

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: KALIM ARSHAD KHAN, CHAIRMAN
ROZINA REHMAN, MEMBER(J)

Service Appeal No.592/2015

Rehman Said, Ex-Chowkidar, Directorate of Social Welfare, Special Education and Women Empowerment, Khyber Pakhtunkhwa, Peshawar(**Appellant**).

Versus

1. **Government** of Khyber Pakhtunkhwa through Secretary, Social Welfare, Special Education and Women Empowerment, Khyber Pakhtunkhwa, Peshawar.
2. **Director**, Social Welfare, Special Education and Women Empowerment, Khyber Pakhtunkhwa, Peshawar.....(**Respondents**)

Present:

Mr. Yasir Salim, Advocate.....For appellant.

Mr. Kabirullah Khattak, Additional Advocate GeneralFor respondents.

Date of Institution.....20.05.2015

Date of Hearing.....14.04.2022

Date of Decision..... 15.04.2022

JUDGEMENT

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 19.01.2015, WHEREBY THE APPELLANT HAD BEEN TERMINATED, AGAINST WHICH HIS DEPARTMENTAL APPEAL DATED 06.02.2015, HAD NOT BEEN RESPONDED DESPITE LAPSE OF 90 DAYS STATUTORY PERIOD

JUDGEMENT

KALIM ARSHAD KHAN CHAIRMAN. The appellant was serving as Chowkidar under the respondents and according to the averments made in the appeal, due to domestic problems he could not join duty in January, 2014, which fact according to him, was duly brought in the notice of the respondents on telephone and orally; that a notice of resumption of duties was though issued but that was never communicated to the appellant; that thereafter a publication was made in the daily newspaper dated 07.01.2015 and when the appellant came to know about the notice, he submitted his arrival report on

08.01.2015; that, thereafter, without issuing show cause notice/charge sheet or statement of allegations or allowing any opportunity of personal hearing to the appellant, quite illegally he had been terminated from service vide order dated 19.01.2015; that the appellant submitted departmental appeal on 13.02.2015, which was not responded within 90 days' statutory period, hence, this appeal mainly on the grounds that the appellant had not been treated in accordance with law, badly violating his legal rights, secured and guaranteed under the law, that no procedure had been followed before termination of service of the appellant; that the word termination was alien to the service laws, as there was no such penalty provided under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011; that the impugned order was not a speaking order and thus violative of section 24-A of the General Clauses Act; that the appellant had never committed any act or omission which could be termed as misconduct; that his absence was not willful rather due to domestic problems and allegation of continuous long absence, was also baseless and unfounded; that the impugned order was politically motivated under the political pressure of a local MPA.

2. On receipt of the appeal, notices were issued to the respondents to file their reply. The respondents submitted reply. The respondents contended that the appellant was a proved problematic throughout his service; that he was habitual duty evader and was used to remain absent from duty for weeks and months without proper and prior permission of the competent authority; that a number of explanations and notices were served upon him but in vain; that his salary was also stopped to compel him to join duty; that a notice was published in the newspaper asking the appellant to join his duties within the specified period but he failed, therefore, his services were terminated after fulfilling all the codal

15/4/22

formalities; that an enquiry was also conducted against the appellant and he was found guilty and was terminated in accordance with law on 19.01.2015, which order, the respondents claim to be legal and within the competence of the authority.

3. We have heard the learned counsel for the appellant and learned Additional Advocate Genera for the respondents.
4. It was argued by the learned counsel for the appellant that in view of the facts and grounds agitated in the appeal and enumerated above, this appeal might be accepted.
5. Conversely the learned AAG for the respondents maintained the stance taken by the respondents in their reply and prayed for dismissal of the appeal.
6. It is undisputed that the appellant submitted his arrival on 08.01.2015 i.e. on the next day of the publication made in the newspaper. It is also uncontroverted that notice of absence was publicized only in one newspaper in violation of rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 1989, which reads as under:

"9. Procedure in case of willful absence.—Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant."

7. The requirement of the above rule is sending of a notice by the competent authority through registered acknowledgment on his home address directing

15/4/22

him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice is to be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex parte decision is to be taken against the absentee.

8. In this case the respondents though alleged to have sent notices through registered mail and copies of some notices have also been annexed with the appeal but not a single postal receipt and for that matter the acknowledgement has been annexed with the appeal to substantiate their contention. Similarly, copy of only one publication shown to have been issued in Urdu Daily Mashriq Peshawar was annexed whereas the requirement of the rule is publication in two leading newspapers.

9. Be that as it may, the appellant had admittedly submitted his arrival on 08.01.2015 i.e. the next day of the publication in the newspaper but even then the respondents proceeded to terminate him. The respondents ought to have proceeded in accordance with law and the rules after the appellant had submitted arrival. It is contended during the course of arguments that the appellant, after leaving the arrival report at the office of respondents, again absented and in that regard the learned AAG referred to the extracts from the attendance register annexed with the reply. The same have been perused. Those do not bear anything to show that those were from the attendance register maintained by the office of the respondents as the copies are not from any printed register of the respondent department nor the copies show the months for which these were maintained though at the bottom of each page 3/2014, to 9/2014 is hand written but that would not be sufficient to rely upon at least

15/4/22

without its attestation by a responsible officer of the respondent department. Similarly, there is even no such copies of pages of the register of attendance for the months after 09/2014 till the termination of the appellant to consider and verify the contention of the respondents that the appellant remained again absent after submission of arrival report on 08.01.2015.

10. Again termination has no place in the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, therefore, on this score alone the impugned order of termination is not sustainable.

11. Therefore, we allow this appeal and set aside the order of termination of the appellant. He is reinstated in service. The department may, however, conduct de novo enquiry for ascertaining the actual period of the alleged absence of the appellant by also ascertaining whether the alleged absence was willful or otherwise and for how long he actually remained absent then keeping in view the actual period of absence the respondents may make appropriate order under the law & rules. The de novo enquiry shall be concluded at the earliest possible but not later than a month of receipt of this judgment. The issue of back benefits will be subject to the outcome of the denovo enquiry. Consign.

12. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of April, 2022.*



KALIM ARSHAD KHAN

Chairman

ROZINA REHMAN

Member Judicial

15th April, 2022

Counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today, containing 05 pages, we allow this appeal and set aside the order of termination of the appellant. He is reinstated in service. The department may, however, conduct de novo enquiry for ascertaining the actual period of the alleged absence of the appellant by also ascertaining whether the alleged absence was willful or otherwise and for how long he actually remained absent then keeping in view the actual period of absence the respondents may make appropriate order under the law & rules. The de novo enquiry shall be concluded at the earliest possible but not later than a month of receipt of this judgment. The issue of back benefits will be subject to the outcome of the denovo enquiry. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of April, 2022.*



(KALIM ARSHAD KHAN)

Chairman



(ROZINA REHMAN)

Member (J)

22.11.2021

Proper D.B is not available, therefore, case is adjourned to 3.2.2022 for the same.



READER

03.02.2022

The Tribunal is non-functional, therefore, the case is adjourned to 14.04.2022 before the D.B for the same.

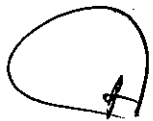


Reader

14.04.2022

Mr. Yasir Saleem, Advocate for the appellant present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Arguments heard. To come up for order on 15.04.2022 before this D.B.



(Rozina Rehman)
Member (J)



Chairman

08.03.2021

Junior to counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Due to non-availability of D.B, case is adjourned to 08.06.2021 for the same as before.



Reader


08.06.2021

Mr. Yasir Saleem, Advocate, for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Mr. Yasir Saleem, Advocate, stated at the bar the he is representing the appellant in the instant appeal and will submit Vakalatnama on behalf of the appellant on the next date. Adjourned. To come up for submission of Vakalatnama on behalf of the appellant as well as arguments before the D.B on 30.08.2021.



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

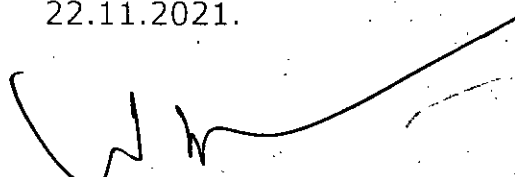


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


30.08.2021

Nemo for the appellant. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Notice for prosecution of the appeal be issued to the appellant and to come up for arguments before the D.B on 22.11.2021.



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



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

25.08.2020

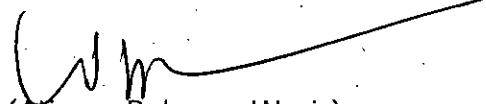
Due to summer vacation case to come up for the same on 29.10.2020 before D.B.


Reader

29.10.2020

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

The Bar is observing general strike, therefore, the matter is adjourned to 05.01.2021 for hearing before the D.B.

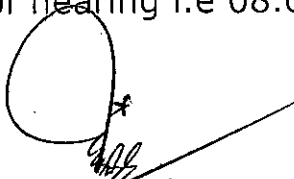

(Atiq-ur-Rehman Wazir)
Member

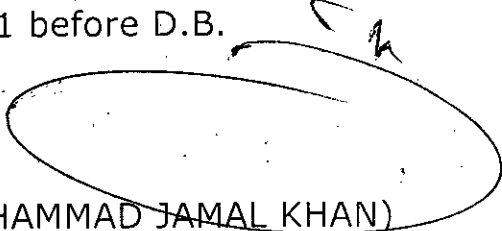

Chairman

05.01.2021

No one on behalf of the appellant is present at the moment 12:15 P.M. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

The Reader of the court namely Afsar Khan informed the bench that during interval he was informed by the clerk of counsel representing appellant that learned counsel is indisposed of today and cannot attend the Tribunal and requested for adjournment. The request is acceded to however, learned counsel representing appellant is provided last chance to appear and address his arguments on the next date of hearing i.e 08.03.2021 before D.B.


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

25.02.2020

Learned counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 01.04.2020 before D.B.


Member


Member

30.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 24.06.2020 before D.B.


Reader

24.06.2020

Nemo for the appellant. Mr. Muhammad Jan learned Deputy District Attorney for the respondents present.

On the last date of hearing the matter was adjourned through reader's note, therefore, office shall issue notice to appellant for 25.08.2020 before D.B.

Adjourned accordingly.


Member


Chairman

29.07.2019 Junior to counsel for the appellant present, stated that identical nature appeals have been fixed for hearing on 26.09.2019 and sought adjournment. Adjourn. To come up for arguments on 26.09.2019 before D.B.


Member


Member

26.09.2019 Clerk of counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the Hon'ble Peshawar High Court and cannot attend the Tribunal today. Adjourned to 11.12.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

11.12.2019 Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 25.02.2020 before D.B.


Member


Member

07.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 26.12.2018.


Reader

26.12.2018

Mr. Yasir Saleem, Advocate for appellant and Mr. Muhammad Jan, DDA for the respondents present.

Learned counsel for the appellant has to participate in a funeral, therefore, the appeal cannot be concluded in the remaining time.

Adjourned to 27.02.2019 for arguments before the D.B.


Member


Chairman

27.02.2019

Counsel for the appellant and Assistant A.G for the respondents present.

Request for adjournment is made due to over engagement before the Honourable High Court today.

Adjourned to 16.05.2019 before D.B.


Member


Chairman

16.05.2019


Appellant in person and Addl. AG alongwith Attaur Rahman, Inspector (Legal) for the respondents present.


Due to demise of his father, learned Member of the Bench (Mr. Hussain Shah) is on leave. Adjourned to 29.07.2019 for arguments before the D.B.


Chairman

30.03.2018

None present for the appellant. Addl. AG for the respondents present. To come up for arguments on 06.06.2018 before the D.B.


Member


Chairman

06.06.2018

Clerk to counsel for the appellant and Mr. Ziaullah, DDA alongwith Mr. Rahim Shah, Assistant for respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 26.07.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

26.07.2018


Due to sickness of learned Member (Executive), further proceedings could not be conducted. Adjourned. To come up for arguments on 19.09.2018 before D.B.


Member

19.09.2018

None present on behalf of the appellant. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Nabi Gul, Superintendent for the respondents present. Notice be issued to appellant for attendance and arguments for 07.11.2018 before D.B.

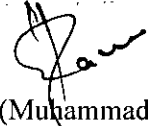

(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

09. 25.07.2017


Agent to counsel for the appellant and Mr. Kabir Ullah Khattak, Assistant AG alongwith Mr. for the respondent present. Agent to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 22.11.2017 before D.B.



(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

22.11.2017

Junior counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for the respondents present. Junior counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 31.01.2018 before D.B.



(Gul Zeb Khan)
Member (E)


(Muhammad Hamid Mughal)
Member (J)

31.01.2018

Learned counsel for the appellant and Mr. Riaz Painsa Kheil, learned Assistant Advocate General for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 30.03.2018 before D.B


(Muhammad Amin Kundi)
MEMBER


(Muhammad Hamid Mughal)
MEMBER

15.08.2016

Counsel for the appellant and Mr. Nabi Gul, Superintendent alongwith Mr. Ziaullah, GP for respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on ~~2-12-16~~ before D.B.

Member

Member

02.12.2016

Counsel for the appellant and Additional AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjournment granted. To come up for final hearing on 10.04.2017 before D.B.

(MUHAMMAD AAMIR NAZIR)
MEMBER

(MUHAMMAD AZIM KHAN AFRIDI)
CHAIRMAN

10.04.2017

Counsel for the appellant present. Mr. Ziaullah, Government Pleader for respondents also present. Learned counsel for the appellant submitted rejoinder and stated at the bar that similar connected case is pending before this Tribunal titled Fazle Akbar-Versus-Government of Khyber Pakhtunkhwa and the same is fixed on 25.07.2017 and requested that the same may also be fixed for the same date. Adjourned. To come up for arguments on 25.07.2017 before D.B.

(Ahmad Hassan)
Member

(Muhammad Amin Khan Kundi)
Member

03

08.06.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Chowkidar when terminated from service vide impugned order dated 19.1.2015 regarding which he preferred departmental on 6.2.2015 which was not responded and hence the instant service appeal on 2.6.2015.

That the impugned order was passed without any inquiry and that no opportunity of hearing was afforded 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 for 27.8.2015 before S.B.

Appellant Deposited
Security & Process Fee



4

27.08.2015

Counsel for the appellant and Mr. Muhammad Khalid, AD
Chairman
alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 23.11.2015 before S.B.


Chairman

23.11.2015

Agent of counsel for the appellant and Mr. Nabi Gul, Supdt. alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 12.4.2016.


Chairman

12.04.2016



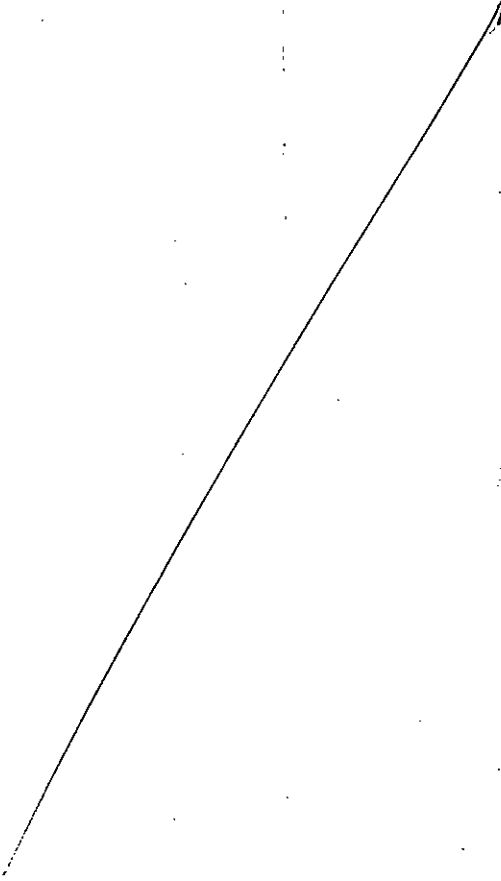
Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Rejoinder on behalf of the appellant submitted. To come up for arguments on 15.08.2016.


Member
Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 592/2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02.06.2015	<p>The appeal of Mr. Rehman Said resubmitted today by Mr. Ijaz Anwar Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p> REGISTRAR</p>
2	5-6-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>8-6-2015</u></p> <p> CHAIRMAN</p> 

The appeal of Mr. Rehman Said Ex-Chowkidar Directorate of Social Welfare Special education and Women Empowerment department received to-day i.e. on 20.05.2015 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

1- Annexures- A and D of appeal iare illegible which may be replaced by legible/better one.

No. 773 /S.T,

Dt. 21/5 /2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ijaz Anwar Adv. Pesh.

Sir

Re Submited of the Completion



**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 592/2015 Appeal No. 592/2015

Rehman Said Ex-Chowidar, Directorate of Social Welfare
Special Education and Women Empowerment, Khyber
Pakhtunkhwa Peshawar.

(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Social
Welfare Special Education and Women Empowerment,
Khyber Pakhtunkhwa Peshawar.

(Respondents)

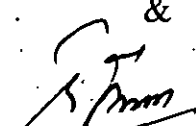
INDEX

S. No	Description of documents	Annexure	Page No
1.	Memo of appeal and Affidavit		1 - 4
2	Copy of the order dated 03.02.2012,	A	5
3	Copies of the Publication and Attendance Report.	B & C	6 - 7
4	Copy of the termination order dated 19.01.2015.	D	8
5	Copy of the departmental appeal dated 13.02.2015.	E	9 - 11
6	Vakalatnama		

Through


Appellant

IJAZ ANWAR
Advocate Peshawar.

&

SAJID AMIN
Advocate Peshawar.

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

Appeal No. 592/2015

Appeal No. 592/2015

K.P.S.T. Tribunal
Service Tribunal
Diary No. 592
Dated 20-5-2015

Rehman Said Ex-Chowidar, Directorate of Social Welfare
Special Education and Women Empowerment, Khyber
Pakhtunkhwa Peshawar.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Social Welfare Special Education and Women Empowerment, Khyber Pakhtunkhwa Peshawar.
2. Director Secretary Social Welfare Special Education and Women Empowerment, Khyber Pakhtunkhwa Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 19.1.2015, whereby the appellant has been terminated, against which his departmental appeal dated 06.2.2015, has not been responded despite the lapse of 90 days statutory period.

Prayer in Appeal: -

On acceptance of this appeal the impugned order dated 19.1.2015, may kindly be set aside and the appellant may be re-instated into service with all back wages and benefits of service.

Respectfully Submitted:

1. That the appellant was initially appointed as Chowkidar in the year 2011. The appellant was Medically examined and when found fit he duly took over charge of his Post. During the course of his service, the appellant was also transferred to Swabi and was placed at the disposal of DO Social Welfare Swabi vide order dated 03.02.2012. (Copy of the order dated 03.02.2012, is attached as Annexure A)

filed to-day

Registrar

20/5/15

re-submitted to-day
and filed:

Registrar

4

2. That ever since his appointment the appellant has performed his duties as assigned with zeal and devotion and there was no complaint what so ever regarding his performance.
3. That while serving in the said capacity, the appellant due to his domestic problems could not join duty in January 2014. It is pertinent to mention here that the appellant duly informed his office telephonically and also made verbal request for leave.
4. That a notice for resumption of duty was though issued, however never communicated to the appellant. Thereafter a publication was made in daily newspaper dated: 07.01.2015. The appellant when came to know about the notice duly, he submitted his arrival report on 08.01.2015. *(Copies of the Publication and Attendance Report are attached as Annexure B & C)*
5. That thereafter without issuing any show cause notice / charge sheet or statement of allegation or allowing any opportunity personnel hearing to the appellant, quite illegally he has been terminated from service vide order dated 19.01.2015. *(Copy of the termination order dated 19.01.2015, is attached as Annexure D)*
6. That the appellant also submitted his departmental appeal on 13.02.2015, however the same has not been responded despite the lapse of 90 days statutory period. *(Copy of the departmental appeal dated 13.02.2015, is attached as Annexure E)*
7. That the impugned order is illegal, unlawful against law and fact hence liable to be set aside inter alia on the following grounds:

GROUND OF DEPARTMENTAL APPEAL .

- A. That the appellant have not been treated in accordance with law hence his rights secured and guaranteed under the law are badly violated.
- B. That no proper procedure has been followed before the termination of service of the appellant. He has not been served with charge sheet or statement of allegations nor any inquiry has been conducted to probe into the charges, thus the whole proceedings are nullity in the eye of law and an order based on such defective proceedings is liable to be set aside.
- C. That the appellant has not been provided opportunity of personal hearing before the termination of his service, hence the appellant has been condemned unheard.

- D. That no charge sheet or statement of allegations as prescribed under the law and rules has been served upon the appellant hence the appellant has not been provided fair opportunity to defend himself against the charges leveled.
- E. That the appellant have never been served with any absence notice before awarding him the penalty more over after the publication of the notice in the daily newspaper, the appellant duly submitted his arrival report and also stated the reason of his absence, however without considering this fact the appellant has been terminated from service.
- F. That the word termination from service is alien to service laws, there is no such penalty prescribed under E & D Rules, 2011, as such the order of termination from service is not tenable under the law and is liable to be set aside on this score alone.
- G. That the impugned order is not a speaking order and is thus violative of the section 24-A of the General Clauses Act.
- H. That the appellant duly applied for the post of Chowkidar and was appointed by the competent authority after observing all codal formalities. The appellant duly took over charge of his post, performed his duties for more then 3 years, as such valuable rights have been created in his favour the same cannot be taken away illegally with one stroke of pen.
- I. That the appellant has never committed any act or omission which could be termed as misconduct albeit he has been terminated from service. His absence was not will full but was due to his domestic problems. Moreover the allegation of continuous long absence is also baseless and unfounded.
- J. That the impugned order is politically motivated and is passed under the political pressure of the local MPA. The appellant have been victimized for the sole reason of belonging to a particular political party.
- K. That the appellant has an unblemished and spotless service career at his credit, the penalty imposed upon him is harsh and liable to be set aside.

- L. That the appellant is jobless since his illegal termination from service.
- M. That the appellant seeks the permission of this Honorable Tribunal to rely on additional ground at the hearing of this appeal.

It is, therefore, humbly prayed that on acceptance of this Service Appeal the order dated 19.01.2015, may kindly be set aside and the appellant may be reinstated into service with all back wages and benefits of service.

(Rehman)
Appellant

Through

(Ijaz Anwar)

IJAZ ANWAR
Advocate Peshawar

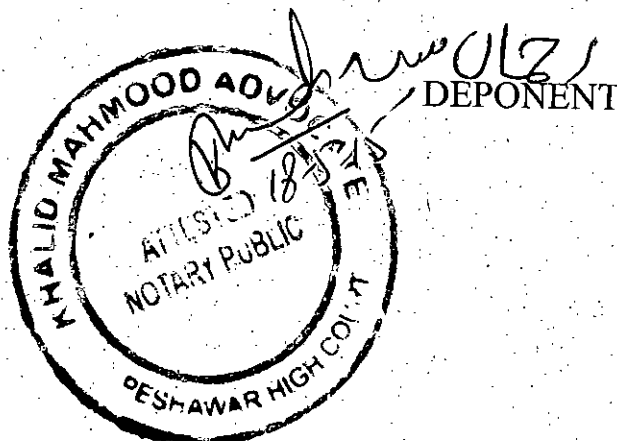
&

(Sajid Amin)

SAJID AMIN
Advocate Peshawar

AFFIDAVIT

I, *Rehman said Ex- Chowkidar, Directorate of Social Welfare Special Education and Women Empowerment, Khyber Pakhtunkhwa Peshawar*, do hereby solemnly affirm and declare on oath that the contents of the above appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.



5

ANNEXI-A



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE,
SPECIAL EDUCATION AND WOMEN
EMPOWERMENT JAMRUD ROAD
PESHAWAR.

Dated Peshawar the 23/02/2012

ORDER:

No.F-17/35/DSW/157000/02. The services of Mr. Rehman Said, Chowkidar Directorate of Social Welfare, Special Education & Women Empowerment, Peshawar Pakhtunkhwa are hereby placed at the disposal of District Officer, Social Welfare Swabi till further orders.

-sd-

Director

Social Welfare, Spl: Edu. & WI
Khyber Pakhtunkhwa

Copy forwarded to the:-

1. The District Officer, Social Welfare Department Swabi.
2. The Assistant Director (B&A) Directorate of Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa.
- ✓ 3. The official concerned.

Asst. Dir. (Admin)
Social Welfare, Spl: Edu. & WI
Khyber Pakhtunkhwa

Pl. File in relevant
documents

7/2/2012

Y/O

GOVT OF KHYBERPAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE
SPECIAL EDUCATION AND WOMAN EMPOWERMENT
JAMRUD ROAD PESHAWAR

Dated Peshawar the 03.02.2012

ORDER:

No.1 F-17/35/DSW/15700..02. The services of Mr. Rehman Said, Chowkidar Directorate of Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa are hereby placed at the disposal of District Officer, Social Welfare Swabi till further orders.

-Sd-

Director
Social Welfare, Spl: Edu: & WL
Khyber Pakhtunkhwa

Copy forwarded to the:-

1. The District Officer, Social Welfare Department Swabi.
2. The assistant Director (B & A) Directorate of Social Welfare Special Education & Women Empowerment, Khyber Pakhtunkhwa.
3. The Official concerned.

Assistant Director (Admin)
Social Welfare, Spl: Edu & WL
Khyber Pakhtunkhwa

Atiqul
JA

6

ANNEXI: "B"

مشاور اسلام آباد

mashriq@brain.net.pk

اللہ ہی کیلئے ہیں
مشرق و مغرب
(القرآن)

بدھ 15 رجب الاول 1436ھ 7 جنوری 2015ء

نوٹس غیر حاضری

کسی رحمان سید سندھ سوال لکچر ہمارے بنیادی سکول 17 میں ڈائریکٹریٹ آف سوشل ویلفیئر، کیمپس ایجوکیشن اینڈ
وون ڈیپنٹ خیر بختو خواجہ نوری روڈ پشاور غیر کیمپس اجازت اطلاع کے تاریخ 1/3/2014 سے
تاحال مسلسل اپنی ذیوبی سے غیر حاضر ہے، آپ سے ذمہ دہی کے دفتر سے بذریعہ مراسلہ نمبر
E-14/283/DSW/814-15 تاریخ 5/5/2014 نمبر 1059-58 تاریخ 11/2/2014 غیر حاضری
1/11/2013 سے 30/11/2013 تک 1/12/2013 سے 21-1-2014، 22-1-2014 سے
19-9-2014 وضاحت غلب کی گئی ہے کہ بحال آپ نے کوئی جواب نہیں دیا لہذا آپ کو بذریعہ اشتہار ہذا
اطلاع دی جاتی ہے کہ اس فوش کی اشاعت کے 15 چہرہ یوم کے اندر اندر ذیوبی پر حاضر ہو کر غیر حاضری کی
وجوہات بیان کریں، بصورت دیگر متفقہ کارروائی قوانین کے تحت یکطرفہ کارروائی عمل میں لائے ہوئے آپ کو
نوٹری سے برخواست کر دیا جائیگا۔

مستقیم باللہ شاہ ڈائریکٹر

سوشل ویلفیئر کیمپس ایجوکیشن اینڈ وون ڈیپنٹ خیر بختو خواجہ نوری روڈ پشاور

INF(P) 97 Also available on www.khyberpaktunkhwa.gov.pk

Handwritten signature

مذکورہ کی دہائیوں میں اس کے لئے ہسپتال کی تعمیر ہو چکی ہے۔

سوانح - حاکمی اور

کے حالی

موردہ نام پر اس کی طبیعت کے بارے میں کچھ بھی نہیں ہے۔
 وہ ایک گاؤں سے تعلق رکھتا ہے اور وہاں ہی پیدا ہوئے۔
 کئی سالوں تک وہ وہاں ہی رہے اور پھر وہاں سے
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DDC Admn

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15

یہ تمام رقمیں جمع کر کے

⑧

ANNEX "D"

FROM :

FAX NO. :

Feb. 01 2015 02:07AM P1

GOVT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE
SPECIAL EDUCATION AND WOMEN EMPOWERMENT
PESHAWAR

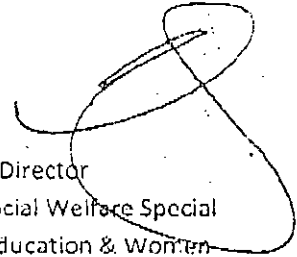
NO: DSW/7823

Dated: 19/01/15

Office Order:

in light of the recommendations of the inquiry officer and subsequent notice in the News Paper for resuming duties in respect of Rahaman Said Chowkidar and reminders on the Home Address of Mr. Fezal Akbar Naib Qasid for resuming duties and showing valid reasons for their prolonged absence without prior permission, both the officials failed to resume their duties and, therefore, their services are hereby terminated with immediate effect on account of their willful absence, *in*

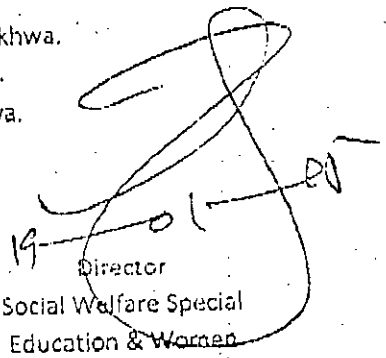
best public interest



Director
Social Welfare Special
Education & Women
Empowerment

Copy to:

- 1) Accountant General Khyber Pakhtunkhwa.
- 2) DDO Directorate of Social Welfare, SE and WE Department Khyber Pakhtunkhwa.
- 3) PS to Minister Social Welfare, SE and WE Department Khyber Pakhtunkhwa.
- 4) PS to Secretary Social Welfare, SE and WE Department Khyber Pakhtunkhwa.
- 5) Officials Concerned.



Director
Social Welfare Special
Education & Women
Empowerment

Handwritten initials

GOVT OF KHYBERPAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE
SPECIAL EDUCATION AND WOMAN EMPOWERMENT
PESHAWAR

No: Dsw/7823

Dated: 19/01/15

Office Order:

In light of the recommendations of the inquiry officer and subsequent notice in the News Paper for resuming duties in respect of Rahaman Said Chowkidar and remainders on the Home Address of Mr. Fazal Akbar Naib Qasid for resuming duties and showing valid reasons for their prolonged absence without prior permission, both the officials failed to resume their duties and, therefore, their services are hereby terminated with immediate effect on account of their willful absence in the best public interest.

Sd/-

Director

Social Welfare Special
Education & Women
Empowerment

Copy to:

- 1) Accountant: General Khyber Pakhtunkhwa.
- 2) DDG Directorate of Social Welfare, SE and WE Department Khyber Pakhtunkhwa.
- 3) PS to Minister Social Welfare, SE and WE Department Khyber Pakhtunkhwa.
- 4) PS to Secretary Social Welfare, SE and WE Department Khyber Pakhtunkhwa.
- 5) Officials Concerned.

Sd/-

Director

Social Welfare Special
Education & Women
Empowerment

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X

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ANNEX E

To

The Secretary,
Social Welfare, Special Education &
Women Empowerment Department
Khyber Pakhtunkhwa, Peshawar.

Through: Proper Channel

Subject: *Departmental Appeal against the order dated 19.01.2015,
whereby the applicant has been terminated from service.*

Prayer in Departmental Appeal.

*On acceptance of this Departmental Appeal order dated
19.01.2015,, may kindly be set aside and the undersigned
may be reinstated into service with all back benefits.*

Respected Sir,

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

1. That the appellant was initially appointed as ^{Chokidar} ~~Naib Qaid~~ in the year 2011, later I was also transferred to swabi and was placed at the disposal of DO Social Welfare Swabi vide order dated 03.02.2012.
2. That ever since from my appointment I performed my duties as assigned to me with zeal and devotion and have never given any chance of complaint to my superiors regarding my performance.
3. That while serving in the said capacity, I due to my domestic problems could not join duty in January 2014. It is pertinent to mention here that I duly informed my office telephonically and also made verbal request for leave.
4. That a notice for resumption of duty was though issued where never communicated to me. Thereafter a publication was issued in daily newspaper dated: 07.01.2015. The undersigned when came to know about the notice duly submitted his arrival report on 08.01.2015.

ADCP
13
Directorate of
Social Welfare K.P.K.
No: 3744
Date: 13-23-15

13

- (10)
- personnel hearing the undersigned has been terminated from service vide order dated 19.01.2015.
6. That the order whereby my service has been terminated is illegal, unlawful against law and fact hence liable to be set aside inter alia on the following grounds:

GROUND OF DEPARTMENTAL APPEAL .

- A. That I have not been treated in accordance with law hence my rights secured and guaranteed under the law are badly violated.
- B. That no proper procedure has been followed before the imposition of penalty upon me. I have not been served with charge sheet or statement of allegations nor any inquiry has been conducted to probe into the charges, thus the whole proceedings are nullity in the eye of law.
- C. That I have not been provided opportunity of personal hearing before awarding me the penalty hence I have been condemned unheard.
- D. That no charge sheet or statement of allegations as prescribed under the law and rules has been served upon me hence I have not been provided fair opportunity to defend my self against the charges leveled.
- E. That I have never been severed with any absence notice before awarding me the penalty more over after the publication of the notice in the daily newspaper, I duly submitted my arrival report and also stated the reason of my absence, however without considering this fact I have been terminated from service.
- F. That the word termination from service is alien to service laws, there is no such penalty prescribed under E & D Rules, 2011, as such the order of termination from service is not tenable under the law and is liable to be set aside on this score alone.
- G. That the impugned order is not a speaking order and is thus violative of the section 24-A of the General Clauses Act.

4/10

(11)

- H. That I duly applied for the post of ~~Naib Qasid~~ ^{Chokidar} and was appointed by the competent authority after observing all codial formalities. I duly took over charge of my post, performed my duties for more then 3 years, as such valuable rights have been created in my favour the same cannot be taken away illegally with one stroke of pen.
- I. That I have never committed any act or omission which could be termed as misconduct albeit I have been terminated from service. my absence was not will full but was due to my domestic problems. Moreover the allegation of continuous long absence is also baseless and unfounded.
- J. That the impugned order is politically motivated and is passed under the political pressure of the local MPA. I have been victimized for the sole reason of belonging to a particular political party.
- K. That I have a long and spotless service career at my credit, the penalty imposed upon me is harsh and liable to be set aside.
- L. That I am jobless since my illegal termination from service.

It is, therefore, humbly prayed that on acceptance of this Departmental Appeal the order dated 19.01.2015, may kindly be set aside and the undersigned may be reinstated into service with all back benefits.

Yours Obediently

رجمان سید

REHMAN SAID

EX- ~~Naib Qasid~~, Chokidar

Directorate of Social Welfare

Special Education and Women

Empowerment, Khyber Pakhtunkhwa

Peshawar.

Dated: 6 / 02 / 2015

Contact No. 0345-9505323.

POWER OF ATTORNEY

In the Court of KPK Service Tribunal Peshawar.

Redman Said

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of KPK and others

} Defendant
} Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/We, the undersigned, do hereby nominate and appoint

IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN

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

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

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

IN WITNESS whereof I/we have hereto signed at Peshawar
the _____ day to _____ the year _____

Executant/Executants Said Amin Akbar

Accepted subject to the terms regarding fee- _____

Said Amin Akbar
Red

Ijaz Anwar

Advocate High Courts & Supreme Court of Pakistan

Before the Service Tribunal Khyber Pakhtunkhwa,
Peshawar
Service Appeal No.592 / 2015

Mr. Rehman Said (Chowkidar) **APPELLANT**
VERSUS

1. Secretary to Govt. Social Welfare Special Education & Women Empowerment Department, office at Oposite Islamia College, Jamrud Road, Peshawar.
2. Director Social Welfare, Special Education and Women Empowerment Department (**Respondents**)

PARA WISE COMMENTS BY DIRECTORATE OF SOCIAL WELFARE

PRE-LIMINARY OBJECTIVES:

1. That the Applicant has no cause of action.
2. That the Appeal is not maintainable in its present form.
3. That the Appeal is bad for Non-Joinder of necessary and misjoinder of unnecessary parties.
4. That the Applicant has been estopped by his own conduct to file the Appeal.
5. That Applicant has not come to this Tribunal with clean hand.

FACTS

1. Correct
2. Incorrect, hence denied. The appellant proved problematic throughout his service. He was a habitual duty evader and used to remain absent from duty for weeks and months without proper and prior permission of the competent authority. A number of explanations and notices were served upon him but in vain (**Annex-A, B, C, D**). His salary was also stopped to compel him to Join his duties (**Annex-E**).
3. Incorrect hence denied. As stated in para-2 supra the appellant was a habitual duty evader and used to remain absent from duty without prior permission of the competent authority. The appellant never informed either through telephone or in written regarding his absence.
4. Incorrect and not admitted. A proper notice was issued and communicated to the appellant at his home address (**Annex-F**) to join his duties. He however failed to join his duties due to which a notice was published in the news papers (**Annex-G**) asking the appellant to join his duties with in a specified period. Since the appellant failed to arrive for duty with in the specified period, his services were therefore terminated after fulfilling all the codal

formalities. It is added here that an inquiry was also conducted against him and was found guilty (**Annex-H**)

5. Incorrect hence denied. Services of the appellant was terminated after fulfilling all the codal formalities as explained in the preceding paras.
6. Correct to the extent that the appellant moved a departmental appeal but the same could not be considered. Keeping in view the track record of the appellant.
7. The order dated 19-01-2015 is legal, lawful, in accordance with law an evident from the details given in the preceding paras.

Grounds of Departmental Appeal

- A. Incorrect hence denied. The appellant has been treated in accordance with Law as evident from the factual position narrated in the preceding paras hence question of violation of rights does not arise at all.
- B. Incorrect hence denied. Proper proceare was adopted and all codal formalities were fulfilled before removing the appellant from service as evident from the details given in Para-4 of the facts.
- C. Incorrect hence denied. Vide the notice published in the News Papers (**Annex-I**), the appellant was directed to join his duties within a specified period and to explain the reasons of hid absence. Since the failed to appear before the competent authority within the specified period. All the codal formalities were fulfilled by respondents.
- D. As Para 5 mentioned above.
- E. Incorrect hence denied. The factual position has been narrated in Para-4 of the facts.
- F. Incorrect hence denied. Under Section-(19) of the E & D rules 2011, the competent authority is authorized to impose major penalty of the absentee (**Annex-J**) ?
- G. Incorrect hence denied. The order dated 19-01-2015 was issued in accordance with the rules and policy of the Govt.
- H. Correct to the extent that the appellant was appointed after fulfilling all codal formalities and similarly he was removed from service after fulfilling all codal formalities. Since the order dated 19-

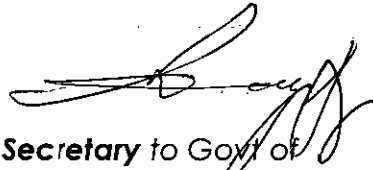
01-2015 was legal and in accordance with the rules, the question of illegality therefore does not arise at all.

- I. Incorrect hence denied. The factual position has been explained in Para-2 and 4 of the facts.
 - J. The appellant has admitted to be an activist of a particular political party which itself is a gross mis-conduct as per rules. The allegation that his removal from service was due to political pressure, is baseless and carries no weight.
 - K. Incorrect hence denied. The factual position has been explained in para-2 & 4 of the facts.
 - L. No Comments.
 - M. The respondents seek the permission of this honorable Tribunal to rely on additional grounds at the time of hearing of this appeal.
- In view of the above, it is prayed that the appeal being devoid of any merit, may graciously be dismissed.



(Director)

SOCIAL WELFARE DEPARTMENT PESHAWAR
KHYBER PAKHTUNKHWA
(RESPONDENT No. 2)



Secretary to Govt of
KHYBER PAKHTUNKHWA.
SOCIAL WELFARE DEPARTMENT PESHAWAR
(RESPONDENT No. 1)

GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION AND
WOMEN EMPOWERMENT JAMRUD ROAD PESHAWAR.

(3)

No. Admn/3-9/DSW/ 1057-58

DATED PESHAWAR THE 11/2 /2014.

To:

~~Mr. Rehman Said~~
Directorate of Social Welfare SE&WE.

Subject

EXPLANATION

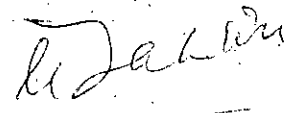
It has been found with grave concern that you have been absent for the last two months. You are directed to explain the reasons for being absent without getting any prior permission of the competent authority. Your reply should reach this office within five days positively. Other wise strict action will be taken against you under E&D rules.



Assistant Director (Admn)
Social Welfare, S.E & W.E
Khyber Pakhtunkhwa

Copy to:-

- 1. PA to Director Social Welfare, SE&WE Department



Assistant Director (Admn)
Social Welfare, S.E & W.E
Khyber Pakhtunkhwa

o/c

1057-58

Amment B⁴

(7)

GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION
AND WOMEN EMPOWERMENT OPPOSITE ISLAMIA PESHAWAR

No.E-14/283/DSW/ 2181-82
Date Peshawar the 20/3/2014

To

1.

Mr. Rehman Said
(Chowkidar)

Directorate of SW, Special Edu: and W.E
Khyber Pakhtunkhwa.

SUBJECT: EXPLANATION

It has been observed with grave concern that instead of performing your duties as per your duty schedule you remained absent and instead a teen aged outsider namely Mohammad Amir s/o Mohammad Ali bearing CNIC No.16201-9084335-1, how happened to be your nephew, was performing the duties as Chowkidar.

You are directed to explain the reason for such acts incompatible to your statues as being a Govt: servant and putting the Govt: Property in danger. Your reply should reach this office with in three days positively otherwise disciplinary action would be initiated against you under E&D rules.

-Sd/-

DIRECTOR
SOCIAL WELFARE SE, SE&WE KPK

Endst. Even No. & Dated:

Copy to:

1. PA to Director, Social Welfare, Special Education and Women Empowerment Khyber Pakhtunkhwa

OK

U. D. Khan

ASSISTANT DIRECTOR (Admin)
SOCIAL WELFARE SE, SE & WE KPK

Annou^oc (8)

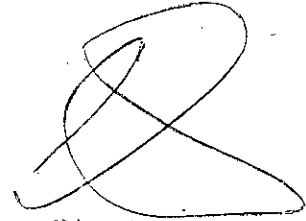
GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION
AND WOMEN EMPOWERMENT JAMRUD ROAD PESHAWAR.

Dated:- 5 / 5 / 2014.

ORDER.

NO.E-14/283/DSW 1786-88 During the surprise visit it was observed that you were not present on duty as specified in the duty schedule and some stranger Mr. Mohammad Amir s/o Mohammad Ali resident of District Swabi, who happened to be your nephew informed that he is performing the duty of chowkidar on behalf of you.

You ~~Mr. Rahman Said, Chowkidar~~ Directorate of Social Welfare is hereby suspended with immediate effect for the above motioned reasons and for not clarifying the position despite repeated calls.

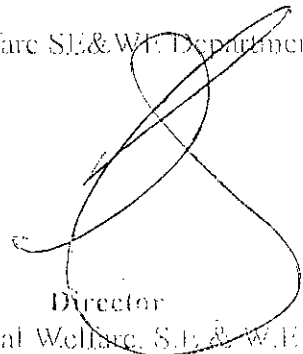


Director
Social Welfare, S.E. & W.E
Khyber Pakhtunkhwa

Copy to:-

1. PS to Special Assistant to Chief Minister for Social Welfare SE&WE Department.
2. PA to Director Social Welfare, SE&WE Department
3. Official Concerned.

o/c



Director
Social Welfare, S.E. & W.E
Khyber Pakhtunkhwa

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Mr. McGee's letter to him
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Miss G. J. ...
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Mr. ...
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Miss ...
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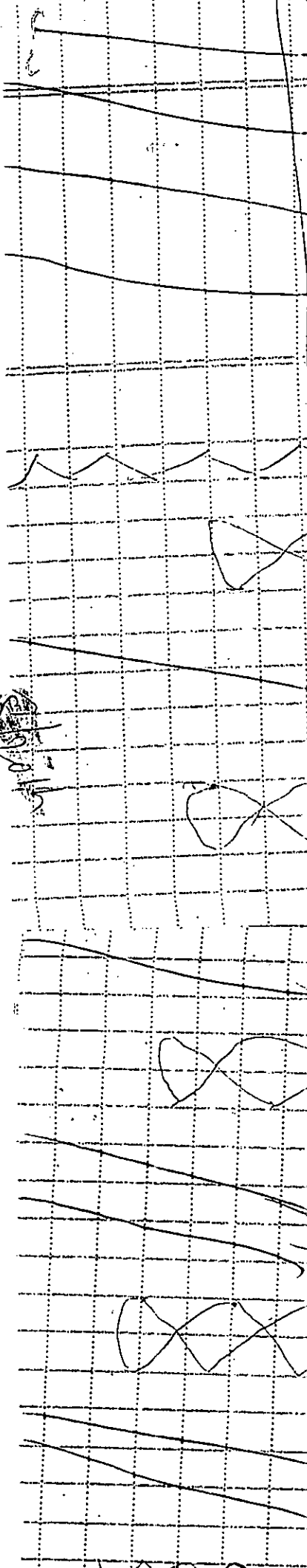
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Miss ...
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8) Mary S. Atter Hanson
 9) Rosalind Ryan
 10) Catherine Ryan
 11) M. P. 1
 12) C. U. Spain Bob
 13) Michael
 14) E. A. S. S. S. S. S.
 15) Atlas Ryan
 16) Faber Ryan
 17) R. Ryan
 18) Adam
 19) J. B. Ryan
 20) Amy Ryan
 21) P. Ryan
 22) P. Ryan



2004

DATE: JAN 17 1967

8. Rasheed Khan

9. F. Hussain Khan

10. M. A. Iqbal

11. P. Ashraf Khan

12. Muhammad Khan

13. Farid Sultan

14. Abbas Khan

15. Habib Khan

16. Rahim Khan

17. Adnan Khan

18. Jafar Khan

19. Amjad Khan

20. M. A. Iqbal

21. ~~M. A. Iqbal~~

Debate

Order

Group

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June

6/20/67

8. Rasfael Khana D. (M. J. 11/11)
9. Abu Ezzan Khana D. (M. J. 11/11)
10. Mubaraqa (M. J. 11/11)
11. Gulshan Bibi (M. J. 11/11)

12. Mufhid Khan (M. J. 11/11)
13. Farid Sultan (M. J. 11/11)
14. Atlas Khan (M. J. 11/11)
15. Saib Kabir Khan (M. J. 11/11)
16. Rahim Gul (M. J. 11/11)

17. Adnan Khan (M. J. 11/11)
18. Amirul Khan (M. J. 11/11)
19. Faraz Ali (M. J. 11/11)
20. ~~_____~~ (M. J. 11/11)
21. Makiel (M. J. 11/11)
22. Dault Khan (M. J. 11/11)

~~_____~~

~~_____~~

Annex 3
4
E

GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION AND
WOMEN EMPOWERMENT JAMRUD ROAD PESHAWAR.

No. E-14/283/DSW/ ~~1078~~ - 1078-82

DATED PESHAWAR THE 11/2/2014...

To.

The Assistant Director (B&A),
Directorate of Social Welfare SE&WE.

Subject **STOPPAGE OF SALARY OF MR REHMAN SAID (CHOWKIDAR)**

The undersigned is directed to refer to the subject noted above and to say that due to prolong absence from duty, pay of Mr. Rehman Said Chowkidar Directorate of Social Welfare may be stopped till further orders.

Assistant Director (Admn)
Social Welfare, S.E & W.E
Khyber Pakhtunkhwa

Copy to:-

1. PS to Special Assistant to Chief Minister for Social Welfare, SE&WE Department
2. PA to Director Social Welfare, SE&WE Department
3. Official concerned
4. Assistant Director (Estab) Directorate Social Welfare, SE&WE Department

Assistant Director (Admn)
Social Welfare, S.E & W.E
Khyber Pakhtunkhwa

dlc

6



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT, KHYBER PAKHTUNKHWA,
OPP: ISLAMIA COLLEGE GATE, JAMRUD ROAD, PESHAWAR.

DATED PESHAWAR THE 24/9 2014

ORDER

No.DSW/ 3882-86 Due to prolong and willful absence from duty, the salary of Mr. Rehman Saeed, Chowkidar of the Directorate of Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa is hereby stopped with immediate effect and till further orders in the public interest.

DIRECTOR

SOCIAL WELFARE, SPL: EDUCATION &
WOMEN EMPOWERMENT, KHYBER PAKHTUNKHWA

Copy to: -

1. PS to Special Assistant to Chief Minister for Social Welfare, Special Education & Women Empowerment Department, Khyber Pakhtunkhwa.
2. PS to Secretary to Govt: of Khyber Pakhtunkhwa, Zakat, Usher, Social Welfare, Special Education & Women Empowerment Department, Peshawar.
3. The Deputy Accountant General, Pay Roll - 10, A.G. Office, Khyber Pakhtunkhwa, Peshawar.
4. The Assistant Director (B&A), Directorate of Social Welfare, Special Education & Women Empowerment Department, Khyber Pakhtunkhwa.
5. The Assistant Director (Admn), Directorate of Social Welfare, Special Education & Women Empowerment Department, Khyber Pakhtunkhwa.

DIRECTOR

SOCIAL WELFARE, SPL: EDUCATION &
WOMEN EMPOWERMENT, KHYBER PAKHTUNKHWA



Amru 47 F

Registered Mail

GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION &
WOMEN EMPOWERMENT, OPPOSITE ISLAMIA COLLEGE
JAMRUD ROAD, PESHAWAR.

No. DSW/ 5169-73
Dated Peshawar the 5/11 /2014

091-9216099

To

~~Mr. Rahman Said (Chowkida)~~

Subject: ABSENCE FROM DUTY

As reported you are found willfully absent from official duty since long. On account of your willful absence, so many memorandums were issued to you but you are failed to join your duty. Hence you are finally advised to immediately report for duty to Assistant Director (Admn) Directorate of Social Welfare, otherwise ex-parte action will be initiated against you.

The Assistant Director (B & A) Directorate of Social Welfare is requested not to release his salary till further order. The competent authority has desired to see you on duty during the office hour.

This issue with the approval of DSW:

[Signature]
Assistant Director
(Establishment)

Copy to:

1. The Assistant Director (B & A).
2. The Assistant Director (Admn).
3. PA to DSW.

[Handwritten initials]

12



12-05-2014

سٹنٹ ڈائریکٹرسوشل ویلفیئر سمیت 3 اہلکار معطل

ت سے قبل چھٹی اور بغیر اطلاع غیر حاضری پر ڈائریکٹرسوشل ویلفیئر کی کارروائی

(نمائندہ خصوصی) ڈائریکٹرسوشل ویلفیئر نے سٹنٹ ڈائریکٹر اور سپرنٹنڈنٹ کو وقت سے قبل چھٹی کرنے پر اور چوکیدار کو اطلاع کئے بغیر غیر حاضری پر معطل کر کے انکے خلاف انکواری کا حکم دے دیا۔ گزشتہ روز ڈائریکٹرسوشل ویلفیئر معتمد ہانڈ نے اچانک اپنے دفتر کی مختلف برانچوں کا دورہ کیا اس موقع پر ایک اسٹنٹ ڈائریکٹر اور ایک سپرنٹنڈنٹ نے دفتری اوقات ختم ہونے سے قبل ہی چھٹی کی تھی جس پر انہوں نے برہمی کا اظہار کرتے ہوئے ان کو معطل کر دیا جبکہ ایک چوکیدار بغیر اطلاع کئے دفتر نہیں آئے تھے انکو بھی معطل کر دیا اور انکے خلاف انکواری کیٹی کر لی جو کہ مذکورہ اہلکاروں کے خلاف انکواری کرنے کے بعد انکو رپورٹ پیش کرینگے۔ اس موقع پر انہوں نے تمام عملہ کو ہدایت کی کہ وہ تمام دفتری امور بروقت سرانجام دے اور کسی قسم کی غفلت اور لاپرواہی کا مظاہرہ نہ کرنے بصورت دیگر نا اہل اور کام چور عملہ کے خلاف سخت کارروائی کی جائے گی۔

گزشتہ شمارے

May 2014

Mo	Tu	We	Th	Fr	Sa	Su
18	28	21	30	1	2	3
4	19	5	6	7	8	9
10	11	20	(2)	11	14	15
16	17	21	19	2	21	22
23	24	25	22	23	24	25
26	27	28	22	23	24	25
26	27	28	29	30	31	1
23	2	3	4	5	6	7
8	2008	2	09	2010	2011	
20	2	2	13	2014	2015	
20	16	22	17	2018	2019	



سنڈے میگزین



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For Personal file
in P.O. Fakhram sarid chawhidam.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE EDUCATION AND
WOMEN EMPOWERMENT JAMRUD ROAD PESHAWAR.

E-14/283/DSW 1814-15

DATED PESHAWAR THE 5/5/2014

To,

The District Officer,
Social Welfare Mardan

SUBJECT: Enquiry

The undersigned is directed to refer to the subject cited above and to nominate you as an enquiry officer in order to probe into the case of ~~Mr. Rehman Said~~ ~~Chowkidar~~ Directorate of Social Welfare SE&WE Khyber Pakhtunkhwa who remained absent from his duty and did not turn up even after repeated orders.

(UMAR ZARIN KHATTAK)
ASSISTANT DIRECTOR (ADMN)
SOCIAL WELFARE SE&WE KPK

Copy to:-

1. PA to Director Social Welfare SE&WE Department.

(UMAR ZARIN KHATTAK)
ASSISTANT DIRECTOR (ADMN)
SOCIAL WELFARE SE&WE KPK

o/c

DUPLICATE COPY

AMEN 7/24
10
OFFICE OF THE DISTRICT OFFICER
SOCIAL WELFARE DEPARTMENT
DISTRICT PESHAWAR. *lt*

No. DO/SW/ 4236

Dated Peshawar the 24-07-2014

To

✓
The Director,
Social Welfare, Special Education
Women Empowerment Khyber Pakhtunkhwa.

Subject: - INQUIRY REPORT REGARDING MR. REHMAN SAID CHOWKIDAR.

With reference to your office letter No E-14/283/DSW/825-26 dated 02-07-2014 followed by a reminder bearing No. 1196-99 dated 10-07-2014 on the above noted subject.

I conducted inquiry in the subject case and the findings whatsoever are communicated for favour of further action at your end please.

1. Mr. Rahman Said Chowkidar is willfully absent from duty w.e.f. 01-11-2013 without any legal grounds as he did not take earned leave or produced any medical certificate in case of illness.
2. He was called upon to resume his duties vide Assistant Director (Admn) letter No. 1057-58 dated 11-02-2013, but he failed to do so.
3. His period of absence from duty and presence on duty is illustrated hereunder.

S. #	Period of Absence		No. of days (Absentees)	Period of Duty		No of days (Presence on duty)
	From	To		From	To	
01	01-11-2013	30-11-2013	30 days	01-12-2013	21-01-2014	52 days
02	22-01-2014	Update i.e. 23-07-2014	183 days			
	Total		213 days	Total		52 days

Certified that the official concerned remained absent from duty for 213 days during the last nine (9) months.

4. He has been suspended from services by the competent authority vide order No. 1786-88 dated 05-05-2014 which is still intact.

⇒ ⑤ According to the Khyber Pakhtunkhwa Govt. Servant (E&D) Rules, 2011 vide clause No. 9, the absentee is required to be informed through publishing an advertisement in at least two leading news papers directing him to resume his duties within 15 days of the publication of that notice failing which an ex-parte decision shall be taken against the absentee and major penalty i.e. removal from service may be imposed upon him accordingly.

The inquiry report is therefore sent here with the request to please follow para No. 5 of the report in order to proceed further in the subject case please.

Directorate of
Social Welfare K.P.K.

No. 97587

Date: 16-9-14

[Signature]
DISTRICT OFFICER
SOCIAL WELFARE DEPARTMENT
PESHAWAR
INQUIRY OFFICER *12/8*

ANNEX 26

26

FROM :

FAX NO. :

Feb. 01 2015 02:07AM P1

GOVT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE
SPECIAL EDUCATION AND WOMEN EMPOWERMENT
PESHAWAR

No: DSW/7823

Dated: 19/01/15

Office Order

In light of the recommendations of the inquiry officer and subsequent notice in the News Paper for resuming duties in respect of Rahman Said Chowkida and reminders on the Home Address of Mr. Fazal Akbar Naib Qasid for resuming duties and showing valid reasons for their prolonged absence without prior permission, both the officials failed to resume their duties and, therefore, their services are hereby terminated with immediate effect on account of their willful absence, *we*

best public interest

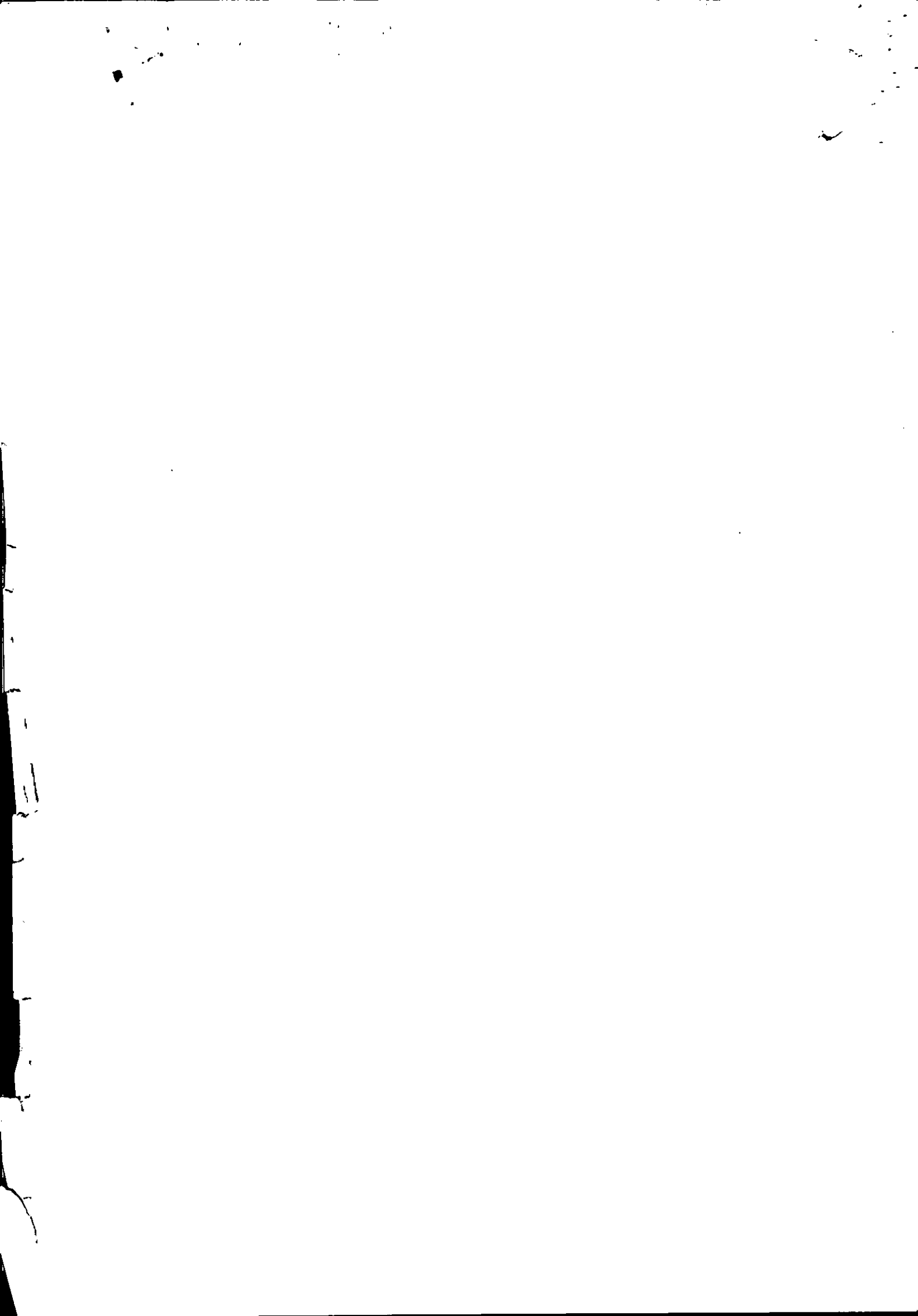
Director
Social Welfare Special
Education & Women
Empowerment

Copy to:

- 1) Accountant General Khyber Pakhtunkhwa.
- 2) DDO Directorate of Social Welfare, SE and WE Department Khyber Pakhtunkhwa.
- 3) PS to Minister Social Welfare, SE and WE Department Khyber Pakhtunkhwa.
- 4) PS to Secretary Social Welfare, SE and WE Department Khyber Pakhtunkhwa.
- 5) Officials Concerned.

19
Director
Social Welfare Special
Education & Women
Empowerment

16



Annex 1

GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION AND
WOMEN EMPOWERMENT JAMRUD ROAD PESHAWAR.

IN No. E-14/283/DSW/

7238-43

DATED PESHAWAR THE 01/10/2015

To,

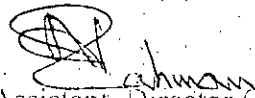
✓
The Director General,
Information Department Khyber Pakhtunkhwa.

Subject ADVERTISEMENT

I am directed, to refer to the subject to the subject noted above and to enclose 7 copies of a notice in Urdu version for publishing in 02 renowned dailies.

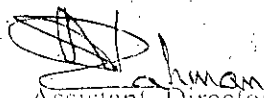
It is certified that funds are available under the relevant head to meet the expenses.

Enc: 07 copies


Assistant Director (Admn)
Social Welfare, S.E & W.E
Khyber Pakhtunkhwa

Copy to:-

1. PS to Special Assistant to Chief Minister for Social Welfare, SE&WE Department
2. PA to Director, Social Welfare, SE&WE Department
3. Official concerned
4. Assistant Director (Estab) Directorate Social Welfare, SE&WE Department


Assistant Director (Admn)
Social Welfare, S.E & W.E
Khyber Pakhtunkhwa

نوٹس غیر حاضری

سٹی رحمان سید سکسہ صوابی چوکیدار بنیادی سکھیل 01 میں ڈائریکٹریٹ آف سوشل ویلفیئر، سوشل ایجوکیشن اینڈ ویمن ڈیولپمنٹ خیبر پختون خواہ یونیورسٹی روڈ پشاور بغیر کسی پیشگی اجازت یا اطلاع کی تاریخ 1/3/2014 سے تاحال مسلسل اپنی ڈیوٹی سے غیر حاضر رہے، آپ سے زبردستی کی دفتر سے بذریعہ مراسلہ نمبر E-14/283/DSW/814-15 تاریخ 05/5/2014 نمبر 1059-58 تاریخ 11/02/2014 غیر حاضری 01-11-2013 سے 30-11-2013 تک 01-12-2013 سے 21-01-2014، 22-01-2014 سے 19-09-2014 وضاحت طلب کی گئی ہے مگر تاحال آپ نے کوئی جواب نہیں دیا۔ لہذا آپ کو بذریعہ اشتہار ہذا اطلاع دی جاتی ہے کہ اس نوٹس کے اشاعت کے 15 پندرہ یوم کے اندر اندر ڈیوٹی پر حاضر ہو کر غیر حاضری کے وجوہات بیان کرنے بصورت دیگر متعلقہ سرکاری ذرائع کے تحت یکطرفہ کارروائی عمل میں لاتے ہوئے آپ کو نوکری سے برخاست کر دیا جائیگا۔

از طرف
معتمد باللہ شاہ
ڈائریکٹر

سوشل ویلفیئر سیشنل ایجوکیشن اینڈ ویمن ڈیولپمنٹ خیبر پختون خواہ یونیورسٹی روڈ پشاور

مشاق

mashraq@brain.net.pk

اللہ ہی کہتے ہیں
شرق مغرب
(القرآن)

بدھ 15 رجب الاول 1436ھ 7 جنوری 2015ء

نوٹس غیر حاضری

کسی رحمان سید سکنہ صوابی چوکیدار بنیادی سکین 01 میں ڈائریکٹریٹ آف سوشل ویلفیئر، جنرل ایجوکیشن اینڈ
 ایڈمنسٹریشن غیر محضو خواتین روزی روڈ بازار پھیر کئی بیگلہ امتیازت با اطلاع کے تاریخ 13-2014 سے
 حاصل سلسل اپنی اپولی سے غیر حاضر ہے۔ آپ سے زبردستی کے دفتر سے بذریعہ مراسلہ نمبر
 15-11/2014/DSW/14/283 تاریخ 5/2014 نمبر 58-1059 تاریخ 11/2 2014 غیر حاضری
 1/11/2013 سے 30/1/2013 تک 17/12/2013 سے 21-1-2014، 22-1-2014 سے
 19-9-2014 وضاحت طلب کی گئی ہے مگر تاہاں آپ نے کوئی جواب نہیں دیا۔ لہذا آپ کو بذریعہ اشتہار
 اطلاع دی جاتی ہے کہ اس نوٹس کی اشاعت کے 15 چھ دنوں کے اندر اندر اپنی پر حاضر ہو کر غیر حاضری کی
 وجوہات بیان کریں۔ صورت دیگر متعلقہ سرکاری قوانین کے تحت پھر کارروائی میں آئے ہوئے آپ کو
 نوٹس سے برخواست کروایا جائیگا۔

مستقیم بلالہ شاہ ڈائریکٹر

جنرل ایجوکیشن اینڈ ایڈمنسٹریشن ڈویژن، سوشل ویلفیئر ڈویژن، اسلام آباد

NP/P-97 Also available on www.sh.berpa@turkwa.gov.pk

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CHAPTER-4

**GOVERNMENT OF THE KHYBER PAKHTUNKHWA
EFFICIENCY AND DISCIPLINE RULES, 2011**

(Notified vide E & AD No.SO(REG-VI)E&AD/2-6/2010 dated 16/9/2011)

1. **Short title, application and commencement.**---(1) These rules may be called the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(2) These shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

(3) These shall come into force at once.

2. **Definitions.**---(1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "Accused" means a person in Government service against whom action is initiated under these rules;
- (b) "Appellate authority" means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;
- (c) "appointing authority" means an authority declared or notified as such by an order of Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made there under or an authority as notified under the specific laws/rules of Government;
- (d) "Charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;
- (e) "Chief Minister" means the Chief Minister of the Khyber Pakhtunkhwa;
- (f) "Competent authority" means-
 - (i) the respective appointing authority;
 - (ii) in relation to a Government servant of a tribunal or court functioning under Government, the appointing authority or the Chairman or presiding officer of such tribunal or court, as the case may be, authorized by the appointing authority to exercise the powers of the competent authority under these rules:

Provided that where two or more Government servants are

to be proceeded against jointly, the competent authority in relation to the accused Government servant senior most shall be the competent authority in respect of all the accused.

(g) "Corruption" means-

- (i) accepting or obtaining or offering any gratification or valuable thing, directly or indirectly, other than legal remuneration, as a reward for doing or for bearing to do any official act; or
- (ii) Dishonestly or fraudulently misappropriating, or indulging in embezzlement or misusing Government property or resources; or
- (iii) Entering into plea bargain under any law for the time being in force and returning the assets or gains acquired through corruption or corrupt practices voluntarily; or
- (iv) Possession of pecuniary sources or property by a Government servant or any of his dependents or any other person, through his or on his behalf, which cannot be accounted for and which are disproportionate to his known sources of income; or
- (v) maintaining a standard of living beyond known sources of income; or
- (vi) having a reputation of being corrupt;

(h) "Governor" means the Governor of the Khyber Pakhtunkhwa;

(i) "inefficiency" means failure to efficiently perform functions assigned to a Government servant in the discharge of his duties;

(j) "inquiry committee" means a committee of two or more officers, headed by a convener, as may be appointed by the competent authority under these rules;

(k) "inquiry officer" means an officer appointed by the competent authority under these rules;

(l) "*misconduct*" includes-

- (i) conduct prejudicial to good order or service discipline; or
- (ii) conduct contrary to the Khyber Pakhtunkhwa Province Government Servants (Conduct) Rules, 1987, for the time being in force; or
- (iii) conduct unbecoming of Government servant and a gentleman; or
- (iv) involvement or participation for gains, directly or

indirectly, in industry, trade, or speculative transactions by abuse or misuse of official position to gain undue advantage or assumption of such financial or other obligations in relation to private institutions or persons as may compromise the performance of official duties or functions; or

- (v) any act to bring or attempt to bring outside influence, directly or indirectly, to bear on the Governor, the Chief Minister, a Minister or any other Government officer in respect of any matter relating to the appointment, promotion, transfer or other conditions of service; or
- (vi) making appointment or promotion or having been appointed or promoted on extraneous grounds in violation of any law or rules; or
- (vii) conviction for a moral offence by a court of law.

(2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Khyber Pakhtunkhwa Province Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) or any other statutory order or rules of Government for the time being in force.

3. **Grounds for proceedings.**---A Government servant shall be liable to be proceeded against under these rules, if he is-

- (a) inefficient or has ceased to be efficient for any reason; or
- (b) guilty of misconduct; or
- (c) guilty of corruption; or
- (d) guilty of habitually absenting himself from duty without prior approval of leave; or
- (e) engaged or is reasonably believed to be engaged in subversive activities, or is reasonably believed to be associated with others engaged in subversive activities, or is guilty of disclosure of official secrets to any un-authorized person, and his retention in service is prejudicial to national security; or
- (f) entered into plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily.

4. **Penalties.**---(1) The following are the minor and the major penalties, namely:

- (a) Minor penalties:
 - (i) Censure;
 - (ii) Withholding, for a specific period, promotion or increment

subject to a maximum of three years, otherwise than for unfitness for promotion or financial advancement, in accordance with the rules or orders pertaining to the service or post:

Provided that the penalty of withholding increments shall not be imposed on a Government servant who has reached the maximum of his pay scale:

- (iii) Recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order;
- (b) Major penalties:
 - (i) Reduction to a lower post or pay scale or to a lower stage in a time scale.
 - (ii) Compulsory retirement;
 - (iii) Removal from service; and
 - (iv) Dismissal from service.

(2) Dismissal from service under these rules shall disqualify a Government servant from future employment under Government.

(3) Any penalty under these rules shall not absolve a Government servant from liability to any other punishment to which he may be liable for an offence, under any other law, committed by him while in service.

5. Initiation of proceedings.---(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-

- (a) proceed itself against the accused by issuing a show cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry:

Provided that no opportunity of showing cause or personal hearing shall be given where-

- (i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or
- (ii) a Government servant has entered into plea bargain under any law for the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine or imprisonment; or
- (iii) a Government servant is involved in subversive activities; or
- (iv) it is not reasonably practicable to give such an opportunity to the accused; or

- (b) get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 11:

Provided that the competent authority shall dispense with the inquiry where-

- (i) a Government servant has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or
- (ii) a Government servant is or has been absent from duty without prior approval of leave:

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or, for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry.

- (2) The charge sheet or statement of allegations or the show cause notice, as the case may be, shall be signed by the competent authority.

6. **Suspension.**---A Government servant against whom action is proposed to be initiated under rule 5 may be placed under suspension for a period of ninety days, if in the opinion of the competent authority, suspension is necessary or expedient, and if the period of suspension is not extended for a further period of ninety days within thirty days of the expiry of initial period of suspension, the Government servant shall be deemed to be reinstated:

Provided that the competent authority may, in appropriate case, for reasons to be recorded in writing, instead of placing such person under suspension, require him to proceed on such leave as may be admissible to him, from such date as may be specified by the competent authority.

7. **Procedure where inquiry is dispensed with.**---If the competent authority decides that it is not necessary to hold an inquiry against the accused under rule 5, it shall-

- (a) inform the accused by an order in writing, of the grounds for proceeding against him, clearly specifying the charges therein, alongwith apportionment of responsibility and penalty or penalties proposed to be imposed upon him;
- (b) give him a reasonable opportunity of showing cause against the proposed action, within seven days of receipt of the order or within such extended period, as the competent authority may determine;
- (c) on receipt of reply of the accused within the stipulated period or after the expiry thereof, if no reply is received, determine whether the charge or charges have been proved against the accused or not:

Provided that after receipt of reply to the show cause notice from the accused, the competent authority, except where the Chief Minister himself is the competent authority, shall decide the case.

within a period of ninety days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons:

Provided further that if the case is not decided by the competent authority within the prescribed period of ninety days, the accused may file an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period;

- (d) afford an opportunity of personal hearing before passing any order of penalty under clause (f), if it is determined that the charge or charges have been proved against him;
- (e) exonerate the accused, by an order in writing, if it is determined that the charge or charges have not been proved against him; and
- (f) impose any one or more penalties mentioned in rule 4, by an order in writing, if the charge or charges are proved against the accused:

Provided that where charge or charges of grave corruption are proved against an accused, the penalty of dismissal from service shall be imposed, in addition to the penalty of recovery, if any.

8. **Action in case of conviction or plea bargain under any law.**---Where a Government servant is convicted by a court of law on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices, or has been acquitted by a court of law as a result of compounding of an offence involving moral turpitude under any law for the time being in force, the competent authority, after examining facts of the case, shall-

- (a) dismiss the Government servant where he has been convicted on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices voluntarily:

Provided that dismissal in these cases shall be with immediate effect from the date of conviction by a court of law; and

- (b) proceed against the Government servant under rule 5, where he has been convicted of charges other than corruption or moral turpitude.

9. **Procedure in case of wilful absence.**---Notwithstanding anything to the contrary contained in these rules, in case of wilful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.

10. Procedure to be followed by competent authority where inquiry is necessary.---(1) If the competent authority decides that it is necessary to hold an inquiry against the accused under rule 5, it shall pass an order of inquiry in writing, which shall include-

- (a) appointment of an inquiry officer or an inquiry committee, provided that the inquiry officer or the inquiry committee, as the case may be, shall be of a rank senior to the accused and where two or more accused are proceeded against jointly, the inquiry officer or the convener of the inquiry committee shall be of a rank senior to the senior most accused;
- (b) the grounds for proceeding, clearly specifying the charges along with apportionment of responsibility;
- (c) appointment of the departmental representative by designation; and
- (d) direction to the accused to submit written defense to the inquiry officer or the inquiry committee, as the case may be, within reasonable time which shall not be less than seven days and more than fifteen days of the date of receipt of orders.

(2) The record of the case and the list of witnesses, if any, shall be communicated to the inquiry officer or the inquiry committee, as the case may be, along with the orders of inquiry.

(3) In a case where preliminary or fact finding inquiry was conducted, and the competent authority decides to hold formal inquiry, the inquiry officer or the inquiry committee for the purpose of conducting formal inquiry shall be different from the inquiry officer, or the inquiry committee which conducted the preliminary inquiry.

11. Procedure to be followed by inquiry officer or inquiry committee.---(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry ex-parte.

(3) The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.

(4) Statements of witnesses and departmental representative(s), if possible, will be recorded in the presence of accused and vice versa.

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him, is sanctioned on the recommendations of a Medical Board; provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.

(7) The inquiry officer or the inquiry committee, as the case may be, shall submit his or its report to the competent authority within thirty days of the initiation of inquiry:

Provided that the inquiry shall not be vitiated merely on the grounds of non-observance of the time schedule for completion of the inquiry.

12. Powers of the inquiry officer or inquiry committee.---(1) For the purpose of an inquiry under these rules, the inquiry officer or the inquiry committee, as the case may be, shall have the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (Act No.V of 1908), in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents, and receiving evidence on affidavits; and
- (c) issuing commissions for the examination of witnesses or documents.

(2) The proceedings under these rules shall be deemed to be the judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

13. Duties of the departmental representative.---The departmental representative shall perform the following duties, namely:

- (a) render full assistance to the inquiry officer or the inquiry committee, as the case may be, during the proceedings where he shall be personally present and fully prepared with all the relevant record relating to the case, on each date of hearing;
- (b) cross-examine the witnesses produced by the accused, and with the permission of the inquiry officer or inquiry committee, as the case may be, may also cross-examine the prosecution witnesses; and
- (c) rebut the grounds of defense offered by the accused before the inquiry officer or the inquiry committee, as the case may be.

14. Order to be passed on receipt of report from the inquiry officer or inquiry committee.---(1) On receipt of report from the inquiry officer or inquiry committee, as the case may be, the competent authority, shall examine the report and the relevant case material and determine whether the inquiry has been conducted in accordance with the provisions of these rules.

(2) If the competent authority is satisfied that the inquiry has been conducted in accordance with the provisions of these rules, it shall further determine whether the

charge or charges have been proved against the accused or not.

(3) Where the charge or charges have not been proved, the competent authority shall exonerate the accused by an order in writing, or it shall follow the procedure as given in sub-rule (6) of this rule.

(4) Where the charge or charges have been proved against the accused, the competent authority shall issue a show cause notice to the accused by which it shall-

- (a) inform him of the charges proved against him and the penalty or penalties proposed to be imposed upon him;
- (b) give him reasonable opportunity of showing cause against the penalty or penalties proposed to be imposed upon him and to submit as to why one or more of the penalties as provided in rule 4 may not be imposed upon him and to submit additional defense in writing, if any, within a period which shall not be less than seven days and more than fifteen days from the day the charge or charges have been communicated to him: provided that the accused shall, in his reply to show cause notice, indicate as to whether he wants to be heard in person or not;
- (c) provide a copy of inquiry report to accused; and
- (d) direct the departmental representative to appear, with all the relevant record, on the date of hearing.

(5) After affording personal hearing to the accused the competent authority shall, keeping in view the findings and recommendations of the inquiry officer or inquiry committee, as the case may be, facts of the case and defense offered by the accused during personal hearing, by an order in writing-

- (i) exonerate the accused if charges had not been proved; or
- (ii) impose any one or more of the penalties specified in rule 4 if charges have been proved.

(6) Where the competent authority is satisfied that the inquiry proceedings have not been conducted in accordance with the provisions of these rules or the facts and merits of the case have been ignored or there are other sufficient grounds, it may, after recording reasons in writing, either remand the inquiry to the inquiry officer or the inquiry committee, as the case may be, with such directions as the competent authority may like to give, or may order a de novo inquiry through different inquiry officer/inquiry committee.

(7) After receipt of reply to the show cause notice and affording opportunity of personal hearing, the competent authority shall decide the case within a period of fifteen days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons.

(8) If the case is not decided by the competent authority within the prescribed period of fifteen days, the accused may submit an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period.

15. **Personal hearing.**---The competent authority may, by an order in writing, call the accused and the departmental representative, along with relevant record of the case, to appear before him, for personal hearing on the fixed date and time.

16. **Procedure of inquiry against Government servant lent to other governments or organizations etc.**---(1) Where the services of Government servant to whom these rules apply are transferred or lent to any other government department, corporation, corporate body, autonomous body, authority, statutory body or any other organization or institution, hereinafter referred to as the borrowing organization, the competent authority for the post against which such Government servant is posted in the borrowing organization may-

- (a) suspend him under rule 6; and
- (b) initiate proceedings against him/her under these rules:

Provided that the borrowing organization shall forthwith inform the authority which has lent his services, (hereinafter referred to as the lending organization) of the circumstances leading to the order of his suspension or the initiation of the proceedings, as the case may be:

Provided further that the borrowing organization shall obtain prior approval of the competent authority in the lending organization before taking any action under these rules against a Government servant holding a post in basic pay scale 17 or above.

(2) If, in the light of findings of the proceedings taken against the accused in terms of sub rule (1), the borrowing organization is of the opinion that a penalty may have to be imposed on him, it shall transmit the record of the proceedings to the lending organization, and the competent authority in the lending organization shall thereupon take action against the accused under rule 14.

(3) Notwithstanding anything to the contrary contained in sub-rules (1) and (2), the Chief Minister may, in respect of certain Government servant or class of Government servants to whom these rules apply, authorize any officer or authority in borrowing organization to exercise all powers of competent authority under these rules.

17. **Departmental appeal and review.**---(1) An accused who has been awarded any penalty under these rules may, within thirty days from the date of communication of the order, prefer departmental appeal to the appellate authority:

Provided that where the order has been passed by the Chief Minister, the accused may, within the aforesaid period, submit a review petition directly to the Chief Minister.

(2) The authority empowered under sub-rule (1) shall call for the record of the case and comments on the points raised in the appeal from the concerned department or office, and on consideration of the appeal or the review petition, as the case may be, by an order in writing-

- (a) uphold the order of penalty and reject the appeal or review petition; or
- (b) set aside the orders and exonerate the accused; or

(c) modify the orders or reduce the penalty.

(3) An appeal or review petition preferred under these rules shall be made in the form of a petition, in writing, and shall set forth concisely the grounds of objection in impugned order in a proper and temperate language.

18. **Appearance of counsel.**---No party to any proceedings under these rules at any stage, except proceedings under rule 19, shall be represented by an advocate.

19. **Appeal before Khyber Pakhtunkhwa Province Service Tribunal.**---(1) Notwithstanding anything contained in any other law or rules for the time being in force, any Government servant aggrieved by any final order passed under rule 17 may, within thirty days from the date of communication of the order, prefer an appeal to the Khyber Pakhtunkhwa Province Service Tribunal established under the Khyber Pakhtunkhwa Province Service Tribunals Act, 1974 (Khyber Pakhtunkhwa Act No. I of 1974).

(2) If a decision on a departmental appeal or review petition, as the case may be, filed under rule 17 is not communicated within a period of sixty days of filing thereof, the affected Government servant may file an appeal in the Khyber Pakhtunkhwa Province Service Tribunal within a period of thirty days of the expiry of the aforesaid period, where after, the authority with whom the departmental appeal or review petition is pending, shall not take any further action.

20. **Exception.**---Notwithstanding anything to the contrary contained in these rules, in cases where Government servants collectively strike work, wilfully absent themselves from duty or abandon their official work, the competent authority in respect of the senior most accused may serve upon them, through newspapers or any other mean, such notice as may be deemed appropriate to resume duty and in the event of failure or refusal to comply with the directive contained in the notice, impose upon the defaulting Government servants any of the major penalties prescribed in these rules.

21. **Indemnity.**---No suit, prosecution or other legal proceedings shall lie against the competent authority or any other authority for anything done or intended to be done in good faith under these rules or the instructions or directions made or issued there-under.

22. **Jurisdiction barred.**---Save as provided under these rules, no order made or proceedings taken under these rules shall be called in question in any court and no injunction shall be granted by any court in respect of any decision so made or proceedings taken in pursuance of any power conferred by, or under these rules.

23. **Repeal.**---(1) The Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 1973 are hereby repealed.

(2) Notwithstanding the repeal of the aforesaid rules, all proceedings pending immediately before the commencement of these rules against any Government servant under repealed rules shall continue under these rules.

(3) Notwithstanding the repeal of the aforesaid rules, all proceedings pending immediately before the commencement of these rules against any employee under the said repealed rules or under the Khyber Pakhtunkhwa Civil Servants Act, 1973 and rules made thereunder, or any other law and rules shall continue under that law and rules, in the manner provided thereunder.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 592/2015.

Rehman Said, Ex-Chowkidar, Directorate of Social Welfare
Special Education and Women Empowerment Khyber
Pakhunkhwa, Peshawar

(Appellant)

VERSUS

Government of Khyber Pakhutukhwa through Secretary Social
Welfare Special Education and Women Empowerment
Khyber Pakhutukhwa Peshawar & others.

(Respondents)

<p><u>REJOINDER TO THE PARA WISE REPLY ON</u> <u>BEHALF OF THE APPELLANT</u></p>
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Respectfully submitted:

The appellant submits his rejoinder as under:

ON PRELIMINARY OBJECTIONS:

1. Contents incorrect and misleading, the appellant has illegally been terminated from service, hence he has got the necessary cause of action and locus standi to file the instant appeal.
2. Contents incorrect and misleading, the appeal being filed well in accordance with the prescribed rule and procedure hence maintainable in its present form.
3. Incorrect and misleading, all necessary parties are arrayed in the appeal.
4. Contents incorrect and misleading, no rule of estoppel is applicable in the instant case.
5. Contents incorrect and misleading, the appellant has come to the tribunal with clean hands.

ON-FACTS

1. Contents need no reply, being admitted.

2. Contents of Para 2 of the appeal are correct, the reply submitted to the Para No. 2 is totally incorrect and misleading hence denied.
3. Contents of Para-3 of the appeal are correct, the reply submitted to the Para is incorrect, misleading hence denied.
4. Contents of Para-4 of the appeal are correct, the reply submitted to the Para is incorrect, misleading and without any proof.
5. Contents of Para-5 of the appeal are correct, the reply submitted to the Para is incorrect and misleading, hence denied.
6. Contents of Para-6 of the appeal are correct, the reply to the Para to the extent of denial is incorrect and misleading, hence denied.
7. Contents of Para-7 of the appeal are correct, the reply submitted to the Para is incorrect and misleading, hence denied.

GROUNDS

The Grounds (A to M) taken in the memo of appeal are legal and will be substantiated at the time of arguments.

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

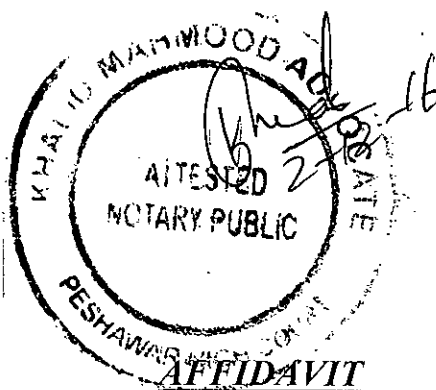

Appellant

Through

~~XXXXXXXXXX~~
Advocate, Peshawar.

&


YASIR SALEEM
Advocate, Peshawar.



I, Rehman Said, Ex-Chowkidar, Directorate of Social Welfare Special Education and Women Empowerment Khyber Pakhunkhwa, Peshawar, do hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as titled appeal are true and correct and nothing has been kept back or concealed from this Honourable Tribunal.


Deponent