

FORM OF ORDER SHEET

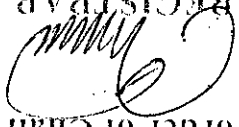
Court of

Appeal No. 349 / 2024

Sheet	Date of order	Order or other proceedings with signature of Judge
1	2	3

06/03/2024

The appeal of Mr. Habibullah resubmitted today by Mr. Umar Farooq Mohmand Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 8-3-24. Parcha Peshi is given to counsel for the appellant.

By the order of Chairman  
  
 REGISTRAR

The appeal of Mr. Habib Ullah received today i.e. on 27.02.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Memorandum of appeal is not signed by the appellant.
- 3- Annexure-A&B of the appeal are illegible be replaced by legible/better one.
- 4- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent may also be submitted with the appeal.

No. 435 /S.T.

Dt. 28-2 /2024.

  
28/2/24


REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Umar Farooq Mohmand Adv.  
High Court at Peshawar.

Respected Sir,

All the objection removed  
and resumed.

Umar Farooq Mohmand

 A.T.S.

Dated - 6/5/2024

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

APPEAL NO. 349 /2024

**HABIB ULLAH**

**V/S**

**EDU: DEPTT:**

**INDEX**

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<b>1.</b>	Memo of appeal with affidavit	.....	1-4
<b>2.</b>	Copy of impugned order dated 05/10/2023	<b>A</b>	5
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Dated: 16/02/2024

**APPELLANT**

**THROUGH:**

  
**UMAR FAROOQ MOHMAND**  
**ADVOCATE HIGH COURT**

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

APPEAL NO. 349 /2024

Habib Ullah, Ex Sweeper  
District Education Officer District Mohmand

..... APPELLANT

**VERSUS**

1 District Education Officer, District Mohmand.

..... RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE KHYBER-  
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974  
AGAINST THE IMPUGNED ORDER DATED  
05/10/2023 WHEREBY THE APPELLANT HAS BEEN  
REMOVED FROM SERVICE AND AGAINST THE  
INACTION OF THE RESPONDENT BY NOT  
DECIDING THE DEPARTMENTAL APPEAL OF THE  
APPELLANT WITHIN STIPULATED PERIOD OF  
NINETY DAYS.**

**PRAYER:**

*That on acceptance of this appeal the impugned order dated 05/10/2023, may very kindly be set aside and the appellant may kindly be reinstated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.*

**R/SHEWETH:**

(2)

**ON FACTS:**

1. That appellant was an employee of the respondent Department and performing his duty his duty with full zeal & zest and up to the entire satisfaction of his high ups.
2. That during the service, the appellant has been removed from service vide order dated 05/10/2023 on the charges of willful absence without conducting regular inquiry and without fulfilling all the legal and codal formalities. Copy of impugned order dated 05/10/2023 is attached as annexure.....**A**
3. That the absence of the appellant was not willful, but due to the reason that a bloodshed enmity occurred between the family of the appellant and one of the other neighbor family, in which a person has been died and an FIR No 30 dated 02/04/2023 u/s 302 PPC of P.S Ghallani, District Mohmand was lodged against the other family members of the appellant, as a result of the said occurrence, the complainant party burned the house of the appellant and threatening him for dire consequences. Copy of FIR is attached as annexure.....**B**
4. That due to the aforesaid reason and the appellant facing such like situation, moved an application to Head Teacher of the concerned school for leave, because the appellant was unable to continue his duty in the said school, because the same has situated in the village of the complainant.
5. That appellant feeling highly aggrieved from the order dated 05/10/2023 preferred departmental appeal before the respondents, but the same has not been decided till date. Copy of the departmental appeal is attached as annexure.....**C**

6. That feeling aggrieved and having no other remedy filed the instant appeal on the following grounds amongst the others.

**GROUND:**

- A-** That the impugned order dated 05/10/2023 passed by the respondents is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B-** That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C-** That no charge sheet and statement of allegations had served upon the appellant.
- D-** That no regular inquiry has been conducted in to the matter, hence the appellant has been condemned unheard.
- E-** That no right of personal hearing and personal defense has been provided to the appellant.
- F-** That, the treatment meted out to the appellant clearly based on discrimination and malafide and as such the respondents violated the principle of natural justice.
- G-** That even otherwise the penalty imposed upon the appellant is very harsh by removing the appellant from service which does not commensurate with the facts and circumstances of the case of the appellant which is not maintainable in the eye of law.

(4)

- H-** That the appellant has provided so many years of service at his credit, in the respondent department. During his entire service, the appellant was never earlier been charge sheeted for dereliction of duties. The penalty is therefore very harsh and liable to be set aside on this ground also.
- I-** That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 16/02/2024

**APPELLANT**  
**THROUGH:**  
**UMAR FAROOQ MOHMAND**  
**MAHMOOD JAN**  
**WALEED ADNAN**  
**KHANZAD GUL**  
**&**  
**MUZZAMMIL KHAN MOHMAND**  
**ADVOCATES HIGH COURT**

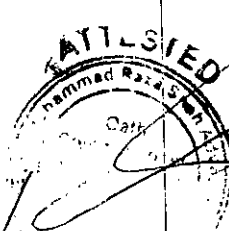
**CERTIFICATE:**

No such like appeal is pending or filed between the parties on the subject matter before this Honorable Tribunal.

Advocate 

**AFFIDAVIT**

I, Habib Ullah, Ex Sweeper District Education Officer District Mohmand do hereby solemnly affirm on oath that the contents of the above appeal are true and correct to the best of my knowledge and believe and nothing has been concealed from this Honorable Tribunal.



**DEPONENT**



OFFICE OF THE DISTRICT EDUCATION OFFICER  
DISTRICT MOHMAND

Email: [deomohmand@kpk.gov.pk](mailto:deomohmand@kpk.gov.pk)



OFFICE ORDER

1. Whereas Mr. Habib Ullah sweeper GMS Sultan Khel District Mohmand was proceeded for having committed the following gross irregularities which constitute inefficiency under Rule 3 (a) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.
2. And whereas report submitted by the concerned Head Master GMS Sultan Khel via his office No 15 dated 01/09/2023 stated that he has been absent since 23/08/2023 till date and gone abroad to Saudi Arabia without prior permission of leave.
3. In terms of rule 5(1) (a) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, as Competent Authority dispensed with the conduct of the inquiry and served him with a show cause notice under rule 7 of the rules ibid vide this office No 9108-13 dated 09/09/2023.
4. And whereas another opportunity was provided to him and he was called for a "Personal Hearing" at the office of the DEO (M) Mohmand vide No. 9209 dated 22/09/2023 at 11 am but he failed to appear before the competent authority in person.

By reasons of the above, he appeared to be guilty of inefficiency and absenteeism under rule-3, and 3(d) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.

Now therefore, I, LIAQAT ALI as Competent Authority DEO(Male) Mohmand is pleased to impose upon Mr. Habib Ullah sweeper GMS Sultan Khel District Mohmand major penalty of "Removal from Service" under rule-4(1)(b)(iii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 with effect from his date of absence i.e. 23/08/2023.

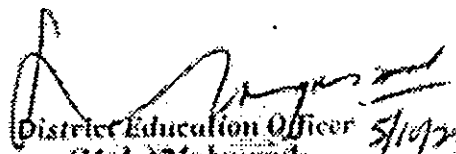
(LIAQAT ALI)  
District Education Officer  
(Male) Mohmand

Enlist No 9205-09/1 Etab (Sec)

Date: 05/10/2023

Copy forwarded to the:

- 1) Director of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
- 2) DMC Education Monitoring Authority Mohmand.
- 3) Head master concerned with the direction to deliver this office order to the said official with acknowledgment on the office copy under intimation to this office and do the needful as per rules.
- 4) Official concerned
- 5) Office Copy.

  
District Education Officer  
(Male) Mohmand



Better copy (A) (5)

**OFFICE OF THE DISTRICT EDUCATION OFFICER  
DISTRICT MOHMAND**

EMAIL:

**Office order**

1. Whereas Mr.Habib Ullah sweeper GMS Sultan Khel District Mohmand was proceeded for having committed the following gross irregularities which constitute inefficiency under Rule 3 (a) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules,2011.
2. And Whereas report submitted by the concerned Head Master GMS Sultan Khel vide his office No 15 dated 01/09/2023 stated that he has been absent since 23 08 2023 till date and gone abroad to Saudi Arabia without prior permission of leave.
3. In terms of rule 5 (1) (a) of Khyber Pakhtunkhwa government Servants (efficiency & Discipline) Rules ,2011 1. As competent authority dispensed with the conduct of the inquiry and served him with a show cause notice under rule 7 of the rules ibid vide this office No 9108-13 dated 09/09/2023.
4. And whereas another opportunity was provided to him and he was called for a "personal Hearing" at the office of the DEO (M) Mohmand vide No. 9269 dated 22/09/2023 at 11 am but he failed to appear before the competent authority in person.

By reasons of the above , he appeared to be guilty of inefficiency and absenteeism under rule - 3(a)&3(d) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline ) Rules 2011.

Now therefore ,I,LIAQAT ALI as competent Authority DEO(Male) Mohmand is pleased to impose upon Mr.Habib Ullah Sweeper GMS Sultan Khel District Mohmand major penalty of "removal from Service ,2011 with effect from his date of absence i.e.23/08/2023.

(LIAQAT ALI)  
District Education Officer  
(Male)Mohmand

Endst No 9505-09/Estab(Sec)

Dated 05/10/2023

Copy forwarded to the:

1. Director of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
2. DMO Education Monitoring Authority Mohmand.
3. Head master concerned with the direction to deliver this office order to the said official with acknowledgment on the office copy under intimation to this office and do the needful as per rules.
4. Official concerned.
5. Office Copy.

District Education officer  
(Male) Mohmand

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2-4-23

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Handwritten signature or mark

MS-10-24  
AS-1-15

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To

The Worthy Director,  
Elementary & Secondary Education Department  
Peshawar.

Subject: **DEPARTMENTAL APPEAL AGAINST THE IMPUGNED  
ORDER DATED 5.10.2023 WHEREBY THE APPELLANT  
HAS BEEN REMOVED FROM SERVICE.**

Respected Sir,

It is most humbly stated that the appellant was an employee of your good self department and was performing his duties as sweeper (BPS-03) up to the entire satisfaction of your good self.

That while performing his duties with zeal and zest the appellant was removed from service vide order dated 05.10.2023 through an illegal and unlawful order on the charges of absence.

That the charges were not proved against the appellant even in the, so called one sided, inquiry but the appellant was dismissed from service vide impugned removal order dated 05.10.2023.

That the absence of the appellant was not willful but due to the reason that a blood shed enmity occurred between the family of the appellant and one of the other neighbor family of the appellant, in which a person has been died and an FIR No 30 dated 02/04/2023 u/s 302 PPC of P.S Ghalani was lodged against the other family members of the appellant and on the result of the said occurrence the complainant party burned the house of the appellant and threatening him for dire consequences and even to kill the appellant.

That due to the above reasons and the appellant facing such like situation, moved an application to the Head Teacher of the concerned School for leave due to the above mentioned reasons and the appellant would not be able to continue his duties in the said school, because the same has been situated in the village of the complainant near to their houses.



(10)

That the appellant has not been heard in person and opportunity for justification and clarification of his position has not been provided to the appellant, hence condemned unheard thus violated Article -10A of the constitution of Islamic republic of Pakistan, 1973.

That no regular inquiry has been conducted neither provided nor provided with the opportunity of personal defense in that respect.

That the impugned order dated 05.10.2023 is again illegal and void as the procedure provided by the Khyber Pakhtunkhwa (E&D) Rules, 2011 has not been followed.

It is, therefore, most humbly prayed that on acceptance of this Departmental appeal the impugned order dated 05.10.2023 may very kindly be set aside and the appellant may kindly be reinstated into service with all back benefits.

Dated: 27.10.2023

D No 2733

صاحب المدعى

APPELLANT  
**Habib Ullah**, Ex-Sweper  
GMS, Sultan khel,  
District Mohmand.

(11)

بعدالت

صیبر مجواہ سر سس ٹریڈنگ لہور

صیبر الہ  
2 جناب  
بنام

مورخہ  
مقدمہ  
دعوی  
جرم

باعث تحریر آنکہ

مقدمہ مہدیچہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کاروائی متعلقہ  
آن مقام مسجور ۵۔ لاس ٹریڈنگ لہور کیلئے عمر سارو می سید میجر جنرل ایئر فورس  
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب حوصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقررات ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضعی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی  
اور منسوخی نیز دائر کرنے اپیل گرائی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت  
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے  
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے  
اور اس کا ساختہ پرداخت منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے  
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں  
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند رہے۔

صیبر الہ  
صیبر الہ  
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صیبر الہ

الرقوم 27 ماہ 26 2026

العبد  
مقام  
کے لئے منظور ہے۔  
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