbak Sherza Khan
Surrani Bannu

29/5/18

Certificate / Recovery Details

Name: M. Ashraf Khan PNO = 706354

(39) ANNEX

To whom it may concern:

Period of Duty as AD in Environmental

Depth project

1-2-2012 to 19-4-2012 = 2 months 19 days

20-4-2012 to 06-03-2013 = E-O-L

7-04-2013 to 30-06-2013 = 2 months 23 days

5 months - 12 days.

Project Salary = 50,000/month

Total Recovery = Rs 70,000/-
($50000 \times 5 \frac{12}{30} =$)

Recovery:

($1 \frac{8}{15}$ to $30 \frac{09}{16}$) Rs = 16,000

Balance : Rs = 11,000/-

Ashraf
[Signature]

Tar Gul 6/10
District Accounts Officer
Bikaner
D A O [Signature]

[Signature]

6/10/16

(This portion to be transmitted to the Bank Agent to the Treasury Officer in support of the credit in his duty account.)

DISTRICT COMPTROLLER OF ACCOUNTS BANNU

To THE MANAGER, STATE BANK OF PAKISTAN

Dated the 20 of 08 2018

Received from the bearer the sum of Rs. 160,000/-
to be credited to Government account under the head C-02814
on account of ROP of salary

Signature and full official designation of the officer ordering the money to be paid in.

STATE BANK OF PAKISTAN

Dated the 20 of 08 200

Received from the bearer Muhammad Ashraf Khan
the sum of Rs. 160,000/- one Lakh Sixty thousand
to be credited to Government account under the head
on account of ROP of salary

RECEIVED CASH
GOVT. ACCOUNT
20/08/18

This portion to be returned to the payee receipted on the reverse.

Note: The Bank Agent is instructed not to receive money unless both portion the invoice are carefully and clearly filed in.

A&T 200.

(See reverse)

CHS HIBAK SHEER ZA ILHAN BANQUA SCHOOL

Pay Bill for the month of December 19 2016 19 2016 ۱۹ دسامبر ۲۰۱۶

Consolidated Amount of SSCRA 2016

ANNEX P
 (11)

No.	Name	Designation	Monthly Pay	Days for which drawn	Amount due	Special allowance	Total Amount	Provident fund deduction	Income Tax deduction	Net Amount Payable	Signature of Teacher	
					Rs.	P.	Rs.	P.	Rs.	P.		
1	0346	9287401				50000		
2	0346	9391065				50000		
3	0335	9797792				50000		
4	0336	9608463				50000		
5	0334	8805658				50000		
6	0314	9401410				50000		
7	0336	9310712				50000		
8	0331	8025290				50000		
							TOTAL =		450000/-			

paid in

8/12/16

Hibak Sheer Za Ilhan Banqua School

Attest

Domestic on: 9/12/2016
[Signature]

42

1

OFFICE OF THE PRINCIPAL GHS LATAMBER KARAK

No. 9060

Dated: 05/06/2018

To

The Director Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Subject: DENOVO INQUIRY IN RESPECT OF MR. ASHRAF KHAN EX- SST
BIO, CHEMISTRY GHS HIBBAK SHERZA KHAN, BANNU.

Memo:

In response to your office letter No.1995 dated 10.04.2018 regarding the subject mentioned inquiry and in view to reach to the ground realities and to find facts and findings, I called the accused Mr. Ashraf Khan to my office and served a questionnaire upon him. I also interrogated him about the allegation leveled against him in the dismissal order No 4452-55 dated 26.09.2016. He was also provided full opportunity to submit any documents, witness in sport of his Case. I also visited the directorate E & SE Khyber Pakhtunkhwa to collect the relevant record for the inquiry was to be conducted.

I personally visited GHS Hibbak Sherza Khan, Bannu to collect relevant record/information about the matter.

I personally heard the then Principal Saif Ullah Khan regarding the performance of accused Mr. Ashraf Khan and also received a written statement from him.

FINDING:

1. On the recommendation of Khyber Pakhtunkhwa public service commission Mr. Ashraf Khan was appointed as SST Science vide directorate E&SE Letter No. 4767-70 dated: 30.12.2011 and was placed on the disposal of EDO (M) Kohat for further adjustment. Afterwards he was posted at GHS Shawaiki Kohat vide EDO (M) Kohat notification No. 1545-49 dated: 17.02.2012 (Attached as annexure A) and took over charge on 01.02.2012.
2. Prior to taking over charge he was also enrolled in M.Phil at Gomal university DI Khan since 04.06.2011 (Attached as annexure B) and also had done his 1st semester annual Exam. Being a Govt. Servant, he submitted application through Proper channel to the EDO Kohat on 19.04.2012 for leave without pay for continuation of his M.Phil Classes but it was not accepted and he continued his

Arifullah

583
19-6-2018

M.phil classes without taking any sort of leave. So remained absent from the school.

3. On complaint of the Headmaster Concerned inquiry was held by the directorate of E & SE Khyber Pakhtunkhwa vide letter no.2052 dated: 19.06.2013. The inquiry was conducted by Moin uddin Khan the then EDO Charsadda (Attached as annexure C).
4. Afterwards, in light of the Inquiry, he was exonerated from the charges leveled against him and the absent period w.e.f 20.04.2012 to 06.03.2013 was converted to extra ordinary leave vide directorate E & SE Khyber Pakhtunkhwa notification no 1299-1304 dated: 29.09.2013 (Attached as annexure D).
5. Prior to the SST Post, he was also working as Assistant Director in Environmental Protection agency (Project Post) at the regional Office D.I. Khan since 05.12.2009 to 30.06.2013 and he has also drawn salaries for having dual posts w.e.f 01.02.2012 to 30.06.2013 excluding the period of extra ordinary leave w.e.f 20.04.2012 to 06.03.2013. (pay slip attached as Annexure E)
6. On eve of his appointment as SST at GHS Showiki Kohat, he could neither provide relieving certificate nor resignation from Environmental Protection agency Khyber Pakhtunkhwa, as he was bound to provide the same as per Rules & policy.
7. Afterwards he was posted to GHS Hibbak Sherza Khan, Bannu on 03.12.2013 vide the directorate E & SE order No. 360-65 dated: 03.12.2013. (attached as Annexure F) During his stay he performed his duty with zeal and spirits as per statement of the then Principal Saif Ullah Khan. He showed 100 % result in the subject taught to High Classes (Bio, Chemistry) during the session 2015-16 and also received Rs.50,000/- as incentive from E & SE Deptt Khyber Pakhtunkhwa on showing the best result in the subject taught during Annual Exam 2016 (Attached as annexure G) and the work of Mr. Ashraf Khan SST has also been appreciated by concerned principal. (Attached as annexure H)
8. He once again applied for the Assistant Director in Environmental Protection agency without taking NOC from the concerned authority and was appointed on the same Post at regional office Bannu vide Environmental Protection agency Letter No. 319-24 dated 09.06.2015. (Attached as annexure I).
9. Once again he tried to take leave without pay from E & SE Department to join the new post but the application for leave was not accepted and subsequently he

Ashraf
Khan


1. 2

- submitted written apology on 02.07.2015 to the Director Environmental Protection agency for not joining the post. (Attached as annexure J)
10. During the process of selection as Assistant Director in Environmental Protection agency he was placed as principal candidate and one Mr. Deedar Khan (2nd candidate in the Merit List) submitted written complaint against the accused Mr. Ashraf Khan in the office of Environmental Protection agency on 15.06.2015 for holding already SST Post in the E & SE Department and so proper inquiry was conducted by the Directorate of Forestry Environment & Wild Life Khyber Pakhtunkhwa. The detail report was further submitted to the Secretary E & SE Khyber Pakhtunkhwa vide Environmental Protection agency Letter No.1034-35 dated 22.02.2016 for initiating disciplinary action against the accused Mr. Ashraf Khan SST.
11. In light of the inquiry conducted by Sana Ullah Deputy Director EPA Khyber Pakhtunkhwa the Secretary E & SE directed the director E& SE Khyber Pakhtunkhwa on 04.04.2016 for taking necessary action. Afterward the directorate of E & SE served a show cause notice to the accused Mr. Ashraf Khan without holding any departmental inquiry and he was also called to his office for personal hearing on 02.06.2016. Mr. Ashraf Khan submitted his written reply to the Director E& SE (Attached as annexure K). In light of charges/allegations, leveled in the show cause notice dismissal order in respect of Mr. Ashraf Khan was issued by the directorate of E & SE vide Notification No. 4452-55 dated 26.09.2016. (Attached as annexure L).
12. After receiving the dismissal order, Mr. Ashraf Khan submitted written appeal to the concerned authority on 10.10.2016 (attached as Annexure M) for reinstatement into service but it was also rejected vide order 14.12.2016 and communicated to him on 26.09.2016.
13. Afterwards he filed a writ petition in Service Tribunal, Peshawar which was accepted and the impugned order of dismissal in r/o Mr. Ashraf Khan was set aside however, the Hon'ble Court allowed the Director, E & SE Khyber Pakhtunkhwa, for conducting de novo inquiry in the case (attached as Annexure O).

CONCLUSION/SUMMARY:

1. The accused Mr. Ashraf Khan has worked on the dual posts of SST (Science) E & SE Department and Assistant Director in Environmental Protection Agency w.e.f 01.02.2012 to 30.06.2013 and has drawn dual salaries and violated the govt. rules.

Alisw


7.2


- 45
2. That coming to know that dual service is against the govt. rules and realizing the mistake the accuse approached the district account office for return of double salaries of 06 months and 12 days (i.e. 01.02.2012 to 19.04.2012 and 07.03.2013 to 30.06.2013) and recovery made Rs. 1, 60,000/- till issuance of the dismissal order. (Pay Slip etc attached as annexure P). I have the opinion that it is not considered to be the grave corruption and the major penalty of dismissal from service imposed upon him seems to be harsh.
 3. On selection for 2nd time for the post of Assistant Director in Environmental Protection Agency in 2015, he could neither continued his new job nor violated the government rules.
 4. On applying major penalty a dismissal order was issued in respect of Mr. Ashraf Khan SST (Science) on the charges/allegation of having dual post of the same time mentioned in the Show Cause notice without giving the opportunity of holding of proper inquiry under the E & SE deptt Khyber Pakhtunkhwa and the undersigned have the view that it was necessary for taking action into the matter properly.
 5. He performed his duties with zeal & spirit at GHS Hibbak Sherza Khan and showed best results in the subject taught during his stay at the school i.e. from taking over charge till the dismissal order and also appreciated his work by the concerned principal.
 6. He is M.phil chemistry and well qualified official and more beneficial for both the students as well as the institution.

RECOMMENDATIONS:

Considering the decision of The Khyber Pakhtunkhwa Services Tribunal being safeguard for both the government employees as well as the government and keeping in view the above mentioned facts and finding the undersigned is agree with the decision of Service Tribunal, Khyber Pakhtunkhwa Peshawar and recommend Mr. Ashraf Khan SST (Bio-Chemistry) for reinstatement at the same post of SST (Bio Chemistry) subject to withholding 02 consecutive annual increment as minor penalty under the Khyber Pakhtunkhwa E & D rules 2011. It is further recommended that the double salaries drawn for the post of Assistant Director as per the following detail of the concerned account office may be recovered prior to his reinstatement into Service:

Ahmed
C

10

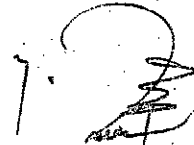
Period of Dual Duties:

01.02.2012 to 19.04.2012	=	02 months 19 days
20.04.2012 to 06.03.2013	=	Extra Ordinary Leave
07.03.2013 to 30.06.2013	=	03 months 23 days
Total	=	06 months 12 days

Total Recovery for 05 months 12 days @ 50000/- month	=	320000/-
Already recovered amount	=	160000/-
Remaining amount to be recovered	=	160000/-

It is also recommended that he may furnish an affidavit to the effect that he will never repeat such like illegal practice in future otherwise he will be liable for any minor/major punishment to be conferred upon him.

The period since the dismissal order till the date of reinstatement order may be converted into leave without pay.



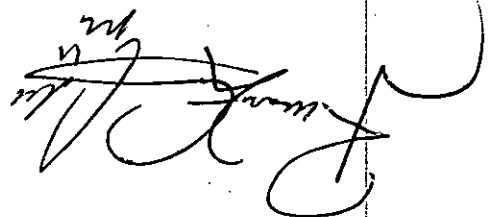
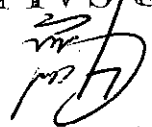
Inquiry Officer

PRINCIPAL
G.H.S Latamber
(Karak)

Muhammad Fook
Ullah
Principal GHS Latamber
District Karak

Alleged
Q

YASIR SALEEM
 Advocate High Court

IN WITNESS whereof I/we have here to signed at _____
 the _____ day to _____
 Executant/Executants _____
 Accepted subject to the terms regarding fee _____

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.
AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

lawyer may be appointed by my said counsel to conduct the case who shall have the same powers. authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other employee any other Legal Practitioner authorizing him to exercise the power and to receive payment of any or all sums or submit for the above matter to arbitration, and to or order and to conduct any proceeding that may arise there out, and to apply for and poena and to apply for and get issued and arrest, attachment or other executions, warrants documents, depositions etc, and to apply for and issue summons and other writs or sub-Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. my same and on my behalf to appear at _____ to appear, plead, act and

YASIR SALEEM ADVOCATE HIGH COURT

I/W, the undersigned, do hereby nominate and appoint _____ of _____
 Appeal/Revision/Suit/Application/Petition/Case No. _____
 Fixed for _____

Defendant } Respondent } Accused }
 Court of _____

VERSUS

Complainant } Petitioner } Appellant } Plaintiff } For _____

POWER OF ATTORNEY
 In the Court of _____
 My _____

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No: 226/2019

Muhammad Ashraf Khan SST GHS Hibbak Sehraz Khan District Bannu.....Appellant

VERSUS

Secretary E&SE Department, Khyber Pakhtunkhwa & others.....Respondents

INDEX SHEET

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3.	Statement of allegation	B	7-10
4.	Show cause & reply	C	11-12
5.	Inquiry Report	D	13
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7.	Notification order 31-07-2018	F	15

Asstt: Director (Lit: II)
E&SE Department, Khyber
Pakhtunkhwa, Peshawar.

①

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Service Appeal No: 226/2019

Muhammad Ashraf Khan SST GHS Hibbak Sehraz Khan District Bannu....Appellant

VERSUS

Secretary E&SE Department, Khyber Pakhtunkhwa & others.....Respondents

PARAWISE COMMENTS ON & FOR BEHALF OF RESPONDENTS No: 1-3.

Respectfully Sheweth:-

The Respondents 1-3 submit as under:-

PRELIMINARY OBJECTIONS.

- 1 That the Appellant has got no cause of action/locus standi.
- 2 That the instant Service Appeal is badly time barred.
- 3 That the Appellant has concealed material facts from this Honorable Tribunal.
- 4 That the instant Service Appeal is based on mala fide intentions.
- 5 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 That the Appellant is not entitled for the relief he has sought from this Honorable Tribunal.
- 7 That the instant Service Appeal is against the prevailing law & rules.
- 8 That the instant Appeal is based on mala fide intentions just to put extra pressure on the Respondents.
- 9 That the Appellant has been treated as per law rules & Procedure, prior to the issuance of impugned Notification dated 31/07/2018 by the Respondent Department.
- 10 That the Appeal is not maintainable in its present form.
- 11 That the Appeal is bad for mis-joinder & non joinder of the necessary parties.
- 12 That the instant Service Appeal is barred by law.

- 13 That the Appellant is not competent to file the instant appeal against the respondents.
- 14 That the Appellant is estopped by his own conduct to file the instant Appeal.
- 15 That this Honorable Tribunal has got no jurisdiction to entertain the instant case.
- 16 That no Departmental Appeal has been preferred by the appellant.
- 17 That the Impugned Notification dated 31/07/2018 of the Respondent No.3 is the result of all legal formalities.
- 18 That the appellant has been found guilty of dual service in both the E&SE and EPA Departments by the competent authority.

ON FACTS.

1. That Para-1 needs no comments being pertains to the recommendation of the appellant against the SST B-16 post by the KPK Public Service Commission.
2. That Para-2 is misleading on the grounds that the appellant has been found guilty of Dual service in both the E&SE and EPA Departments along with his regular admission in M.Phil in Education from the Gomal University D I Khan as a regular student & has drawn his salaries from both the Departments namely EPA in B-17 as Assistant Director & SST B-16 (Sc) by concealing this fact from the competent authority & has thus caused huge financial loss to the Government Treasury of the KPK.
3. That Para-3, is also correct to the extent that the KPK PSC whom the appellant has not made as a Respondent in the instant case on mala fide intentions has invited applications for the appointment against the SST posts in BPS-16 in the year 2011, wherein the appellant also applied for the said post & got recommended vide Notification dated 30/12/2011, & was Posted at GHS Showaki District Kohat by concealing his previous Govt. service /appointment as Assistant Director B-17 in EPA Govt; of KPK in D I Khan along with his regular admission in M.Phil Education from the Gomal University D I Khan on mala fide intentions.
4. That Para-4 is incorrect & denied on the grounds that the appellant has not performed has official duty in the E&SED KPK Peshawar against the SST post in District Kohat nor it is possible for a person to attend his classes in MPhil program at Gomal University D I Khan & another duty as AD B-17 in EPA in D I Khan along with his presence in District Kohat at the same time as SST B-16 Teacher, hence, the stand of the appellant is baseless.

- 5 The appellant has been proceeded against the under the E&D rules 2011 on charges of misconduct & guilty of absence from duty/corruption/Dual Service hence a Show Cause Notice dated 01/04/2016 & Statement of charge sheet dated 25/07/2013 have been served upon the appellant by the Respondent No: 3 with an opportunity of his personal hearing to the appellant mentioned in the statement of allegations leveled against the appellant in the light of the enquiry report submitted by the Enquiry Officer **(copies of the statement of allegations, charge sheet show casus notice & inquiry report are attached as Annexures -A,B, C& D).**
- 6 That Para-6 is correct that the appellant has been found guilty of Dual services in EPA & E&SED KPK Peshawar along with his regular admission in the MPhil Education in Gomal University D I Khan, hence, the appellant has been proceeded under the E&D Rules 2011 & resulted in the dismissal from service against the SST B-16 post vide Notification dated 26/09/2016 issued by the competent authority. **(Copy of the said Notification is Annexure-E).**
- 7 That para-7 is correct on the grounds that the appellant was re-appointed in the EPA Government of KPK at D I Khan against the AD B-17 post during has service against the SST B-16 post in the E&SED and has drawn salaries from both the Department at the same time, hence the matter of Dual service was reported to the competent authority which resulted in the Department proceedings against the appellant & copies whereof are attached in Para-6 for ready reference.
- 8 That Para-8 is also incorrect & denied as the appellant himself admitted in the para-6 of the present appeal that he has served show cause notice etc; by the Respondent Department on charges of his absence from duty wef 20/4/2012 to 6/3/2013 against the SST B-16 post along with Dual service & regular admission in MPhil at Gomal University D I Khan, hence the plea of the appellant is baseless.
- 9 That Para-9 is incorrect as the appellant has been dismissed from service against the SST B-16 post vide order dated 26/9/2016 after observing all the formalities by the Respondent Department. Therefore, the stand of the appellant is illegal. & a Copy of the order dated 26/9/2016 is Annexure-E.
- 10 That Para-10 is incorrect & denied as the appellant has been treated as per Law & Rules by the respondent Department vide the Notification 26/09/2016 which is legal & liable to be maintained.
- 11 That para-11 is correct that vide order dated 10/10/2016, the Departmental appeal of the appellant against the impugned Notification 26/09/2016 has been rejected vide order dated 10/10/2016 on merits of the case & dully communicated to the appellant in due process of Law where as rest of the Para relates to the record of this Honorable Tribunal.
- 12 That Para-12 is correct that the appellant has been re-instated in service for De-novo inquiry in compliance of the judgment dated 08/11/2017 of this Honorable Tribunal rendered in S/A No.09/2017.

13 That para-13 is also incorrect & denied, formal proceedings have been observed by the Respondent Department resulted in the imposing minor penalty of with holding of 2 annual increments along with the recovery of Rs.160000/-from the appellant vide order dated 31/07/2018.(copy of the order dated 31/07/2018 is Ann-F).

14 That Para-14 is incorrect as no Departmental appeal against the order dated 31/07/2018 has been filed by the appellant, hence, got final against the appellant & the appeal of the appellant is also badly time barred & liable to be dismissed.

15 That para-15 is incorrect & denied as the order dated 31.7.2018 is legal & liable to be maintained, hence, the Respondents further submit on the following grounds inter alia:-

ON GROUNDS.

A **Incorrect not admitted.** The statement of the appellant is baseless, against the facts, without legal proof and based on mala fide motives. The appellant has been treated as per law, rules & Procedure prior to the issuance of the impugned Notification dated 31/7/2018 by the Respondent No: 2 in the interest of justice.

B **Incorrect not admitted.** The appellant has been found guilty of misconduct & corruption & even misuse of his official position, hence he has been proceeded against the E&D Rules 2011 & has thus removed from service against the above mentioned post vide Notification dated 31/7/2018 by the Respondent No: 3.

C **Incorrect not admitted.** The appellant has been served a formal Show Cause Notice, along with the statement of allegations dully replied by the appellant on 31/7/2018, hence the plea of the appellant is baseless & liable to be dismissed.

D **Incorrect not admitted.**The appellant has been given due opportunity of his personal by the Respondent No: 3 hence the statement of the appellant is against the facts & available record on file, hence is liable to be dismissed in favor of the Respondents.

E **Incorrect not admitted.** The appellant has been found guilty of misconduct & corruption, hence he has been removed from service vide the impugned Notification dated 31/7/2018 by the Respondent No: 3, hence the stand of the appellant is liable to be dismissed.

F **Incorrect not admitted.** The statement of the appellant is baseless as the recovery of Rs.160000/- from the appellant is legal & liable to be maintained.

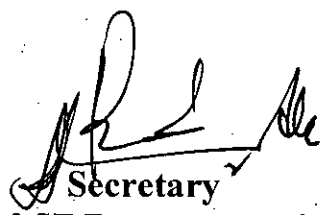
G **Incorrect not admitted.** The impugned order dated 31/07/2018 is legally competent & liable to be maintained.

H **Incorrect not admitted.** The statement of the appellant is against the facts of the case as narrated in the above mentioned paras of the present reply by the Respondent Department.

I **Incorrect not admitted.** The statement of the appellant is against the facts of the case as he has been found guilty by the competent authority & resulted in the impugned order dated 31/07/2018 after observing all the formalities, hence the Respondents seek leave of this Honorable Tribunal to submit additional grounds, record & case law at the time of arguments on the date fixed.

In view of the above made submissions, it is most humbly requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant Service Appeal in favor of the Respondents in the interest of justice.

Dated ___/___/2020


Secretary

E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 1 & 2)


Director

E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 3)

AFFIDAVIT

I, **Hayat Khan Asstt: Director (Litigation-II)** E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant Parawise Comments are true & correct to the best of my knowledge & belief.


Deponent

ANNEX - A

(6)

Annexure
A to A
5/7

CHARGE SHEET

(8)

1. Mr. Muhammad Rafiq Khattak Director Elementary and Secondary Education Khyber Peshawar, as competent authority, hereby charge you, Muhammad Ashraf Khan SST GHS Showeki Kohat, as follows:

That you, while posted as SST GHS Showeki Kohat committed to the following irregularities:-

- a. You took admission in M.Phil class at Gomal University D.I.Khan without prior permission of the competent authority.
 - b. You have been absent from duty since 20-4-2012 and the students were badly been effected as per report of the Headmaster concerned dated 29-12-2012.
 - c. You came to the school on 7-3-2013 after three notices issued to you (on your home address) by the Headmaster concerned and produced medical certificates that you met an accident and admitted in the Hospital on 11-2-2013.
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, as the case may be.
4. Your written defence, if any, should reach the inquiry officer within the 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.

(Competent authority)

Muhammad Ashraf Khan
SST GHS Showeki Kohat

(7)

Annex B/1

(9)

DISCIPLINARY ACTION

1. Mr. Muhammad Rafiq Khattak Director Elementary and Secondary Education Khyber Peshawar, as competent authority, am of the opinion that Muhammad Ashraf Khan SST GHS Showeki Kohat, 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

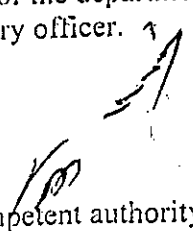
- i. He took admission in M.Phil class at Gomal University D.I.Khan without prior permission of the competent authority.
- ii. He has been absent from duty since 20-4-2012 and the students were badly been effected as per report of the Headmaster concerned dated 29-12-2012.
- iii. He came in the school on 7-3-2013 after three notices issued to him (on his home address) by the Headmaster concerned and produced medical certificates that he met an accident and admitted in the Hospital on 11-2-2013.

2. For the purpose of inquiry against the said accused with reference to the above allegations, the following officer is appointed as enquiry officer under rule 10 (1) (a) of the ibid rules:

- i. Mr. Moeen-ud Din
DEO (M) Charsadda

3. The inquiry officer shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record his 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.


(Competent authority)

Muhammad Ashraf Khan
SST GHS Showeki Kohat

Mr. Moeen-ud-Din
DEO (M) Chausada.

Subject: Reply to the Allegations

Reference to the letter of Director E&S Education
vide No. --- (F. No 455/vol-11/SST(M) dated Daskiran the
19/6/2013.

I, Muhammad Ashraf Khan SST GHS Showari
Kohat submit the parawise reply to the
allegation framed against me.

1:- a: I have taken admission six (6) months
before my appointment I was already
enrolled and had completed one semester
ie. The process of M.Phil admission was
started in February 2011. I have submitted
fee on 04-6-2011 (Fee slips attached) Annex A
I was adjusted on 01/2/2012 (order attached
on Annex B). I performed duty upto 20/5/12
during this time I submitted application
for leave without pay on the direction
of Head Master (copy attached) on 19-4-12
Annex-C

P.T.O (contd) —

My application was duly recommended
by the Head Master due to which I presumed
that my application has been accepted.
I appeared in second semester exam on

29/5/2012 upto 14/6/2012. After that
there were summer vacations. After vacations
I again joined my duty but the head
Master did not allow me mark in the
attendance register although I was
regularly performing my duties. I
performed my duties in September and October,
I went for my final term exam in

November 2012.

I came back home on 15/2/2013 after
the meeting with an accident on 11/2/2013.
I received Two Notices at once on 15/2/2013
but I could not move because of injuries.
I came back to school on 07/3/2013
(Medical reports are attached on Annex 'D')

(Continue)

(10)

B/4

12

Page No

2:- I was extremely puzzled, I knew nothing what to do? I had submitted huge amount in M.Phil, I had cleared GAT subject test. I need a job also, I am a father of two children, Therefore request for sympathetic considerations.

3:- I submitted this report based on facts.


4:- I submitted this report on 07/7/2013.

5:- I am ready for any kind of clarification, but I was facing embarrassing situation at that time.

6:- I declare that any kind of negligence from my side was due to my in-experience.

I solemnly declare that I will perform my duties with enthusiasm, devotion and dedication in future.

Dated: 07/7/2013


12/7/13.
Yours truly
Muhammad Ashraf Khan
SST GHS Shewiki Kotat

Handwritten marks and scribbles at the top of the page.

Annex C/1
ANNEX F
(15)

SHOW CAUSE NOTICE.

I Muhammad Rafiq Khattak Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar, as competent authority under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve, you Muhammad Ashraf Khan SST GHS, Hibbak Sheraz Khan Surani District Bannu as follows:-

- i. That you have been appointed as SST (Science) through public service commission Khyber Pakhtunkhwa, Peshawar and your services has been placed at the disposal of DEO (M) Kohat for further posting against vacant post of SST (Science) vide Notification No. 4767-76 dated 30-12-2011. Furthermore the DEO (M) Kohat posted you at GHS, Showaki District Kohat vide No.1545-49 dated 17-02-2012.
- ii. That prior to 17-02-2012 you have also been appointed as Assistant Director and posted at Regional Office of Environmental Protection Agency DIKhan on 2009, and you have been served as Assistant Director at Environment Protection Agency since 05-12-2009 to 30-06-2013. During the period w.e.f. 17-02-2012 to 30-06-2013 you have drawn double salaries from Government exchequer.
- iii. That on the eve of your appointment as SST (Science) at GHS, Showaki District Kohat dated 17-02-2012 you have neither produced relieving certificate from Environment Department nor resignation as per rules/policy.
- iv. That you have been drawn regular salary from Environmental since 05-12-2009 to 30-06-2013, meaning that you have neither taken over charge in E&SE Department as SST (Science) nor served in Education Department since 17-02-2012 to 30-06-2013. already L.W.P & o.L
- v. I am satisfied that you are guilty of misconduct and irregularities as specified in rule 3 of the said rules. Thus you have rendered yourself liable to be proceeded against under the said rules.

2. Therefore, in exercise of the powers conferred by the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011, I in the capacity of competent authority, is hereby dispense with the conduct of a formal enquiry and serve you with the instant show cause notice with the direction to submit your defense in writing within 7 (seven) days of the receipt of this Notice and I have tentatively decided, as to why one of the penalty specified in rules-4 of the said rules should not be imposed upon you and also intimate whether you desire to be heard in person.

3. In case you failed to submit your reply within the stipulated period, it will be presumed that you have no defense to offer and ex- parte decision will be taken against you.

Competent authority, 2012

Muhammad Ashraf Khan SST
GHS, Hibbak Sehraz Khan District Bannu.

Annex C/A
~~ANNEX G~~

(16)

To,

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

Subject: REPLY OF SHOW CAUSE NOTICE

Reference to your letter No. 1062/F.No 490/Vol-01/SST (M) dated 06/04/2016

It is humbly stated that all the allegation framed against me are correct, I do confess the blunder, I have committed. But I have already appeared before the enquiry officer, the same allegation were framed vide NO. 4933 dated 28/6/2013 attached on Annex-A. Reply of that allegation attached on Annex-B.

After detailed enquiry by Mr. Moin-Ud-Din DEO (M) Charsada on the basis of that enquiry, I was issued orders in which my absence period was marked as "leave without pay" due to my M.Phil continued from Gomal University D.I Khan. I was already enrolled in M.Phil prior to my job. Decision of your good self is attached herewith as Annex-C.

M.Phil DMC is also attached on Annex-D.

After that enquiry, I had requested the district Accounts Officer for reimbursement of the salary I had draw from both departments.

I had drawn salary of 5 months and 12 days from education department amounting Rs. 130000. While I had drawn Rs. 270000 from EPA.

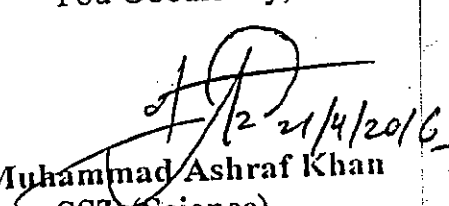
Now the accounts office have seen deducting Rs. 270000/- from me to education department. Statement of Accounts Office is attached on Annex-E.

Respected Sir,

Presently I am working as a SST (Science) at GHS Hibbak Sherza Khan and working devotedly up to the level of entire satisfaction of my superiors principal certificate attached on Annex-F.

I solemnly undue like that I will never do any minor mistake during of entire service and life with steamed regards.

You Obediently,


Muhammad Ashraf Khan
SST (Science)
GHS Hibbak Sherza Khan
Bannu

Received
Reply of show
cause notice on
2/4/2016.
Ay
3. ac



No. EPA/2001/1-30174/KP/911

Date: 28-2-15

14

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

Subject:- Varification of Salary.

It is to inform you that this office had a vacant post of Assistant Director under an ADP Project titled "Establishment of three Divisional Offices at Mardan, Kohat and Bannu" which was advertised in the National Dailies. 92 Nos of applications were received. The Shortlisting meeting was held on 02-01-2015 and shortlisted 11 Nos applications. Then the Project Departmental Selection Committee meeting was held on 20-04-2015 under the Chairmanship of Special Secretary, Forestry, Environment & wildlife Department, Govt. of Khyber Pakhtunkhwa wherein Mr. Muhammad Ashraf Khan S/o Mr. Sher Ali Khan was recommended for appointment as Assistant Director Bannu and his appointment order was issued by the Administrative Department.

But before submitting arrival report for duty, this office received a complaint from Mr. Deedar Ahmed S/o Mr. Muhammad Ikram on 15-06-2015 that Mr. Muhammad Ashraf Khan was serving in Education Department Khyber Pakhtunkhwa as SET. Mr. Muhammad Ashraf Khan submitted his arrival report on 18-06-2015 which was not accepted in light of the above mentioned complaint and he was directed through this office letter No EPA/3DO/inquiry/583 dated 07-07-2015 to clarify his position. In response Mr. Muhammad Ashraf Khan submitted a written apology on 02-07-2015 that he can not join the subject post due to his domestic problem (Copy enclosed). In this regard a fact finding inquiry on the complaint of Mr. Deedar Ahmed is also being conducted at our own level.

Further the above mentioned officer was also appointed as Assistant Director (Regional Office D.I. Khan) in the ADP Scheme Namely "Establishment of Three Regional Offices of Environmental Protection Agency (D.I. Khan, Mingora and Abbottabad) v.c.f. 05/012/2009 to 30/06/2013. During this period he performed the duty regularly and found no absent from the duty and this office was fully satisfied from the performance of the said officer.

During the above mentioned period he has got the salary from the Regional Office D.I. Khan regularly wherein as Muhammad Ashraf Khan has produced a letter of your office vide letter No. 7299-7304/F No. 485/Vol-II/SST (M) complaint/ Kohat/2013 dated: 27/02/2013 wherein he has got extra ordinary leave (without-pay) from your office where as the complainant produced the salary slip of Mr. Muhammad Ashraf Khan wherein he has drawn his double salary from your office from 05-12-2009 to 30-06-2013 (copy enclosed).

It is therefore requested to verify either the above mentioned officer has drawn the salary at once or otherwise. An early action in the matter will be highly appreciated please.

Handwritten notes: 17/2/15, 27/2/15, 30/2/15, 16/1/15

Mr. Sanaullah Khan
Deputy Director/Enquiry Officer

Signature of Mr. Sanaullah Khan

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3/17

Handwritten notes: 17/2/15, 27/2/15

(14)

ANNEX H

(17)

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

Notification

1. WHEREAS, the Deputy Director (Technical)/Enquiry Officer Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department has been conducted an enquiry against Muhammad Ashraf Khan SST GHS, Hibbak Sherza Khan District Bannu for the charges of performing of dual duty i.e. as Assistant Director at Regional Office of Environmental Protection Agency Dikhan as well as Secondary School Teacher (SST) Science BPS-16 regular at Elementary & Secondary Education Department during February, 2012 to 30-6-2013.
2. AND WHEREAS, Deputy Director (Technical)/Enquiry Officer Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department has sent the report to E&SE Department vide letter No. SO (Estb) PE&WD/IV.6/2K15 dated 22-02-2016.
3. AND WHEREAS, the Administrative Department has sent the enquiry report against Muhammad Ashraf Khan SST at Govt. High School, Hibbak Sherza Khan District Bannu vide letter No. SO (S/M) E&SED/401/2018/M.Ashraf Khan SST dated 04-04-2016.
4. AND WHEREAS, the Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar has served a show cause notice upon the said SST through District Education Officer (Male) Bannu vide letter No. 1052 dated 06-04-2016.
5. AND WHEREAS, Muhammad Ashraf Khan SST at Govt. High School, Hibbak Sherza Khan District Bannu has sent the reply of show cause notice through District Education Officer (M) Bannu vide letter No. 2559-60 dated 29-04-2016.
6. AND WHEREAS, the competent authority has called Muhammad Ashraf Khan SST GHS, Hibbak Sherza Khan Bannu for personal hearing vide letter No. 4507 dated 19-05-2016.
7. AND WHEREAS, the competent authority having considered the enquiry report/evidence on record and given the opportunity of personal hearing to the accused SST is of the view that the charges leveled upon the said SST have been proved.
8. NOW THEREFORE, in exercise of powers conferred under the Government of Khyber Pakhtunkhwa, Government Servants (E&D) Rules, 2011, the major penalty of "Dismissal from service" is hereby imposed upon him with immediate effect.

DIRECTOR

Enquiry No. 152-SS / F.No.490/Vol-01/SST (M) Complaint/Kohat.Dated Peshawar the 26.9 2016

Copy of the above is forwarded for information & n/action to the:-

1. District Education Officer (M) Bannu.
2. District Accounts Officer Bannu.
3. Principal GHS, Hibbak Sherza Khan District Bannu.
4. SST concerned.
5. PS to Secretary to Govt. of Khyber Pakhtunkhwa, E&SE Department w/r to the letter No. SO (S/M) E&SED/4-3/2016/M.Ashraf Khan SST dated 04-04-2016
6. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar
7. Master File.

Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa

27/9/16

(15)

Ameera F

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER

PAKHTUNKHAWA PESHAWAR

NOTIFICATION.

WHEREAS, consequent upon finalization of disciplinary proceedings under Government of Khyber Pakhtunkhwa, Government Servants E&D Rules-201, major penalty of "Dismissal from Service" was imposed upon Mr. Muhammad Ashraf Ex-SST GHS, Hibbak Sherza Khan, District Bannu vide this office Notification issued under Endst: No. 4452-55 dated 26-09-2016 on charge of "dual job/service" in E&SE Department as well as in Environmental Protection Agency DIK.

AND WHEREAS, the aggrieved Ex-SST lodged a departmental appeal dated 10-10-2016 against the aforesaid major penalty. His said departmental appeal was rejected vide order dated 14-12-2016 communicated to the appellant on 26-12-2016

AND WHEREAS, in the wake of rejection of departmental appeal referred to above, the aggrieved Teacher (Mr. Muhammad Ashraf Ex-SST) filed a Service Appeal No. 09/2017 before the Khyber Pakhtunkhwa Service Tribunal, Peshawar against this office Notification dated 26-09-2016.

AND WHEREAS, the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar while deciding the Service Appeal under reference vide its Judgment dated 08-11-2017 decided that:-

"We accept the present appeal, set-aside the impugned order and reinstate the appellant in service. However, the department is at liberty to conduct a de-novo inquiry within a period of six months from the receipt of this judgment in the mode and manner prescribed by law. The issue of back benefits of intervening period will be decided subject to the outcome of the de-novo inquiry proceedings"

5. AND WHEREAS, in order to comply with the Judgment of Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar cited above, the major penalty (dismissal from service) order dated 26-09-2016 in respect of Mr. Muhammad Ashraf Ex-SST GHS, Hibbak Sherza Khan, District Bannu (appellant) was "withdrawn" and the appellant concerned was reinstated in service vide this office Notification issued under Endst: No. 5033 dated 19-01-2018 for the purpose of "de-novo inquiry"

6. AND WHEREAS, Mr. Muhammad Rookhullah Principal, GHS Latamber, District Karak was appointed as Inquiry Officer to conduct de-novo inquiry in the service appeal of Mr. Muhammad Ashraf Ex-SST (appellant) in the light of Service Tribunal Peshawar judgment under reference.

7. AND WHEREAS, the concerned Inquiry Officer conducted the said de-novo inquiry and submitted report vide letter No. 8060 dated 05-06-2018 with the recommendations (on the basis of findings) that the appellant concerned may be "reinstated in service" subject to "withholding of 02 consecutive annual increments as minor penalty under E&D Rule-2011 besides recovery of remaining amount of Rs. 160000/- on account of double salaries"

8. AND WHEREAS, the respondents filed CPLA against the decision of Service Tribunal, Peshawar in the instant case. The Scrutiny Committee decided that the case in question is not "fit for CPLA" before the Supreme Court of Pakistan.

9. NOW THEREFORE, in pursuance of judgment of the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar, recommendations of the inquiry officer and decision of the Scrutiny Committee quoted above, this office Notification issued under Endst: No. 4452-55 dated 26-09-2016 is hereby "set aside". The major penalty of dismissal from service imposed upon Mr. Muhammad Ashraf Ex-SST GHS, Hibbak Sherza Khan, District Bannu vide order dated 26-09-2016 is hereby converted into "minor penalty of withholding of 02 consecutive annual increments". He is hereby "re-instated in service" subject to "recovery of remaining amount of Rs. 160,000/- on account of double salaries". The intervening period since his dismissal from service and reinstatement in service in respect of the appellant concerned may be treated as "leave without pay".

(DIRECTOR)

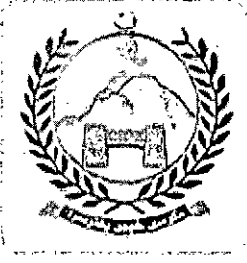
Endst: No. 7291-95 /F.No.65/SST (M) Complaint/Bannu Dated Peshawar the 31 7 2018

Copy for information and necessary action to:-

1. Registrant Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. District Education Office (Male) Bannu with the remark to keep a vigilant eye on the SST/appellant concerned and he should be kept under strict surveillance.
3. District Accounts Office Bannu
4. Mr. Muhammad Ashraf SST GHS, Hibbak Sherza Khan, District Bannu. He is hereby warned to be more careful in future otherwise strict punitive action will be taken against him.
5. PA to Director E&SE Khyber Pakhtunkhwa Peshawar

[Signature]
Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

[Signature]
31/7/18



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No: 920 /ST

Dated: 13-4-2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

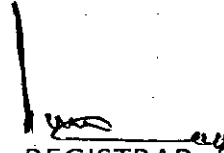
To

The Director E&SE,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 226/2018, MR. MUHAMMAD ASHRAF KHAN

I am directed to forward herewith a certified copy of Judgement dated 28.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR