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 Appeal No. 1398/2015 Date of Institution ... 17.12.2015 Date of Decision ... 04.07.2017 Shahid Ali, Ex Junior Clerk (BPS-11), R/O Village Utmanzai, Tehsil and District Charsadda. Versus 1. The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and others.
	04.07.2017	JUDGMENT MUHAMMAD HAMID MUGHAL, MEMBER: - Appellant, learned counsel for the appellant and Mr. Usman Ghani, District Attorney on behalf of the official respondents present. 2. In this service appeal bearing No. 1398/2015 the appellant Shahid Ali, 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. 3. Argument heard. File perused.

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

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, your 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

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.

(Muhammad Amin Khan Kundi)
Member

(Ahmad Hassan)
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.

Appellant Deposited
Security & Process Fee

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

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1398/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17.12.2015	The appeal of Mr. Shahid Ali 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. REGISTRAR
2	21-12-15	This case is entrusted to S. Bench for preliminary hearing to be put up thereon 04-1-16. CHAIRMAN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1398 /2015

Shahid Ali **VS** **Education Department**

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	.....	1- 4.
2.	Advertisement	A	5.
3.	Education testimonials	B	6- 11.
4.	Appointment order	C	12.
6.	Service Book	D	13- 17.
7.	Up-gradation order	E	18.
8.	Pay slip	F	19.
9.	Judgment	G	20- 26.
10.	Impugned order	G	27.
11.	Departmental appeal	H	28- 29.
12.	Vakalat nama	.....	30.

APPELLANT

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO._____/2015

Mr. Shahid Ali, Ex Junior clerk (BPS-11),
R/O Village Utmanzai,Tehsil and 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 WIHTIN 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 inresponse 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.

GROUNDS:

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

SHAHID ALI

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

10

Annex: A

A-5

صوبائی قومی بین الاقوامی

خالی آسامیاں

ٹیچر BPS-07	11	گورنمنٹ ہائی سکول چارسدہ	گورنمنٹ ہائی سکول چارسدہ	لیٹرک ٹیسٹ/ڈومیسائل یا سکاری تابیت تعلیم شدہ چارسدہ اور اگر ہزاری کا کیس میں 30 الفاظ فی منٹ کی رفتار
		03/05/2011	10/05/2011	

دیگر قواعد وضوابط: 1۔ درخواستیں ایجوکیشن آفیسر (ایلیمنٹری اینڈ سیکنڈری ایجوکیشن) چارسدہ کے نام ہونی چاہئیں۔ 2۔ امیدواروں کو ضلع چارسدہ کا ہونا لازمی ہے۔ 3۔ درخواست کنندہ کی عمر 20 اپریل 2011ء کو 18 سے 30 سال تک ہونی چاہیے۔ 4۔ سرکاری ملازمین اپنے محکمے کے توسط سے درخواستیں دے سکتے ہیں۔ 5۔ مجاز اتھارٹی کو اختیار حاصل ہے کہ وہ اشتہار کو تبدیل کرے/ترمیم کرے/منسوخ کرے یا آسامی کی تعداد میں کمی بیشی کرے۔ 6۔ درخواست کے ساتھ تعلیمی اسناد تجربے، پی ایم ایس کا سرٹیفکیٹ، ڈومیسائل، قومی شناختی کارڈ کی تصدیق شدہ نقول سمیت واضح اور مدلل سپورٹ سائز فوٹو پر مشتمل ہونا چاہیے۔ 7۔ نامکمل یا مسترد، تاریخ کے بعد موصول ہونے والی درخواستوں پر غور نہیں کیا جائے گا۔ 8۔ تمام تقرریاں میرٹ کی بنیاد پر ہوں گی۔ 9۔ ٹیسٹ انٹرویو کے لئے کسی قسم کا ٹی اے/ڈی اے نہیں دیا جائے گا۔ 10۔ درخواستیں مورخہ 20/04/2011ء کو وصول ہونے چاہئیں۔ مقررہ تاریخ کے بعد میں موصول ہونے والی درخواستیں زیر غور نہیں لائی جائیں گی۔ 11۔ تعینات کے لئے کمپیوٹر لٹریٹ افراد کو ترجیح دی جائے گی۔ 12۔ 33% پروموشن سنیارٹی کم فٹنس کی بنیاد پر ہوگی۔ درخواست فارم EDO ایجوکیشن آفس سے حاصل کریں۔

عبداللہ خان میناخیل ایگزیکٹو ڈسٹرکٹ آفیسر
ایلیمنٹری اینڈ سیکنڈری ایجوکیشن ضلع چارسدہ

روزنامہ آج پشاور 06 اپریل 2011ء

ATTESTED

D O M I C I L E

B-6

I Declare That I Was Born Of Parents Who Are Permanently

Domiciled In N.w.f.p. Having Belonged To In By Birth/settled In It. I Belong By Birth To

Mohallah Khoshy Sar Peran Utmanzai

Village Utmanzai Tehsil C.H.D District C.H.D

Signature Of Applicant

Pursuance To The Declearation Dated

Filed By Shahid Ali S/D/W/of Zarshad Khan

Domicilein The N.w.f.p It Is Hearby Certified That The Said

Is Born Of Parents Who Are Permanent Residents Of The N.w.f.p Having Belonge To It By Birth/setteled In It. I Have Satisfied My Self Personally/my Knowledge Verification That The Above Declaration is True And Certify.

This 20 Days Of 2 20

Countersigned

DEPUTY DISTRICT REVENUE OFFICER

DISTRICT REVENUE OFFICER

(7)

S.No. 459825

بسم الله الرحمن الرحيم

Roll No. 61267

Board of Intermediate and Secondary Education
Peshawar
N.W.F.P. Pakistan

Secondary School Certificate Examination

SESSION 2006- ANNUAL

(Science Group)

This is to Certify that **Shahid Ali** Son of **Zar Shad Khan**

and a resident of **Charsadda District** has passed the Secondary School Certificate Examination of the Board of Intermediate and Secondary Education, Peshawar held in **March, 2006** as a **Private** candidate. He obtained **516** Marks out of 1050 and has been placed in Grade **D** Representing **Fair**

The Candidate passed in the following subjects:

1. English	2. Urdu	3. Islamiyat (Comp)	4. Pakistan Studies
5. Maths	6. Physics	7. Chemistry	8. Biology

Date of birth according to admission form **March 11,1988**

Asstt Secretary

This certificate is issued without alteration or erasure.

Secretary

بسم اللہ الرحمن الرحیم

S. No. 043629

Roll No. 82500

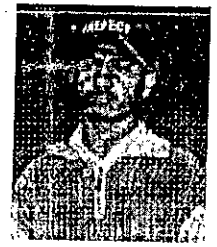
Group. Pre-Medical

(8)

Board of Intermediate and Secondary Education
Peshawar
N.W.F.P Pakistan

INTERMEDIATE EXAMINATION

SESSION 2009- ANNUAL



This is to Certify that Shahid Ali Son of Zar Shad Khan

and a resident of Charsadda District Registered No. 008-B/HUTZ-2006

has passed the Intermediate Examination of the Board of Intermediate & Secondary Education, Peshawar held in May, 2009 as a Private candidate. He obtained 476 Marks out of 1100 and has been placed in grade D Representing Fair. The examination was taken in parts.

Asstt Secretary

This certificate is issued without alteration or erasure.

Secretary

University of Peshawar

Pakistan

Detailed Marks Certificate

(9)

Private

Bachelor of Arts.

Part-II
Annual Examination 2014
District Charsadda

Name: SHAHID ALI Gender: *Male* Roll No: 66220

Father's Name: ZARSHAD KHAN Registration No: 2012-PE-44174 *Division: 2nd*

Papers	Max Marks	Marks Obtained	
		In Figures	In Words
English (Compulsory)	75	26	Twenty Six
Urdu	75	62	Sixty Two
Islamic Studies	75	55	Fifty Five
Pakistan Studies	40	16	Sixteen
Part-I 20597:Annual-2013	285	134	One Hundred and Thirty Four
Part-II	550	293	Two Hundred and Ninety Three

ATTESTED

Errors & omissions are subject to subsequent rectification

Chances Availed: 2

The Examination was taken In Parts

Examination held From 28-May-2014 to 28-Jun-2014
Result Declared on Monday, September 15, 2014
Issue Date: 11-Feb-2015
9:13 am

(Prof. Dr. Rashid Khan)
CONTROLLER OF EXAMINATIONS
UNIVERSITY OF PESHAWAR

Computerized by PTC

Charsadda City Area

Serial No. 10472 Roll No 469461 (10)

Serial No.000366

SOFT ZONE COMPUTER COLLEGE

Soft Zone Computer College

Rafiq Plaza Mardan Road Charsadda

CERTIFICATE

This is to certify that Mr/Miss Shahid Ali

S/O Zarshad Resident of Kali Samaran

Utmanzai Charsadda

has undergone Three Months Computer course in

this institute under my supervision from 22-04-2006

to 22-07-2006 He took keen interest in his studies

during the training period.

Wishing him good luck & success in his future life.

ATTESTED

PRINCIPAL

Serial No. 00591 Reg. No. Scc 891-10

SOFT ZONE COMPUTER COLLEGE

Soft Zone Computer College

Rafiq Plaza Mardan Road Charsadda

CERTIFICATE

This is to certify that Mr/Miss Shahid Ali

S/O Zarshad Resident of Umarzai

Kali Gir Fazal P

has undergone Typing Speed 40 course in

this institute under my supervision from 03.06.2010

to 03.08.2010. He took keen interest in his studies

during the training period.

Wishing him good luck & success in his future life.

Soft Zone Computer

Soft Zone Computer College

Principal / Director

(12)

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

ORDER.

Consequent upon the recommendations of Departmental Selection Committee, Shahid Ali S/O Zarshad Khan resident of Utmanzai 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 Kharakai 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 otherwise DDO will be held personally responsible for any consequences.

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

No. 4375-78 / Dated Charsadda the 11 / 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

Executive District Officer
(E&SE) Charsadda.

Verified.

Executive District Officer
E&SE Charsadda

The entries in this page should be renewed or re-attested at least every five years and the 9 and 10 should be dated.

Name: SHAHID ALI

Race: Afghan

Residence: Kaka Khel Surprizan Village & P/O Utmanzai Tehsil and Distt: Charsadda.

Father's name and residence: Zarshad Khan

Date of birth by Christian era as nearly as can be ascertained: 11-03-1988

Exact height by measurement: 5'-8"

Personal marks for identification: NIL

Left hand thumb and finger impression of (Non-Gazetted) officer:

Little Finger

Ring Finger

Middle Finger

Fore Finger

Thumb

ATTESTED

Signature of Government Servant:

Signature and designation of the Head of the Office, or other Attesting Officer.

16-3-2012

HEAD MASTER
Govt: High School
Kharaki 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 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "P"	Date of appointment	Signature, Government Servant
B.P.S-7							
J/Clerk GHS Khoora Kalan			Rs. 5810/- P.M			22/2/2012	
-Do-	-Do-		Rs 6120/- P.M			01/12/2012	
-Do-	-Do-		Rs 6460/2 P.M			1/12/13	
Proc-Mature: Time			6600/2 Rs 6900/-P.M			20/5/2-14	
Proc-Mature: Time			Rs 7060/2			20/5/2014	

ATTESTED

P.T.O

(14)

HEAD MAS
Govt: High S
Kharaki Char

HEAD MASTE
GHS Kharaki
Charsadda

HEAD MASTE
GHS Kharaki
Charsadda

HEAD MASTE
GHS Kharaki
Charsadda

(15)

9	10	11	12	13			14	15
Signature of Government Servant	Signature and Designation of the head of the office or other attesting officer in attestation of columns 1 to 6	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.	Leave			Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure or praise of the Government Servant.
					Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government			
						Period	Government to which debitable		
	16.3.12	30/11/2012			H/p service as Junior clerk vide EDO(E&SE) Charsadda Endst No. 4375-78 dated 11/2/2012				
	HEAD MASTER Govt: High School Kharaki Charsadda		HEAD MASTER GHS Kharaki Charsadda		Non professional P. Ed Casual attendant at GHS Kharaki Kalegay vice Vacant Post.				
	HEAD MASTER GHS Kharaki Charsadda	30/11/13	HEAD MASTER GHS Kharaki Charsadda					HEAD MASTER Govt: High School Kharaki Charsadda	
	HEAD MASTER GHS Kharaki Charsadda	Pre-mature inc: on 24/5/2014	HEAD MASTER GHS Kharaki Charsadda		TR 279 17/3/12				
	HEAD MASTER GHS Kharaki Charsadda	30/11/2013	HEAD MASTER GHS Kharaki Charsadda		Drawn 83498/- on account of pay & allow: w.e.f 20/2/12 To 29/2/12.				
			4/8/2014						
					DDO Chd 17/3				
					Service verified w.e.f 20/02/2012 to 30/11/2012 from the Acct: Roll and other record of this office				
ATTESTED			4/8/2014 Drawn Rs. 1288/-						
								HEAD MASTER GHS Kharaki Charsadda	

(16)

1	2	3	4	5	6	7	8	9
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 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "P"	Date of appointment	Signature of Government	and Designation ad of the office attesting officer testation of mns 1 to 8
J/C G.H.S Khoraki chd.	UP gradation Revision Pay Scale Rs 5600-400-20400)							
		R.S= 7520/=				1/12/2014		HEAD M GHS K Chars
		ATTESTED						

(17)

8	9	10	11	12	13			14	15
					Leave				
					Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is debitable 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.
						Period	Government to which debitable		
ature of nt Servt	ure and Designation head of the office or attesting officer attestation of olumns 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.					
	HEAD MASTER GHS Kharaki Charsadda		Annual increment		Scale-Upgradition				
					Scale upgradition From B.P.S-07 to B.P.S 11 vide Notification No No FD/SO(FR)10-22/2014 vide Secretary to Govt of Khyber Pakhtun khawa Finance deptt. No FD/SO(FR)10-22/2014 Dated 20-5-2014 w.e.f 20/5/2014.				
					HEAD MASTER 17/8/14 GHS Kharaki Charsadda				
					TR-04/81 Source III 13/2/15 Verified Arc annual increments self adjusted on 1/12 arrears of pay and allowances w.e.f 1/12 to 31/1 15 and trf to A/c-1384/2				
			ATTESTED						

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

ED-(18)

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

2. 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.

3. 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

F 15 - (19)

GOVERNMENT OF PAKISTAN
ACCOUNTANT GENERAL KHYBER PAKHTUNKHWA
DISTRICT
PAY ROLL SYSTEM

PAYMENT ADVICE

SR: 25

Purs #: 00659528 Buckle:
Name: SHAHID ALI
Dsg.: JUNIOR CLERK
CNIC: 17101-2752733
GPF #:

P Sec: 001 Month: February 2015
C: 7089-Head Master Govt High Sch
M: #: Education Schools
N: N:
GP F #:
018 #

BPS: Presc Applied
11 Active Temporary

DEPTT CODE

		CA/Q/Y
PAYS AND ALLOWANCES:		
0001-Basic Pay		520.00
1000-House Rent Allowance		234.00
1210-Convey Allowance 2005		856.00
1300-Medical Allowance		120.00
1971-Adhoc Allowance 2010 15%		412.00
1973-Adhoc Allowance 2010 50%		057.00
2118-Adhoc Relief Allow (2012)		504.00
2148-15% Adhoc Relief All-2013		130.00
2174-Adhoc Relief Allow-2014		71.00
Gross Pay and Allowances		0.00
DEDUCTIONS:		
GPF Balance 19.051.00		
3501-Benevolent Fund	Subrc:	675.00
3511-Addl Group Insurance		180.00
3604-Group Insurance		13.00
3990-Emp.Edu. Fund KPK		115.00
		100.00
Total Deductions		
	NET AMOUNT PAYABLE	0.00

QUALIFYING SERVICE YRS	MON	D.O.B	LPR Dues:
07 Years 09 Months Old		11.08.1978	NEP
			0.00

UDERSANDA SUBAB

Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR

(Judicial Department)

E-20

WP No. 2225-P/2014.

JUDGMENT

Date of hearing. 4.6.2015

Petitioners (Sher Bahader etc) By M/S Muhammad Ijaz Khan Sabi and Fazle 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

ATTESTED

(21)

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

ATTESTED

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

93

23

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 2nd 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:
23.06.2015.

JUDGE

ATTESTED

JUDGE

Qaseem

Office
23/6/15

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

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

(24)

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 t 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 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."*

ATTESTED

ATTESTED

Superintendent
Supreme Court of Pakistan

(25)

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 2nd 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

ATTESTED

ATTESTED

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.

(26)

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

SEAL OF THE SUPREME COURT OF PAKISTAN
ISLAMABAD.
09.10.2015.

Certified to be True Copy

Superintendent
Supreme Court of Pakistan
Islamabad

CR No: 1426 3/15 Criminal
Date of Presentation: 13.10.15
No. of Words: 900
No. of Folios: 9
Requisition Fee Rs: 5.00
Copy Fee in: 5.18
Court Fee stamps: 10.18
Date of Completion of Copy: 15/10/15
Date of delivery of Copy: 15-10-15

ATTESTED

OFFICE OF
THE DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA

169 - (27)

NOTIFICATION.

01. WHEREAS, **Mr Shahid Ali, J/Clerk GHS; Kharakai Charsadda** 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, Charsadda 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 Charsadda 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 25th June, 2015;

> **"this petition to the extent of the other petitioners stands dismissed".**

03. AND WHEREAS, a show cause notice was served upon Mr Shahid Ali GHS Kharakai Charsadda 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) CHARSADDA

Endstt No: 8353-57 / Dated 8/8 2015

ATTESTED

Copy forwarded for information to the:

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

8/8/2015

DISTRICT EDUCATION OFFICER
(M) CHARSADDA

To,

The Director
Elementary and Secondary Education (E&SE) Department,
Khyber Pakhtunkhwa, Peshawar.

I - (28)

Subject:-

Departmental Representation/Appeal Under Section 22 of KP Civil Servant Act, 1973, against the order of District Education Officer (Male) Charsadda dated 10.8.2015 whereby the appellant was terminated from the post of Junior Clerk 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 compliant 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 for 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 other colleagues had challenged the said office order in writ petition No. 2225-P/2014 before the Hon'ble 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 –alteram pertram" has 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 inquiry 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.

(29)

7. That the impugned order of termination of the appellant has bee 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-anition and thus the same need 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 re-instated in his service with all back benefits.

Dated: 21/8/2015

Appellant

Shahid Ali
Ex- Junior Clerk GHS Kharakai

Attested

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

_____ OF 2015

Shahid Ali _____ (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt: _____ (RESPONDENT)
(DEFENDANT)

I/We Shahid Ali _____

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.1398/2015

Shahid Ali

Vs

District Education Officer & others

INDEX

S No	Description	Annexure	Page
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2	Affidavit		5
3	Copy of the enquiry report	A	6-9
4	Copy of Show cause notice	B	10

DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA

Page 1

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1398/2015

Shahid Ali

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 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 2nd 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 relif by not coming upto the mark."*

this view is further supported by the Hon'ble Supreme Court in its judgment delivered in C.P.NO.2251of 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.

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

.....

Dated: ___/_____/2016

(5)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No.1398/2015

Shahid Ali

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/O DEO (MALE)
Charsadda CNIC: 17101-0330479-9

KHALID MAHMOOD ADVOCATE
ATTESTED
NOTARY PUBLIC
PESHAWAR

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

ANNEX 'A' (6)

To

The District Education Officer (Male & Female)
Charsadda.

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

I am directed to state that the Chief Minister Khyber Pakhtunkhwa/ Competent Authority has appointed Mr. Muhammac 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 or 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:

Attested

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

Endst: Even No. & Date:

Copy forwarded to the:-

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

SECTION OFFICER (SCHOOLS/ MALE)

(7)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

(7)

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 (F/E).

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

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, PET, DM, 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 a deserving candidates 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:

i. 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

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Commission hence his reversion to lower post is not permissible. It is recommended that minor penalty of stoppage of three increements 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 Pervz 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 Roohul 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 promotions 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 terminated 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, IT 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 Hussan 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 Adam 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

(9)

(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:-

i. 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.

MB 10

SHOW CAUSE NOTICE

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; Shahid Ali J/Clerk GHS Kharakai 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;

   (y) 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.

   (z) 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.

   (aa) 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

4/C COMPETENT AUTHORITY

Mr; Shahid Ali
J/Clerk GHS Kharakai

ATTESTED
EXAMINER
Peshawar High Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No.1398/2015

SHAHID ALI VS EDUCATION DEPTT:

REJOINDER ON BEHALF OF THE APPELLANT IN RESPONSE TO THE REPLY SUBMITTED BY THE RESPONDENTS

R/SHEWETH:
(1 TO 7):

All the preliminary objections raised by the respondents are incorrect and baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

1- Incorrect and not replied accordingly. That appellant was appointed on the post of Junior Clerk (BPS-07) after success in test, interview and typing test. That after proper recommendation of Departmental Selection Committee the appellant submitted his charge report and started performing his duty quite efficiently and upto the entire satisfaction of his superiors.

2- Incorrect and not replied accordingly. That appellant was appointed after completion legal process and fulfillment of all codal formalities.

3- Incorrect and replied accordingly. That appellant was success in the test, interview as well as in typing test. That during service appellant promoted to BPS-11 and after proper verification of the documents of appellant the salary of appellant was released. That appellant successfully completed his probationary period and was regularized on the post of junior clerk. That all of sudden the salary of the appellant was stopped by the District Education Officer (M), District Charsadda. That feeling aggrieved the appellant 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. That during the pendency of the said CPLA the District Education Officer Charsadda issued impugned order dated 8.8.2015 whereby the appellant was terminated from his service.

4- No comments.

5- Incorrect and not replied accordingly. That appellant also explained in Para No.3.

6- Incorrect and not replied accordingly. That appellant filed writ petition No.2225/2014 before the Peshawar High Court Peshawar for release of salaries which was dismissed by the Hon'ble Peshawar High Court Peshawar. That appellant filed CPLA No. 2251/2015 in Supreme Court of Pakistan for the same issue but during the pendency of the above mentioned CPLA the District Education Officer malafidely issued the impugned termination order dated 8.8.2015.

GROUNDS:
(A to K):

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect and baseless hence denied. 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. That appellant's certificates/ degrees are genuine and not bogus; the same can be verified again from the concerned authority/quarter. That no show cause notice has been served on the appellant before issuing the impugned order dated 8.8.2015. 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. 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. 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. That the respondents acted in arbitrary and malafide manner while issuing the impugned order dated 8.8.2015 against the appellant. That the impugned order has been issued by the wrong authority, therefore, the impugned order is void ab anition in the eyes of law.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted as prayed for.

APPELLANT

SHAHID ALI

THROUGH:

NOOR MOHAMMAD KHATTAK
DVOCATE