

Sr. No.	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	04.07.2017	<p style="text-align: center;"><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b></p> <p style="text-align: center;">Appeal No. 1395/2015</p> <p style="text-align: center;">Date of Institution ... 17.12.2015 Date of Decision ... 04.07.2017</p> <p style="text-align: center;">Sajidullah, Ex Junior Clerk (BPS-11), R/O Village Haleemzai, Shabqadar, District Charsadda.</p> <p style="text-align: center;">Versus</p> <p>1. The Government of Khyber Pakhtunkhwa through Secretary (E&amp;SE) Department, Khyber Pakhtunkhwa, Peshawar and others.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Appellant, learned counsel for the appellant and Mr. Usman Ghani, District Attorney on behalf of the official respondents present.</p> <p>2. In this service appeal bearing No. 1395/2015 the appellant Sajidullah, while in the connecting appeals other affectees have made impugned order dated 8.8.2015 regarding termination of their service from the post of Junior Clerk in the Education Department Charsadda and prayed for reinstatement with all back benefits.</p> <p>3. Argument heard. File perused.</p>

4. Learned counsel for appellant vehemently challenged the validity of the impugned order. On the other hand learned District Attorney contended that the present appeal is not maintainable under rule-23 of Khyber Pakhtunkhwa Service Tribunal Rules 1974.

5. Appellant was appointed as Junior Clerk (BPS-07) in the Education Department vide order dated 11.02.2012 of Executive District Officer E&SE Charsadda. During the course of his employment the pay scale of his post was also upgraded to BPS-11. However in the enquire report it was surfaced that certain candidates were accommodated without undergoing the rigors of typing test of thirty words per minute and consequently vide orders dated 3.07.2014 and 07.07.2014 the appellant and other affectees were directed to appear in the typing test or else they would lose their right to maintain their service. Appellant and other affectees challenged the said orders before Honourable Peshawar High Court, Peshawar through writ petition bearing No. 2225-P of 2014. The Honorable High Court itself stepped in and directed the learned District & Sessions Judge Charsadda to hold typing test for the petitioners. That only seven out of fifteen petitioners participated in the test and except one petitioner Usman Qamar all others failed. The Honorable Peshawar High Court, Peshawar observed that it was sin qua non for the post in question that the candidates must have Matric Second Division and Know English typing with the speed of

U.S.M.A.

thirty words per minute, but except the petitioner Usman Qamar, all the others failed. The Honorable Peshawar High Court, Peshawar while holding that the petitioners are not entitled to the relief and barring petitioner namely Usman Qamar dismissed the writ petition vide judgment dated 23.06.2015. Resultantly impugned order of the termination of service of appellant was issued on 08.08.2015. The last two lines of the said order reads as under:-

“In the light of above enquiry report & judgment of the Honorable Peshawar High Court Peshawar, you are hereby terminated from the post of J/Clerk with immediate effect”.

6. Feeling aggrieved against the judgment of Honorable Peshawar High Court Peshawar the appellant and other affectees also approached the august Supreme Court of Pakistan and filed CP No. 2251 of 2015. However the august Supreme Court of Pakistan vide order dated 09.10.2015 also upheld the judgment of Honorable Peshawar High Court Peshawar. Perusal of para-4 of the order of august Supreme Court of Pakistan would show that while rejecting the case/CP of appellant and other affectees the august Supreme Court of Pakistan was well aware of the fact that the petitioners i.e appellant and other affectees have lost their service.

7. In view of the above scenario of the case, this Tribunal is of the humble view that the issue of termination of service of appellant i.e. the matter directly and substantially in issue in this appeal has already been finally decided by the Honorable Superior Courts of

Usman Qamar

the competent jurisdiction. Thus this Tribunal has got no powers to entertain the present appeal as well as the connecting appeals, under the principle of Res-Judicata and under rule-23 of Khyber Pakhtunkhwa Service Tribunal Rules 1974.

8. As a sequel to above, the present appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room after its completion.



(MUHAMMAD HAMID MUGHAL)  
MEMBER



(GUL ZEB KHAN)  
MEMBER

ANNOUNCED

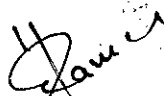
04.07.2017

11. -04.07.2017

Learned counsel for the appellant and Mr. Usman Ghani, District Attorney on behalf of the official respondents present. Vide separate judgment of today of this Tribunal the present appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

**ANNOUNCED**  
04.07.2017

  
(Gul Zeb Khan)  
Member

  
(Muhammad Hamid Mughal)  
Member

16.11.2016

Counsel for the appellant and Addl: AG for respondents present. Rejoinder submitted. To come up for arguments on 13.02.2017.



(PIR BAKHSH SHAH)  
MEMBER



(ABDUL LATIF)  
MEMBER

13.02.2017

Counsel for appellant and Mr. Wisal Ahmed, Litigation Officer alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents present. Learned counsel for appellant requested for adjournment on the ground of preparation. Adjournment granted. To come up for arguments on 13.04.2017 before D.B.



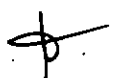
(AHMAD HASSAN)  
MEMBER




(ASHFAQUE TAJ)  
MEMBER

13.04.2017

Junior to counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Junior to counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 04/07/2017 before D.B.



(Ahmad Hassan)  
Member



(Muhammad Amin Khan Kundi)  
Member

04.01.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Junior Clerk when terminated from service vide impugned order dated 8.8.2015 on the allegations of irregular appointment where-against he preferred departmental appeal on 21.8.2015 which was not responded and hence the instant service appeal on 17.12.2015.

That the appellant was appointed in the prescribed manners and the punishment in the shape of termination of service of the appellant was awarded without any regular-inquiry and opportunity of hearing and that the punishment is not attributed to the appellant.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 1.3.2016 before S.B.

  
Chairman

01.03.2016

Counsel for the appellant, M/S Khurshid Khan, SO and Wisal Muhammad Khan, ADO (legal) alongwith Addl: A.G for respondents present. Written statement submitted. The appeal is assigned to D.B for rejoinder and final hearing for 23.6.2016.

  
Chairman

23.06.2016

Clerk to counsel for the appellant and Addl:AG for respondents present. Clerk to counsel for the appellant requested for time to file rejoinder. To come up for rejoinder and arguments on 16.11.2016.

  
Member



  
Member

Appellant Deposited  
Sub. Process Fee

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1395/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17.12.2015	<p>The appeal of Mr. Sajid Ullah presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	21-12-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>04-1-16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

APPEAL NO. 1395 /2015

Sajid Ullah

VS

Education Department

**INDEX**

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4.	Appointment order	<b>C</b>	12.
6.	Service Book	<b>D</b>	13- 14.
7.	Up-gradation order	<b>E</b>	15.
8.	Pay slip	<b>F</b>	16.
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11.	Departmental appeal	<b>I</b>	25- 26.
12.	Vakalat nama	.....	27.

**APPELLANT**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

APPEAL NO. 1395 /2015

A.W.P. Province  
Service Tribunal  
Diary No. 1466  
Dated 17-12-15

Mr. Sajidullah, Ex Junior clerk (BPS-11),  
R/O Village Haleemzai, Shabqadar, District Charsadda.

..... **Appellant**

**VERSUS**

- 1- The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer (Male), District Charsadda.

..... **RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 08-08-2015 WHEREBY MAJOR PENALTY OF "TERMINATION" FROM SERVICE WAS IMPOSED ON THE APPELLANT WITHOUT CONDUCTING REGULAR INQUIRY IN THE MATTER AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STAUTORY PERIOD OF NINETY DAYS**

**PRAYER:** That on acceptance of this appeal the impugned order dated 08-08-2015 may very kindly be set aside and the appellant may kindly be re-instated with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

*17/12/15*  
**R.SHEWETH:**  
**ON FACTS:**

- 1- That the respondent No.3 advertised posts of junior clerk BPS-07 for District Charsadda on 06-04-2011 published in daily "AAJ" Peshawar. That appellant having the requisite qualification and experience applied for the said post and after participated in the test, interview and Typing test the appellant was declared successful. Copies of the advertisement and educational & professional testimonials are attached as annexure ..... **A and B.**
- 2- That vide order dated 11-02-2012 the appellant was appointed as Junior clerk (BPS-07) on the proper

recommendation of Departmental selection committee. That in response the appellant submitted his charge report and started performing his duty quite efficiently and up to the entire satisfaction of his superiors. Copies of the appointment order and service book are attached as annexure ..... **C and D.**

- 3- That after appointment the appellant served the respondent Department with all zeal and zest at District Charsadda and as such no complaint whatsoever has been received against the appellant. That the appellant in due course was promoted to BPS-11. That it is very pertinent to mention that after proper verification of the documents of the appellant the salary of the appellant was released. Copies of the up gradation order and pay slip is attached as annexure ..... **E & F.**
- 4- That appellant has successfully completed his probationary period and was regularized on the post of junior Clerk. That all of a sudden the salary of the appellant was stopped by respondent No.3. That appellant feeling aggrieved filed writ petition No.2225/2014 in the Peshawar High Court Peshawar which was dismissed vide judgment dated 23-06-2015. That subsequently the appellant filed CPLA No.2251/2015 in Supreme Court of Pakistan. Copy of the judgment of PHC is attached as annexure ..... **G.**
- 5- That during the pendency of CPLA in the august Supreme Court Of Pakistan the respondent No.3 issued an order dated 08-08-2015 against the appellant whereby major penalty of "termination" from service was imposed on the appellant without conducting regular inquiry in the matter. Copy of the impugned order is attached as annexure ..... **H.**
- 6- That appellant feeling aggrieved from the impugned order dated 8.8.2015 filed Departmental appeal before the respondent No.2 but no reply has been received so far. Copies of the Departmental appeal is attached as annexure ..... **I.**
- 7- That having no other remedy the appellant prefer the instant appeal inter alia on the following grounds.

**GROUND:**

- A- That the impugned order dated 8.8.2015 issued by the respondent No.3 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

- B- That the appellant has not been treated by the respondent Department in accordance with law and rules and as such the respondent Department violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That so far verification and typing test are concerned the same has already been verified by the concerned quarter. The salary of the appellant has been released after the verification of appellant documents.
- D- That appellant's certificates/ degrees are genuine and not bogus; the same can be verified again from the concerned authority/quarter.
- E- That no show cause notice has been served on the appellant before issuing the impugned order dated 8.8.2015.
- F- That no regular inquiry has been conducted before issuing the impugned order dated 8.8.2015 against the appellant. That as per Supreme Court judgments regular inquiry is must in the cases of punishment.
- G- That the punishment awarded by the respondent No.3 is not attributed to the appellant because the appellant has not committed any misconduct within the definition of section-3 of the E&D Rules 2011 rather it is the fault on the part of authority for which the said authority be punished and not the appellant.
- H- That no fact finding inquiry has been conducted by the respondent Department and as such the impugned order dated 8.8.2015 is not tenable and liable to be set aside.
- I- That the respondents acted in arbitrary and malafide manner while issuing the impugned order dated 8.8.2015 against the appellant.
- J- That the impugned order has been issued by the wrong authority, therefore, the impugned order is void ab anition in the eyes of law.
- K- That appellant seeks permission to advance other grounds and roofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed far.

Dated: 8.12.2015

**APPELLANT**



**SAJIDULLAH**

**THROUGH:**



**NOOR MOHAMMAD KHATTAK  
ADVOCATE**

10

Annex: A A-5



# صوبائی قومی بین الاقوامی

کابینہ وائس چانسلر

## خالی آسامیاں

11	BPS-07	گورنمنٹ ہائی سکیل ایڈو	گورنمنٹ ہائی سکیل ایڈو	پارہ	پارہ
		10/05/2011	03/05/2011		

دیکھو اور ملاحظہ کریں: 1۔ درخواستیں ایکریڈٹڈ آفسر ایجنسیوں اور ایجنسیوں کے نام پر ہونی چاہئیں۔ 2۔ امیدواروں کو مطلع کرنا ضروری ہے کہ درخواستیں 120 اپریل 2011ء کو 18 سے 30 سال تک ہونی چاہئیں۔ 4۔ سرکاری ملازمین اپنے تنگ کے توسط سے درخواستیں دے سکتے ہیں۔ 5۔ بازار قدرتی کو اختیار حاصل ہے کہ وہ اسٹیڈی آؤٹ تبدیل کر کے ازیم کر کے اسٹیڈی آؤٹ یا آسامی کی تعداد میں کمی کر دے۔ 6۔ درخواست کے ساتھ طلبی اسٹاٹس کے ساتھ طلبی اور دیگر تفصیلات کی کارڈ کی تصدیق شدہ انفرمیشن مع 11 عدد پاسپورٹ سائز تصاویر منسلک ہونا چاہیے۔ 7۔ نام مکمل ہائپر، ہونٹا کے بعد موصول ہونے والی درخواستوں پر غور نہیں کیا جائے گا۔ 8۔ تمام تقرریاں میرٹ کی بنیاد پر ہوں گی۔ 9۔ سیٹ انفرمیشن کے لئے کسی قسم کی اپیل کی جائے گی۔ 10۔ درخواستیں مورخہ 20/04/2011ء کو موصول ہونے چاہئیں، مقررہ تاریخ کے بعد موصول ہونے والی درخواستیں زیر غور نہیں لائی جائیں گی۔ 11۔ تین سال کے لئے کچھ زمرہ لبرٹ افراد کو ترجیح دی جائے گی۔ 12۔ 33% پر دہوش شہید کی کمیٹی کی بنیاد پر ہوگی۔ درخواست فارم EDO ایجنسیوں کے نام سے حاصل کریں۔

علاء اللہ خان مینا خیل ایگزیکٹو ڈسٹریکٹ آفیسر  
ایلیمنٹری اینڈ سیکنڈری ایجوکیشن ضلع چارسدہ

تاریخ: 06 اپریل 2011ء

ATTESTED

S.No. 42255

Roll No. 21377



B-6

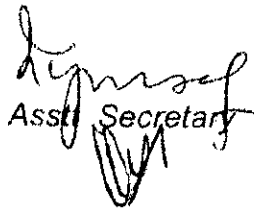
**Board of Intermediate and Secondary Education**  
**Peshawar N.W.F.P. Pakistan**  
**Secondary School Certificate Examination**  
**SESSION 1998 - SUPPLEMENTARY**  
**(Humanities Group)**

This is to Certify that Sajid Ullah Son / Daughter of Hissadar  
and a resident of Charsadda District has passed the Secondary School Certificate  
Examination of the Board of Intermediate and Secondary Education, Peshawar held in Oct./Nov. 1998 as a Private  
candidate. He / She obtained 398 Marks out of 850 and has been placed in Grade D Representing Fair

The Candidate passed in the following subjects:

- |            |                     |                    |                    |
|------------|---------------------|--------------------|--------------------|
| 1. English | 3. Islamiyat        | 5. Mathematics     | 7. Islamic Studies |
| 2. Urdu    | 4. Pakistan Studies | 6. General Science | 8. Pashto          |

Date of birth according to admission form February 10, 1982

  
Asst. Secretary

**ATTESTED**



  
Secretary

This certificate is issued without alteration or erasure.

S.No. 66194

Roll No. 77467

Group. Humanities



7

**Board of Intermediate and Secondary Education**  
**Peshawar N.W.F.P. Pakistan**  
**INTERMEDIATE EXAMINATION**  
**SESSION 2000 - ANNUAL**

This is to Certify that Sajid Ullah Son of Hissadar  
and a student of Govt. College Ekka Ghund Mohmand Agency Registered No. 10-B/EKG-98  
has passed the Intermediate Examination of the Board of Intermediate & Secondary Education, Peshawar  
held in May/June, 2000 as a Regular Candidate. He obtained 544 Marks out of 1100  
and has been placed in Grade D Representing Fair. He has been awarded Grade D on the  
basis of internal assessment by the institution concerned. The Examination was taken as a whole.

  
Asstt. Secretary

ATTACHED



  
Secretary

This certificate is issued without alteration or erasure.



بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

# University of Peshawar (Pakistan)

Session SUPPLEMENTARY 2002

SAJID ULLAH Son / ~~Daughter~~ of HISSADAR

and a student/private candidate of DISTRICT CHARSADDA

having passed the Prescribed examination held in JANUARY 2003

is this day admitted by the University of Peshawar to the Degree of

## Bachelor of Arts

in SECOND Division

The Examination was taken as ~~whole~~ in parts

Serial No. 0119400

ATTESTED

Registration No. 2001-PC-11219

Roll No. 40249



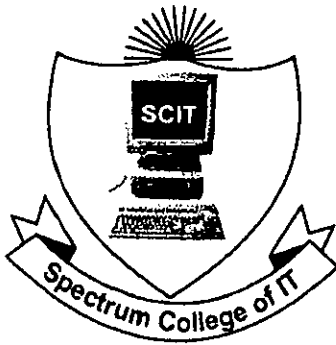
*[Signature]*  
Registrar

Countersigned

*[Signature]*  
Vice-Chancellor



# CERTIFICATE



## SPECTRUM COLLEGE OF INFORMATION TECHNOLOGY

Charsadda, Khyber Pukhtoon Khwa, (Pakistan).

Affiliated With TTB Govt; of K.P.K Peshawar

Vide Notification No:2847(1-3)

10

### CERTIFICATE

Acknowledging That

Mr/Miss/Mrs SAJID ULLAH Son/Daughter of HISSADAR  
has Successfully completed THREE Months Type / Short Hand Course  
Vide Reg. No S.H/5316/03/2010 At the time of Course completion his/her  
Speed was ( 40 ) FORTY Words per minute. During his/her stay in this college his/her  
conduct was " GOOD "

In Recognition Thereof This Certificate is awarded to him/her

at CHARSADDA on the 8th day of MARCH 2010

vide S.No: SCC/CHD/6012/2010.

*[Handwritten signature]*

Principal

*[Handwritten signature]*

*[Handwritten signature]*  
Director  
DIRECTOR  
Spectrum Computer College

# CERTIFICATE



# SPECTRUM COLLEGE OF INFORMATION TECHNOLOGY

## CHARSADDA, (PAKISTAN).

Affiliated with FPB Govt; of N.W.F.P Peshawar.

Vide Notification No: 2847(1-3)

## Certificate

(11)

### Awarded To:

Mr./Mrs/Miss **SAJID ULLAH**

Son/Daughter Of **Mrs. Missadad**

on successful completion of the Following Courses in Computer Science /  
Information Technology in Grade "A" vide Registration No: S-EC/935/05/2003.

### Course Contents

- ◆ Microsoft Disk Operating System
- ◆ Electronic Data processing
- ◆ Microsoft Windows
- ◆ Internet

### OFFICE AUTOMATION

- ◆ Microsoft Word
- ◆ Microsoft Excel
- ◆ Microsoft Powerpoint
- ◆ Microsoft Access

In Recognition thereof this certificate is awarded to him/her

at Charsadda on the 24th day of December 20 09.

vide S/No: SGC/CHD/BAQ/6565/2009.

Principal  
Spectrum College Of IT  
Charsadda



C-12 E.S.C. 3  
T.R.C.

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (E & SE) CHARSADDA.

ORDER.

Consequent upon the recommendations of Departmental Selection Committee, Mr. Sajidullah S/O Hissadar resident of Hakeemzai Shabqadar District Charsadda is hereby appointed as Junior Clerk in BPS-7 (Non Pensionable) plus usual allowances as admissible under the rules against the vacant post at GHS, Shara in the interest of public service from the date of his taking over charge on the following terms and conditions

TERMS & CONDITIONS.

1. The appointment is made purely on temporary basis and is liable to termination at any time without assigning any reason or note.
2. His services will be governed by the existing rules & regulation of Govt. of Khyber Pakhtoonkhwa and by such rules and orders as may be issued by the Govt. from time to time for the category of the Govt. servant to which he belongs.
3. He will produce Health and Age Certificate from the Medical Superintendent concerned.
4. He should report for duty within fifteen days after the receipt of this order otherwise this appointment will be considered as cancelled.
5. In case of resignation, one month prior notice will have to be given by him or forfeit one month pay to Government.
6. Charge reports should be submitted to all concerned.
7. No TA/DA etc is allowed.
8. His services will be on regular basis but non pensionable as per existing rules/policies of the Government.

Note:- The DDO concerned is directed not to draw his salary till the verification of all the related documents from the concerned quarters and the DDO will be held personally responsible for any consequences.

(Attaullah Khan)  
Executive District Officer  
(E & SE) Charsadda.

No. 4351-54/1

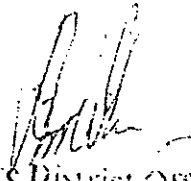
Dated Charsadda the 11/1/02 / 2012.

Copy for information and necessary action to the:

1. District Accounts Officer Charsadda.
2. Principal/ Headmaster/Headmistress concerned School
3. Official concerned.
4. Office file.

ATTESTED

cf

  
Executive District Officer  
(E & SE) Charsadda.

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 CSR	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "p"	Date of appointment	Signature of Government Servant
Junior Clerk GHS Sharo Shogadai (Chd)		BPS-07 (5800-920-15400)				13/2/2012	Sub-district
- do -		BPS-07 - Rs: 5800/P.M.				13/02/2012	Sub-district
- do -		- do	RS 6120	1-P.M.		1/12/2012	Sub-district
- do -		- do	RS 6440	1-P.M.		1/12/2013	Sub-district
20/05/2014		<del>448261</del> BPS 11 (6600-960-20400)					Sub-district
<del>Prashant</del> <del>Wolawat</del>			Rs 6600	1-P.M.		20/5/2014	Sub-district
do		- do -	RS 7060	1-P.M.		1/12/2014	Sub-district
		19/04					

Signature and of the head or other authority

G.H.S. Shogadai

G.H.S. Shogadai

G.H.S. Shogadai

G.H.S. Shogadai

G.H.S. Shogadai

G.H.S. Shogadai

9	10	11	12	13	14	15	
Signature and Designation of the head of the office or other attesting officer in attestation of columns 1 to 8.	Date of termination or appointment.	Reason of termination such as: promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer.	Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is payable to another Government.	Signature of the head of the office or other attesting officer.	Reference to any recorded punishment or censure or praise of the Government servant.
<i>lilly</i> Head Master G.H.S Shara (S.KF) Charsadda						Appointed against Junior class at G.H.S Shara Shabadda vide ED/CESE) dated vide Order No 4351-54 dt. 11/02/2018	
<i>lilly</i> Head Master G.H.S Shara (S.KF) Charsadda	An/9nc		<i>358</i>				
<i>lilly</i> Head Master G.H.S Shara (S.KF) Charsadda	An/9nc		<i>358</i>				
<i>lilly</i> Head Master G.H.S Shara (S.KF) Charsadda	An/9nc		<i>358</i>				
<i>lilly</i> Head Master G.H.S Shara (S.KF) Charsadda	An/9nc		<i>358</i>				
<i>lilly</i> Head Master G.H.S Shara (S.KF) Charsadda	An/9nc		<i>358</i>				
<i>lilly</i> Head Master G.H.S Shara (S.KF) Charsadda	An/9nc		<i>358</i>				
<i>lilly</i> Head Master G.H.S Shara (S.KF) Charsadda	An/9nc		<i>358</i>				
<i>lilly</i> Head Master G.H.S Shara (S.KF) Charsadda	An/9nc		<i>358</i>				
<i>lilly</i> Head Master G.H.S Shara (S.KF) Charsadda	An/9nc		<i>358</i>				
<i>lilly</i> Head Master G.H.S Shara (S.KF) Charsadda	An/9nc		<i>358</i>				

ATTESTED

*[Signature]*

Head Master  
G.H.S Shara (S.KF)  
Charsadda



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)

E-15

Dated Peshawar, the 20-05-2014

NOTIFICATION

NO.FD/SO(FR)10-22/2014. The competent authority has been pleased to accord sanction to the upgradation of pay scales of the following posts, wherever exist, in all the Departments / Offices (except Civil Secretariat) of the Government of Khyber Pakhtunkhwa with immediate effect:

S. No.	Nomenclature of the post	Existing Scale	Upgraded Scale
1	Superintendent	BS-16	BS-17
2	Assistant	BS-14	BS-16
3	Senior Clerk	BS-09	BS-14
4	Junior Clerk	BS-07	BS-11

The pay of the existing incumbents of the posts shall be fixed in higher pay scales at a stage next above the pay in the lower pay scale.

All the concerned Departments will amend their respective service rules to the same effect in the prescribed manner.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

Endst No. & Date even.

Copy of the above is forwarded for information and necessary action to the: -

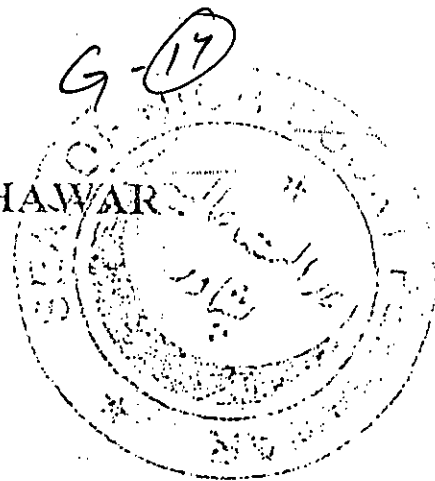
1. PS to Additional Chief Secretary, FATA.
2. All Administrative Secretaries Government of Khyber Pakhtunkhwa.
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa Peshawar.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. Secretary to Governor, Khyber Pakhtunkhwa, Peshawar
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. Secretary Provincial Assembly, Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. Registrar, Peshawar High Court, Peshawar.
10. All Deputy Commissioners, Political Agents, District & Sessions Judges / Executive District Officers in Khyber Pakhtunkhwa.
11. Chairman, Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
12. Registrar, Service Tribunal Khyber Pakhtunkhwa.
13. All the Autonomous and Semi Autonomous Bodies in Khyber Pakhtunkhwa.
14. Secretary to Govt. of Punjab, Sindh and Baluchistan, Finance Department, Lahore, Karachi and Quetta.
15. The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Bannu, Abbottabad, Swat and D.I. Khan.
16. The Senior District Accounts Officer Nowshera, Swabi, Charsadda, Haripur, Mansehra and Dir Lower.
17. The Treasury Officer, Peshawar.
18. All District/Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
19. PSO to Senior Minister for Finance, Khyber Pakhtunkhwa.
20. PSO to Chief Secretary, Khyber Pakhtunkhwa.
21. Director Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
22. PS to Finance Secretary.
23. PAs to All Additional Secretaries/ Deputy Secretaries in Finance Department.
24. All Section Officers/Budget Officers in Finance Department.
25. Abbas Khan, President of Khyber Pakhtunkhwa Civil Secretariat Superintendent, Assistant, Clerks Association with reference to his application No. PR/KPS/SACA/2-1/2013 dated 8-01-2014

ATTESTED



Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR  
(Judicial Department)



WP No. 2225-P/2014.

JUDGMENT

Date of hearing. 4.6.2015

Petitioners (Sher Bahader etc) By M/S Muhammad Ijaz Khan Sæbi and Fazole Wahid,  
Advocates.

Respondent (s) By Mian Arshad Jan, AAG alongwith Mr. Muhammad Rafiq  
Khattak, Director Education KPK Peshawar.  
\*\*\*\*\*

QAISER RASHID KHAN, J. Through the instant petition, the petitioners have prayed for declaring the orders No. 6431-47 dated 3.7.2014 and No. 6502-6 dated 7.7.2014 issued by respondent No.4 whereby the petitioners were directed/ required to appear in the typing test on 15.7.2014 and if they failed, it would be considered that they had lost their legal right to maintain their service, to be illegal, against the law, improper, against the terms and conditions of appointment orders as well as advertisement, unjust, discriminatory without lawful authority and of no legal effect with further prayer to issue directions to the respondents restraining them from such illegal act and harassing the petitioners in future.

2. Relevant facts forming the background of the instant petition are that pursuant to an advertisement dated 6.4.2011 published in daily 'Aaj' Peshawar whereby applications were sought from candidates for different vacancies including Junior Clerks at District Charsadda, the petitioners being eligible and

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Handwritten signature

ATTESTED  
EXAMINER  
Peshawar High Court  
25 JUN 2015

qualified applied for the same. They were subjected to written test, typing test, interview and after fulfilling all the codal formalities, they were appointed as Junior Clerks vide Office Orders dated 11.2.2012 and 25.12.2012. During the course of performance of their duties, they were promoted from BS-7 to BS-11 vide order dated 20.5.2014 with no complaint made against them. However, vide impugned orders dated 3.7.2014 and 7.7.2014, the petitioners were directed to appear in the typing test or else they would lose their right to maintain their service hence, the petition in hand.

3. On 15.7.2014, when the petition came up for hearing before the court, directions were given to the learned AAG to submit comments on behalf of the respondents and by way of interim relief, operation of the impugned orders dated 3.7.2014 and 7.7.2014 was suspended. Accordingly,, the desired comments were filed by the respondents.

4. The petition was adjourned on three occasions due to absence of the learned counsel for the petitioners and lastly it was argued on 28.10.2014 at a considerable length by the learned counsel for the petitioners as well as the learned AAG and in order to seek further assistance, this court directed the learned AAG to come alongwith the Director Education on 30.10.2014. Accordingly, the Director Education Khyber Pakhtunkhwa appeared before the court.

5. Keeping in view the allegations of the respondents that the petitioners were appointed without being subjected to typing test

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*[Signature]*

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EXAMINER  
Court  
*[Signature]*

and simultaneously to allay the fear of the petitioners regarding victimization at the hands of the respondents, we with the consent of the learned counsel for the petitioners, the learned AAG and the Director Education Khyber Pakhtunkhwa Peshawar directed the learned District & Sessions Judge Charsadda to hold the typing test for the petitioners of 30 words per minute.

6. Today, we have before us the report of the learned District & Sessions Judge Charsadda wherein out of 15 petitioners only seven opted to appear in the test and the rest preferred to stay away. Even out of the seven candidates who appeared in the typing test, petitioner No.2 namely, Usman Qamar, qualified the typing test with the speed of 34 words per minute and rest of the six candidates failed with two scoring 'nil'. At this stage our attention was again drawn to the advertisement dated 6.4.2011 published in daily 'Aaj' Peshawar whereby applications were sought for the posts of Junior Clerks by Attaullah Khan Minakhel EDO Elementary and Secondary Education District Charsadda. In the comments furnished by the respondents, it has also been mentioned that an enquiry was held against the said Attaullah Khan EDO, Charsadda for his malpractices in the Education Department and ultimately he has been penalized with stoppage of three increments.

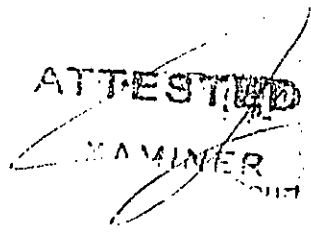
7. The case of the petitioners has surfaced eminently in that enquiry report whereby certain candidates were accommodated without undergoing the rigors of the typing test of 30 words per

**ATTESTED**



**ATTESTED**

**EXAMINER**



minute and that is how the petitioners were directed through the impugned orders to justify their presence in the department. We are rather surprised that barring petitioner No.1 namely, Usman Qamar, who managed to qualify the typing test with 34 words per minute, the performance of the others is abysmal, to say the least.

8. Where it was the sine qua non for the post in question as per advertisement in daily 'Aaj' dated 6.4.2011 that the candidates must have Matric 2<sup>nd</sup> Division and know the English typing with the speed of 30 words per minute for which the petitioners offered their candidature way back in April, 2011 and were in due course promoted to BS-11, certainly they should have performed better in the typing test conducted under the watchful eyes of the learned District & Sessions Judge Charsadda but except the petitioner, Usman Qamar, all the others failed in the test. As such, it does not behove the petitioners to invoke the constitutional jurisdiction of this court seeking equitable relief when they have held themselves disentitled to the said relief by not coming upto the mark.

In view of the foregoing discussion, barring petitioner No.2 namely, Usman Qamar, who shall be deemed to have qualified the typing test, this petition to the extent of the other petitioners stands dismissed.

Announced

JUDGE

JUDGE

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

PRESENT:  
MR. JUSTICE EJAZ AFZAL KHAN,  
MR. JUSTICE QAZI FAEZ ISA

21

C.P. No. 2251 of 2015

(On appeal against the judgment dt. 23.06.2015 passed by the Peshawar High Court, Peshawar in W. P. No. 2225-P of 2014).

Sabir Jan and others.

...Petitioners.

Versus

Govt. of KPK thr. Chief Secretary, Peshawar, etc.

...Respondents

For the petitioners: Mr. M. Ijaz Khan, ASC.

For the respondents: N.R.

Date of hearing: 09.10.2015.

ORDER

EJAZ AFZAL KHAN, J.- This petition for leave to appeal has arisen out of the judgment dated 23.6.2015 of a Division Bench of Peshawar High Court, Peshawar whereby it dismissed the petition filed by the petitioners.


2. Brief facts of the case as narrated in para-2 of the impugned judgment read as under:-

"Relevant facts forming the background of the instant petition are that pursuant to an advertisement dated 6.4.2011 published in daily 'Aaj' Peshawar whereby applications were sought from candidates for different vacancies including Junior Clerks at District Chamanadda, the petitioners being eligible and qualified applied for the same. They were subjected to written test, typing test, interview and after fulfilling all the codal formalities, they were appointed as Junior Clerks vide Office Orders dated 11.2.2012 and 25.12.2012. During the course of performance of their duties, they were promoted from BS-7 to BS-11 vide order dated 20.5.2014 with no complaint made against them. However, vide impugned orders dated 3.7.2014 and 7.7.2014, the petitioners were directed to appear in the typing test or else they would lose their right to maintain their service hence, the petition in hand."

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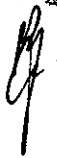
  
Superintendent  
Peshawar High Court

3. When the writ petition came up for hearing before the High Court, the stance of the respondents was that they were appointed after having qualified typing test, therefore, they could not given another test. Just to see whether the stance of the respondents was justifiable, the High Court itself stepped in and directed the learned District and Sessions Judge Charsadda to hold the typing test for the petitioners. On the date fixed for the test, only seven out of fifteen participated in the test. Except Usman Qamar who is respondent No. 5 before us, all others failed. The High Court in this view of the matter held as under :-

*"Where it was the sine qua non for the post in question as per advertisement in daily 'Aaj' dated 6.4.2011 that the candidates must have Matric 2<sup>nd</sup> Division and know the English typing with the speed of 30 words per minute for which the petitioners offered their candidature way back in April, 2011 and were in due course promoted to BS-11, certainly they should have performed better in the typing test conducted under the watchful eyes of the learned District and Sessions Judge Charsadda but except the petitioner, Usman Qamar, all the other failed in the test. As such, it does not behove the petitioners to invoke the constitutional jurisdiction of this court seeking equitable relief when they have held themselves disentitled to the said relief by not coming upto the mark."*

4. The view taken by the High Court in the matrix of the case does not smack of any error, absence or excess of jurisdiction. It rather helped bringing to light who was appointed with justification and who was appointed otherwise. The view taken by the High Court being just, fair and equitable merits no interference. The learned ASC appearing for the petitioners at this stage contended that the case of Sher Bahadur respondent No. 6 is distinguishable as he lost his 21 years service rendered in the Population Welfare Department on account of his appointment against the post in question, therefore, he has to be treated differently. We appreciate the distinction highlighted by the learned ASC for the

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22

petitioners but in the peculiar circumstances of the case we are afraid we cannot help him. He, however, could approach the D. G. Population Welfare Department and seek his redress therefrom. We have been told that he has already approached the said D. G., if so let him pass an appropriate order in this behalf.

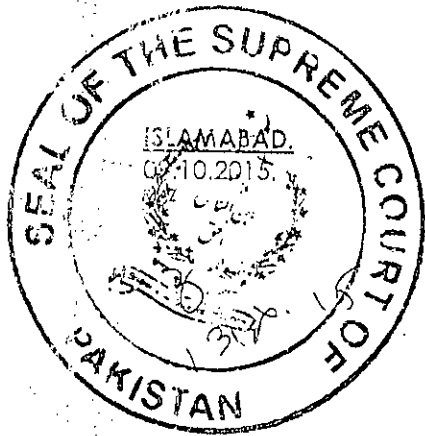
23

5. For the reasons discussed above, this petition is disposed of in the terms mentioned above.

Sd/- Ejaz Afzal Khan, J  
Sd/- Qazi Faez Isa, J

Certified to be True Copy

*[Signature]*  
15/10/15  
Superintendent  
Supreme Court of Pakistan  
Islamabad



14263/15  
CR No: \_\_\_\_\_  
Date of presentation: 13.10.15  
No. of Words: 900  
No. of Follies: 9  
Requisition Fee Rs: 500  
Copy Fee in: 500  
Court Fee stamps: 10.00  
Date of Completion of Copy: 15/10/15  
Date of delivery of Copy: 15-10-15

ATTACHED

*[Signature]*

THE DISTRICT EDUCATION OFFICER  
(MALE) CHARSAJDA

NOTIFICATION.

H-(24)

01. WHEREAS, Mr Sajid Ullah, J/Clerk GHS; Shara SKF Charsajda was proceeded under the Khyber Pakhtunkhwa, Government servants (Efficiency & Discipline) Rules, 2011 on the charges pointed out by Muhammad Humayun Khan, Chairman BS-21, Provincial Inspection Team Peshawar (now secretary transport department) as inquiry officer, who conducted formal inquiry against Mr Atta Ullah Khan Ex-DEO (M) BS-19, Charsajda in irregular appointments in his tenure (now removed from service) for the charges leveled against him in accordance with Rules, which was communicated to this office vide letter No SO (S/M) E&SED/4-17/2013/Attaullah Khan Ex-EDO/Chd dated Peshawar the May 12, 2014, approved by the Honorable Chief Minister Khyber Pakhtunkhwa. Recommendation (iii) of the inquiry report contains the following words;  
"Junior Clerks appointed by initial recruitment who do not know the typing may be terminated after serving show cause Notice"

02. AND WHEREAS, the undersigned after having examined the charges, evidence against the accused as mentioned in the above inquiry report and report of typing test conducted by session judge Charsajda received through Honorable High Court Peshawar in writ petition No 2225-P/2014 in which the following remarks have been recorded in the judgment attested on 25<sup>th</sup> June, 2015;  
"this petition to the extent of the other petitioners stands dismissed".

03. AND WHEREAS, a show cause notice was served upon Mr Sajid Ullah J/Clerk GHS Shara SKF Charsajda dated 15/07/2015.

04. AND WHERE AS, I the competent authority after having considered the charges and evidence on record inquiry report, explanation of the accused officials in response to the show cause notice and personal hearing granted to you by the personal hearing committee on behalf of the undersigned on 05/08/2015, is of the view that the charges i.e not qualifying the required criteria of typing against you have been proved.

05. In the light of above enquiry report & judgment of the Honourable Peshawar High Court Peshawar, you are hereby terminated from the post of J/Clerk with immediate effect.

(SIRAJ MUHAMMAD)  
DISTRICT EDUCATION OFFICER  
(M) CHARSAJDA

Endstt No: 8363-67 / Dated 8/8/2015

Copy forwarded for information to the:

01. Director (E&SE) KPK Peshawar
02. District Account Officer Charsajda
03. Official concerned
04. Principal/Head Master concerned
05. Office file

ATTACHED

8/8/15  
DISTRICT EDUCATION OFFICER  
(M) CHARSAJDA



To,

The Director  
Eliminatory and secondary Education (E&SE)  
Khyber Pukhtunkhwa Peshawar.

1 - (25)

Subject:- Departmental Representation / Appeal Under Section 22 of KP Civil Servant Act, 1973, against the order of District Education Officer (Male) Charsadda dated 10/08/2015 whereby the appellant was terminated from the post of Junior Clerk with immediate effect.

1. That the appellant was appointed as against a vacant post of Junior Clerk in BPS-7 after due process of appointment prevailed at the relevant time upon the recommendations of Departmental Selection Committee and by the then Executive District Officer (E&SE) Charsadda vide order No.4355-58/ dated 11/02/2012.
2. That since then the appellant was performing his duty with high degree of devotion, dedication and commitment and thus no complaint whatsoever has ever been made against him in their whole service career.
3. That it was in the year 2014 when the appellant was informed / called vide office order No.Endstt:6431-47/dated 03/07/2014 for a typing test to be conducted on 15/07/2014 and in case the appellant failed it then it will be considered that the appellant has lost his legal right to maintain his service, the appellant along with others colleague had challenged the said office order in writ petition No.2225-P/2014 before the Hon'able Peshawar High Court Peshawar but the same was not allowed for reason stating therein this order of the Peshawar High Court has also been challenged by the appellant in the Supreme Court where their Civil Petition for leave to appeal (CPLA) is pending.
4. That thereafter the appellant was issued with a show cause notice to which a detailed reply was submitted by the appellant.
5. That the impugned order of District Education Officer (Female) Charsadda is against the century old principle of "audi-altram pertram" as no opportunity of hearing was provided to the appellant before the passing the impugned order.
6. That over the passage of time it is an established law that before passing an order warranting major penalty a regular enquiry has to be conducted but in the case of the appellant no such enquiry was carried out and another enquiry conducted against the Ex-EDO namely Atta Ullah was made basis for the termination of the appellant, which is prima facia illegal and unlawful.

ATTACHED

- (26)
7. That the impugned order of termination of the appellant has been passed in total disregard of the mandatory provision of KPK Efficiency and Disciplinary Rules 2011 and thus the same has no legal footing to stand upon.
  8. That as per the terms of advertisement and appointment order no typing test during existence of service is a condition precedent therefore the very order requiring the appellant to appear in typing test was/is illegal and unlawful.
  9. That the impugned order is based on malafide and political victimization which has promotes bad governance and unprecedented departmental practice.
  10. That the impugned termination order is prima facia illegal and void-ab-initio and thus the same needs to be recalled.

It is therefore, most humbly prayed that on acceptance of this appeal the impugned order of District Education Officer (Female) Charsadda dated 10/08/2015 whereby the appellant was terminated from the post of Junior Clerk with immediate effect may be set aside and consequently the appellant may be reinstated in his service with all back benefits.

Date. 21/8/2015

Appellant.  
S1 -  
Sajid Ullah Son of Hisadar  
GHS Shara

ATTENDED

8

**VAKALATNAMA**

IN THE COURT OF KPK Service Tribunal Peshawar  
\_\_\_\_\_ OF 2015

Sajid Ullah

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Education Dept.

(RESPONDENT)  
(DEFENDANT)

I/We Sajid Ullah

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. \_\_\_\_/\_\_\_\_/2015



**CLIENT**



**ACCEPTED**

**NOOR MOHAMMAD KHATTAK  
(ADVOCATE)**

OFFICE:

Room No.1, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICES  
TRIBUNAL PESHAWAR

Service Appeal No.1395/2015

Sajid Ullah

Vs

District Education Officer & others

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S No	Description	Annexure	Page
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4	Copy of show cause notice	B	10

  
DISTRICT EDUCATION OFFICER  
(MALE) CHARSADE

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

Service Appeal No.1395/2015

Sajid Ullah

Vs

District Education Officer & others

**Written comments on behalf of Respondents**

**Preliminary Objections:**

Respectfully Sheweth:

- A. That the Appellant has no locus standi and cause of action.
- B. That the present Appeal is wrong, baseless and not maintainable, it shows no strong cause to be taken for adjudication, therefore, the same Appeal is liable to be rejected/ dismissed.
- C. That the Appeal is unjustifiable, baseless, false, frivolous and vexatious. Hence the same is liable to be dismissed with the order of special compensatory costs in favour of Respondents.
- D. That no legal right of the appellant has been violated, therefore, the appellant has no right to file the instant appeal.
- E. That the Appellant is completely estopped/precluded by his conduct to file this Appeal.
- G. Appellant has not come to this Hon' able Tribunal with clean hands. The Appeal also suffers from mis-statements and concealment of facts and as such the Appellant is not entitled to equitable relief.
- H. That the Appellant have no right to file the instant Appeal and the Hon' able Services Tribunal have got no jurisdiction to adjudicate upon and the Appeal is liable to be dismissed.
- I. That the instant appeal is barred by law and limitation.
- J. That the appeal is hit by the Khyber Pakhtunkhwa Services Tribunal rules i.e. rule-23.

**PARA WISE REPLY ON FACTS:**

1. That the Para is partially correct to the extent that the respondents have advertised the post of Junior Clerks. But the then Ex-EDEO did not followed

the procedure and the enquiry was conducted against him and in consequent of that enquiry the appellant, have been put into test and interview and they failed to qualify the same. Hence terminated after issuing show cause notice and personal hearing. **(Copy of enquiry is attached as Annexure A)**  
**(Copy of show cause notice is attached as Annexure B).**

2. That the appellant was appointed without due process and fulfillment of Codal formalities, therefore, a test was arranged and the appellant was un-able to pass the same.
3. That as the appellant was appointed without being subjected to typing test. And an enquiry was conducted against the then Ex-EDEO Mr. Attaullah Khan and it was found that irregularities were committed while in appointments of different categories of employees. Therefore, the appellant was directed by the Hon'ble Peshawar High Court Peshawar to appear before the District & Sessions Judge for typing test. The government of KPK issued a notification No.FD/SO(FR)10-22/2014 upgrading the clerical staff scales which is annexed with the appeal as annexure E on page 11. Therefore, it is not only the appellant but also the whole of the clerical staff of the KPK have been upgraded and not promoted.
4. The Para needs no comments.
5. The Para is self explanatory and has been already replied above.
6. Incorrect the appellant have approached for the redressal of their grievances to
7. the Hon'ble Peshawar High Court Peshawar in writ petition No. 2225/2014 titled Sher Bahadar & Others. The Hon'ble Supreme Court of Pakistan have held in its judgment in Para No.3 that when the writ petition came up for hearing before the High Court the stance of the respondents was that they were appointed after having qualified typing test, therefore, they could not given another test. Just to see whether the stance of the respondents was justifiable. The High Court itself stepped in and directed the learned District and Sessions Judge Charsadda to hold the typing test for the petitioners. On the date fixed for the test, only seven out of fifteen participated in the test. Except Usman Qamar who is respondent No.5 before us, all others failed. The High Court in this view of the matter held as under:-

*“Where it was the sine qua non for the post in question as per advertisement in daily ‘Aaj’ dated 6.4.2011 that the candidates must have Matric 2<sup>nd</sup> Division and know the English typing with the speed of 30 words per minute for which the petitioners offered their candidature way back in April, 2011 and were in due course promoted to BPS-11, certainly they should have performed better in the typing test conducted under the watchful eyes of the learned District and Sessions Judge Charsadda but except the petitioner, Usman Qamar, all the other failed in the test. As such, it does not behave the petitioners to invoke the constitutional jurisdiction of this court seeking equitable relief when they have held themselves disentitled to the said relief by not coming upto the mark.”*

3

this view is further supported by the Hon'ble Supreme Court in its judgment delivered in C.P.NO.2251 of 2015 on dated 09-10-2015 in its Para No.4 which is re-produced for the assistance of the Hon'ble Tribunal as under:-

The view taken by the High Court in the matrix of the case does not smack of any error, absence or excess of jurisdiction, it rather helped bringing to light who was appointed with justification and who was appointed otherwise. The view taken by the High Court being just, fair and equitable merits no interference. The learned ASC appearing for the petitioners at this stage contended that the case of Sher Bahadur respondent No.6 is distinguishable as he lost his 21 years service rendered in the Population Welfare Department on account of his appointment against the post in question, therefore, he has to be treated differently. We appreciate the distinction highlighted by the learned ASC for the petitioners but in the peculiar circumstances of the case we are afraid we can't help him. He, however, could approach the D.G Population Welfare Department and seek his redress there from. We have been told that he has already approached the said D.G, if so let him pass an appropriate order in this behalf.

As both the Superior Courts have delivered concurrent judgments and supported the stance of the respondents and dismissed the petitions, therefore, the appellant has no right to file the instant appeal and is liable to be dismissed inter alia on the following grounds.

**PARA WISE REPLY ON GROUNDS:**

- A. Incorrect the answering respondents have acted in accordance with law, rules and policy.
- B. Incorrect the respondents have acted in pursuance of the enquiry conducted against the then Ex-EDEO and in consequent of that enquiry the test was conducting under the watchful eyes of the District & Session Judge Charsadda and the appellant failed to qualify, therefore, terminated.
- C. Incorrect the appellant was appointed without due course of law, therefore, subject to typing test and the appellant was unable to qualify. Hence the appointment order is void ab-initio.
- D. The Para is irrelevant, therefore, needs no comments.
- E. Incorrect the appellant have been terminated in the light of judgment of Peshawar High Court Peshawar after proper procedure and fulfilling all the codal formalities.
- F. Incorrect the proper enquiry was conducted against the Ex-EDEO Mr. Attaullah Khan for the irregularities committed by him in the appointments of different categories. Therefore, to bring into light who was appointed with justification and who was appointed otherwise. Therefore, the competent authority appointed the then Secretary Transport Of The Govt Of KPK Mr.Hamayoun Khan of Bps .21 to enquire into the matter and in the light of that enquiry and recommendations of that enquiry the appellant have been given the show cause notice and all the formalities were fulfilled and then the services of the appellant have been dispensed with.

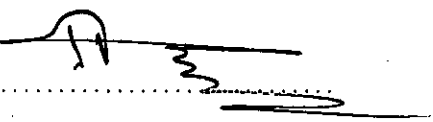
- 4
- G. The Para as stated reveals that the appellant have been appointed irregularly and illegally, therefore, have been subjected to test and was failed to qualify, having served the department nearly for three years still have no experience and knowledge of his job. Hence illegal act can't create any right.
- H. Incorrect the Para is elaborately replied in Para No. G in reply to the grounds.
- I. Incorrect the answering respondents have acted in accordance with law, rules and policy.
- J. Incorrect the Para is false and frivolous the answering respondents have the power to terminate the appellant in accordance with law, rules and policy and in pursuance of the directions of the Hon'ble Peshawar High Court Peshawar.
- K. That the answering respondents seek permission to advance further documents/ arguments at the time of hearing of the appeal.

**PRAYER:**

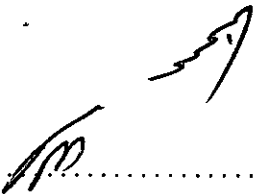
That in the light of enquiry report and recommendations of the said enquiry, the appellant have been terminated after due process of law and procedure. Therefore, the appellant has no right to be reinstated as the issue has already been decided once for all by the Hon'ble Supreme Court of Pakistan and the answering respondents have acted in accordance with the law, rules and policy and with the directions of Hon'ble Peshawar High Court and Hon'ble Supreme Court of Pakistan . The appeal of the appellant is time barred, therefore, is of no legal effect and is liable to be dismissed in favor of respondents with heavy cost.

**Respondents**

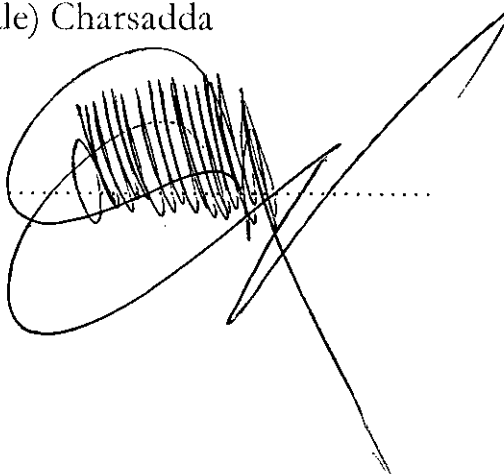
1. Secretary (E&SE) Khyber Pakhtunkhwa.

  
.....

2. Director (E&SE) Khyber Pakhtunkhwa Peshawar.

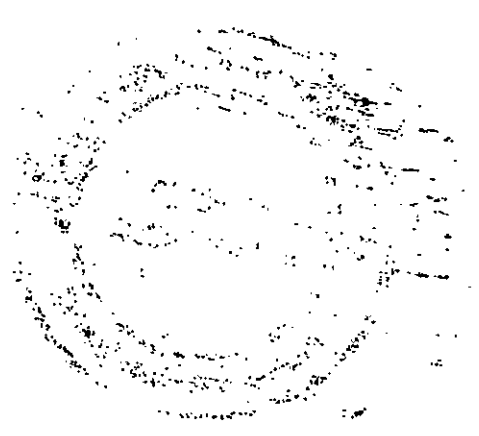
  
.....

3. District Education Officer (Male) Charsadda

  
.....



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5

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICES  
TRIBUNAL PESHAWAR

Service Appeal No.1395/2015

Sajid Ullah

Vs

District Education Officer & others

AFFIDAVIT

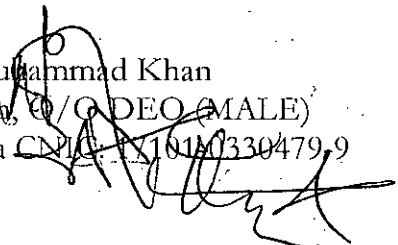
I Mr. Wisal Muhammad Litigation Officer of the DEO (M) Charsadda do hereby solemnly affirms that the contents of the Para-wise comments submitted by respondent are true and correct and nothing has been concealed intentionally from this Hon' able court.

Deponent

Identified by:

Advocate General Khyber Pakhtunkhwa  
Peshawar

Wisal Muhammad Khan  
Litigation, O/G DEO (MALE)  
Charsadda CNIC: 10100330479-9



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

No.SO(S/M) E&SED/4-17/2013/Attaullah Khan Ex-EDO/Chd  
Dated Peshawar the May 12, 2014

To

The District Education Officer (Male & Female)  
Charsadda.

*ANNEX A*  
*(6)*

Subject: - DISCIPLINARY ACTION AGAINST MR. ATTA ULLAH KHAN EX-EDO E&SE/  
EX-DEO MALE BS-19 CHARSADEA. (NOW PRINCIPAL GHS BOGARA  
KARAK)

I am directed to state that the Chief Minister Khyber Pakhtunkhwa/ Competent Authority has appointed Mr. Muhammad Humayun Khan, Ex-Chairman BS-21 Provincial Inspection Team Khyber Pakhtunkhwa Peshawar as inquiry officer to conduct formal against Mr. Atta Ullah Khan, Ex-Executive District Officer, E&SE/ District Education Officer BS-19 Charsadda (now Principal BS-19 GHS Bogara Karak) on account of illegal appointment of Junior Clerks BS-07 and different categories of teachers during 2010 to 2013 in District Education Charsadda in violation of rules & regulations and prescribed procedure. The inquiry officer has submitted inquiry report which was moved to the Chief Minister Khyber Pakhtunkhwa for approval. The Chief Minister Khyber Pakhtunkhwa has approved recommendations of the inquiry officer at para-10 (iii to viii except v) copy enclosed).

2. It is therefore, requested that compliance report may be furnished to all concerned in the light of recommendations of the inquiry officer duly approved by Chief Minister Khyber Pakhtunkhwa/ Competent Authority.

Encl: As Above:

*Mujeeb-ur-Rehman*

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

*Aliqad*

Endst: Even No. & Date:

Copy forwarded to the:-

1. PS to Special Secretary, E&SE Department Khyber Pakhtunkhwa Peshawar.

SECTION OFFICER (SCHOOLS/MALE)

*in the case  
mutual as per  
of Rules/Policy.  
4/15/14*

7

7



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

SUBJECT: - DISCIPLINARY ACTION AGAINST MR. ATTAULLAH KHAN, EX-EDO  
E&SE/ EX-DEO (BS-17) MALE CHARSADDA (NOW PRINCIPAL (BS-19) GHS  
BOGARA KARAK.

Para-8 of the Summary refers.

9. The Chief Minister Khyber Pakhtunkhwa/ Competent Authority had appointed Mr. Muhammad Humayun Khan, Ex-Chairman (BS-21), Provincial Inspection Team Khyber Pakhtunkhwa (now Secretary Transport & Mass Transit Department Khyber Pakhtunkhwa) as inquiry officer to conduct formal enquiry against Mr. Atta Ullah Khan, Ex-Executive District Officer E&SE/ Ex-District Education Officer (BS-19) Male Charsadda (now Principal BS-19 GHS Bogara District Karak) for the charges mentioned in the Charge Sheet and Statement of Allegations vide notification dated 21-11-2013 (P/P).

10. The inquiry officer has now submitted inquiry report containing the following observations/ recommendations (P/P).

Observations:

It was observed that Mr. Attaullah Khan Ex-EDO (E&SE) Charsadda advertised all the posts in the news papers. Scrutiny committees were constituted. Written test and typing test were conducted. PTFA test was also arranged for the posts of CT, PPT, DAI, TT & Qari. Interviews were held. Merit lists were prepared and displayed. Appellate committees were also notified. A number of appeals were decided by the Appellate Committee and candidates were given their due rights. However, certain irregularities have been noted in the appointment of Junior Clerks, reinstatement of sacked employees. Mr. Muhammad Usman, an underage candidate was appointed as Junior Clerk, typing material produced seems fake and certain other categories. In certain cases observations raised by the fact finding committee were found valid while in other cases baseless. In order to extend undue favour to an deserving candidate, written test was conducted for the post of Junior Clerks. After passing typing test merit list should have been prepared on the basis of academic record and experience etc.

Recommendations:

- 1. Charge of illegal and irregular appointments leveled against Mr. Attaullah Khan, Ex-EDO Charsadda partially proved. Eligible and qualified candidates were deprived of their due rights. Mr. Atta Ullah Khan, Ex-EDO (E&SE) Charsadda was appointed in BS-19 by initial recruitment through Public Service

Commission hence his reversion to lower post is not permissible. It is recommended that minor penalty of stoppage of three increments may be imposed upon him. District Selection Committee notified by Mr. Attaullah Khan, Ex-EDO Charsadda is as under:-

S.#	Name	Designation	
1.	Mr. Atta Ullah Khan	Ex-EDO, Charsadda	Chairman
2.	Mr. Maqsood Jan, (Died)	District Accounts Officer, DCO Office Charsadda.	Member
3.	Mr. Jehangir Khan,	Deputy District Education Officer (M/F), E&SE Charsadda.	Member.
4.	Mr. Khadim Shah, Mr. Ruhul Qudus Mr. Khisro Peryz Mr. Shah Jehan  Mr. Liaqat Qazi Sirajul Haq.	Superintendent, EDO office Charsadda Superintendent Retd: office of EDO Charsadda Superintendent Retd: office of EDO Charsadda Superintendent, office of EDO (F) Tangi Charsadda. Assistant, office of EDO Charsadda. Assistant, office of EDO Charsadda.	Member

- ii. Members of District Selection Committee are equally responsible therefore action may also be taken against them except M/S Ruhul Qudus & Khisro Pervez who had retired from service and Mr. Maqsood Jan who has died.
- ✓ iii. Class-IV Employees who were promoted out of turn as Junior Clerks may be reverted and promotion be made purely on the basis of seniority and service record of Class-IV employees. Junior Clerks appointed by initial recruitment who do not know the typing may be terminate after serving Show Cause Notices.
- iv. Mr. Muhammad Hayat PET who has been illegally reinstated in service may be served with show cause notice and his service may be terminated and Mr. Alam Zeb PET may be re-instated against the said vacancy.
- v. Since DCO Charsadda was appointing authority in respect of AT, TT and Qari. Moreover, sacked employees were also reinstated in service with his approval therefore he may be asked to explain reasons for according approval of irregular appointments.
- vi. Mr. Shah Hussain S/O Hussain Zada, was reinstated as CT teacher vide office order No. 3505-10/Appointment/CT dated 31-12-2012. Perusal of record reveals that Mr. Shah Hussain passed professional examination of CT (General) in 1998. His reinstatement is not covered under the Sacked Employees Act.
- vii. Mr. Jehanzeb Khan S/O Adnan Khan was reinstated as CT teacher vide office order No. 3505-10/Appointment/CT dated 31-12-2012. Perusal of record reveals that Mr. Jehanzeb Khan passed professional examination of CT

(General) in 1998. His reinstatement is not covered under the Sacked Employees Act.

- viii. Mr. Zahid Ali S/O Muslim Khan was reinstated as AT teacher vide office order No. 3929-34/Appointment/AT dated 31-12-2012. His appointment order and termination order were not available in the record thus his reinstatement in service is irregular.

11. It is pertinent to note that the accused officer is also involved in the following disciplinary cases.

- a. The Competent Authority/ Chief Minister, Khyber Pakhtunkhwa has imposed the minor penalty of "Withholding of three increments" upon of Mr. Attaullah Khan, District Education Officer (BS-19) Charsadda vide notification dated 25-11-2011 (F/G).
- b. The Competent Authority/ Chief Minister Khyber Pakhtunkhwa has imposed minor penalty of "Withholding of two annual increments for two years" upon Mr. Attaullah Khan, Ex-DEO (BS-19) Lakki Marwat vide notification dated 28-09-2012 (F/H).
- c. The Competent Authority/ Chief Minister Khyber Pakhtunkhwa has imposed minor penalty of "Withholding of two annual increments for two years" upon Mr. Attaullah Khan, Ex-DEO (BS-19) Charsadda vide notification dated 24-11-2011 (F/I).
- d. Mr. Hussain Shah Director (BS-20) Staff Training Institute, Benevolent Fund Building, Peshawar Cantt was appointed as inquiry officer to conduct formal inquiry against Mr. Attaullah Khan DEO (BS-19) Charsadda on account of allegations/ charges leveled against him mentioned in the Charge Sheet and Statement of Allegations vide notification dated 05-12-2012. (Inquiry report is awaited) (F/J).

12. The Elementary & Secondary Education Department endorses the recommendations of the enquiry officer for imposition of penalties against the accused officer/ officials and proposes that:-

1. Since Mr. Atta Ullah Khan, (Ex-EDO, E&SE re-designated as DEO Male Charsadda), the accused officer, has committed the omission and commission of inefficiency and misconduct being involved in different inquiries and his retention in the Department is not in the public interest. Therefore, major penalty of dismissal from service may be imposed upon him.

SHOW CAUSE NOTICE

*Mr. Sajid Ullah*

*15/7/15*

I, Siraj Muhammad District Education Officer (M) Charsadda as competent authority under the Khyber Pakhtunkhwa Government Servants E&D Rules 2011, do hereby serve you Mr. Sajid Ullah J/Clerk GHS Shara as follow.

1. (i) That consequent upon the completion of inquiry conducted against you by the enquiry officer/inquiry committee for which you were given opportunity of hearing vide communication No \_\_\_\_\_ dated \_\_\_\_\_ and
- (ii) On going through the findings and recommendations of the enquiry officer/inquiry committee, the material as record and other connected papers including your defense before the enquiry officer/inquiry committee,

I am satisfied that you have committed the following acts omission specified in Rule 3 of the said rules;

- (p) Your appointment as J/Clerk was considered as irregular by the inquiry committee constituted by the Govt; for checking the appointment record of all cadres made in the tenure of Mr Attaullah Khan Ex-DEO (M) Charsadda.
  - (q) You were given opportunity of the test in typing as per decision of the Honorable High Court held at Session Court Charsadda under the supervision of Session Judge Charsadda.
  - (r) You could not qualify typing test as evident from the judgment of Honorable Court (Copy enclosed)
2. As a result thereof. I as competent authority have tentatively decided to impose upon the penalty of REMOVAL under rules 4 of the said rules.
  3. You are therefore required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person on 28 / 07 / 2015.
  4. If no reply to this notice is received within 7 days or not more than 15 days of its delivery it shall be presumed that you have no defense to put in and in that case an ex-parte shall be taken against you.
  5. A copy of findings of the inquiry officer/inquiry committee is enclosed.

*15/7/15*  
COMPETENT AUTHORITY

Mr. Sajid Ullah  
J/Clerk GHS Shara

ahid  
GHS

EXAMINER  
Session Judge High Court