

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD.**

SERVICE APPEAL NO. 212/2016

Date of institution ... 03.11.2016

Date of judgment ... 18.12.2017

Nadar Khan S/o Fawas Khan,
Ex-C.T (BPS-15),
R/o Village Jano, P.O & Tehsil Khawaza Khela,
District Swat.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Director Elementary and Secondary Education (Male), Government of Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Kohistan.

... (Respondents)

*M. Amin
18.12.2017*

SERVICE APPEAL UNDER SECTION-4 OF THE N.W.F.P. SERVICE TRIBUNAL ACT, 1974, FOR MODIFICATION OF ORDER DATED 24.02.2016 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT DATED 15.12.2015 WAS PARTIALLY ACCEPTED AND MAJOR PENALTY OF REMOVAL FROM SERVICE WAS CONVERTED INTO COMPULSORY RETIREMENT.

Mr. Ansar Ullah Khan, Advocate.

.. For appellant.

Mr. Muhammad Bilal, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. GUL ZEB KHAN

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant with

counsel present. Mr. Muhammad Bilal, Deputy District Attorney alongwith Mr.

Muhammad Alam, ADO for the respondents also present. Arguments heard and

record perused.

2. Brief facts of the present appeal are that the appellant was serving in Education Department and during service he submitted application for extra ordinary leave to the competent authority, the competent authority accepted the application of extra ordinary leave to the appellant with effect from 01.10.2014 to 30.09.2015 (365 days) vide order dated 01.10.2014. Later on after expiry of the aforesaid extra ordinary leave when the appellant submitted arrival report on 19.11.2015 show cause notice was issued to him by the competent authority on the allegation of (a) wilful absence from duty since 24.09.2010 to date (b) that he travelled abroad Saudi Arabia on 27.09.2012 and stay there up to 13.11.2015 without any NOC or Departmental permission/Ex-Pakistan leave (c) that he got the salary for period mentioned above and (d) concealing the facts, and after issuing of show-cause notice the appellant was removed from service with effect from 13.08.2014 with recovery of salaries for the period with effect from October 2012 to August 2014 (23 months) vide order dated 01.12.2015. The appellant also filed departmental appeal on 15.12.2015 however, the same was partially accepted and the penalty of removal from service was converted into major penalty of compulsory retirement and the amount of salary since October 2012 to August 2014 (23 months) was ordered to be recovered from the appellant and be deposited in the Government Treasury vide order dated 24.02.2016 and thereafter the appellant filed the present service appeal on 09.03.2016.

3. Learned counsel for the appellant contended that the appellant was serving in Education Department. It was further contended that during service the appellant submitted application for extra ordinary leave which was sanctioned by the competent authority and he was granted extra ordinary leave with effect from 01.10.2014 to 30.09.2015 (365 days) vide order dated 01.10.2014. It was further contended that after expiry of extra ordinary leave when the appellant submitted arrival report on 19.11.2015 he was issued a final show cause notice on the aforesaid allegations and ultimately he was removed from service by the competent authority with retrospective dated i.e with effect from 31.08.2014 with recovery of salaries

M. Amin
18.12.2017

from October 2012 to August 2014 (23 months). It was further contended that the impugned order of removal from service being retrospective is illegal and void therefore, the impugned order is liable to be set-aside on this score alone. It was further contended that the appellant was issued show-cause notice on the allegations allegedly occurred prior to his sanction of leave with effect from 01.10.2014 to 30.09.2015 by the competent authority, therefore, it was contended that the alleged allegation clearly indicate that the same was the result of malafide and personal grudges. It was further contended that neither charge sheet was framed nor statement of allegation was served upon the appellant nor any proper inquiry was conducted, therefore, the impugned order is illegal and liable to be set-aside.


4. On the other hand, the learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was granted extra ordinary leave with effect from 01.10.2014 to 30.09.2015. It was further contended that the appellant did not attend the duty in time. It was further contended that a final show-cause notice was issued to the appellant and after issuance of show-cause notice the competent authority has rightly passed the impugned order and prayed for dismissal of appeal.


5. Perusal of the record reveals that the appellant was serving in Education Department and during service he applied for extra ordinary leave through application which was accepted by the competent authority and the appellant was granted extra ordinary leave with effect from 01.10.2014 to 30.09.2015 (365 days) vide order dated 01.10.2014. The record further reveals that when the appellant submitted arrival report on 19.11.2015 he was served with show-cause notice on the allegations mentioned in the show-cause notice. The record further reveals that the impugned order of removal from service of the appellant has been passed by the competent authority retrospectively i.e 31.08.2014 therefore, the impugned order is void ab-initio. In this regard reliance is made to 1985-SCMR-1178. Furthermore, neither charge sheet was framed against the appellant nor statement of allegation was served on the appellant nor a proper inquiry was conducted but the appellant

M. Amin
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was removed from service by the competent authority retrospectively on the allegations which was allegedly occurred before granting extra ordinary leave to the appellant by the competent authority. Moreover, neither opportunity of personal hearing was afforded nor opportunity of defence was provided to the appellant which has rendered the impugned order illegal and liable to be set-aside. Therefore, we accept the present appeal and reinstate the appellant in service. However, the respondent-department is at liberty to conduct de-novo inquiry in the mode and manner prescribed by law within a period of three months from the date of receipt of this judgment. In case the de-novo inquiry is conducted the issue of back benefits of intervening period will be decided subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
18.12.2017


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD


(GUL ZEB KHAN)
MEMBER (EXECUTIVE)
CAMP COURT ABBOTTABAD

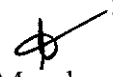
212/16


21.12.2016 None present for appellant. Mr. Shah Waliullah, Computer Operator alongwith Mr. Muhammad Siddique, Sr.GP for the official respondents present. Notice be issued to appellant and his counsel. To come up for rejoinder and final hearing on 19.06.2017 before D.B at camp court, Abbottabad.


Chairman
Camp court, A/Abad

19.06.2017

Junior to counsel for the appellant and Mr. Muhammad Siddique, Sr. GP alongwith Mr. Shah Waliullah, Computer Operator for respondents present. Counsel for the appellant has sent an application for adjournment. Adjourned for rejoinder and final hearing before the D.B on 18.12.2017 at camp court, Abbottabad.


Member


Chairman
Camp court, A/Abad

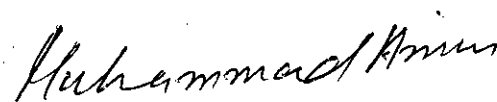
18.12.2017


Appellant with counsel present. Mr. Muhammad Bilal, Deputy District Attorney alongwith Mr. Muhammad Alam, ADO for the respondents also present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of four pages placed on file, we accept the present appeal and reinstate the appellant in service. However, the respondent-department is at liberty to conduct de-novo inquiry in the mode and manner prescribed by law within a period of three months from the date of receipt of this judgment. In case the de-novo inquiry is conducted the issue of back benefits of intervening period will be decided subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

18.12.2017


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER(JUDICIAL)
CAMP COURT ABBOTTABAD


(GUL ZEB KHAN)
MEMBER (EXECUTIVE)
CAMP COURT ABBOTTABAD

24.03.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as C.T when subjected to inquiry on the allegations of willful absence and dismissed from service vide impugned order dated 1.12.2015 where-against he preferred departmental appeal on 15.12.2015 which was partially allowed vide order dated 24.2.2016 and penalty converted into compulsory retirement and recovery of arrears of pay with effect from October 2012 to August 2014.

Appellant Deposited
Security & Process Fee

That the appellant has never remained absent as he was on leave duly sanctioned by the competent authority. That the inquiry was not conducted in the prescribed manners

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 23.6.2016 before S.B at Camp Court A/Abad as the matter pertains to the territorial limits of Hazara Division.

Chairman

23.06.2016

Attorney for the appellant and Mr. Riasat Khan, DEO Kohistan alongwith Mr. Muhammad Siddique Sr. GP for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 21.12.2016 at camp court, Abbottabad.



Chairman

Camp court, A/Abad,

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 219 /2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	09.03.2016	<p>The appeal of Mr. Nadar Khan presented today by Mr. Muhammad Zafar Tahirkheli Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench. for preliminary hearing to be put up thereon <u>24-3-16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 212 /2016

Nadar Khan

VERSUS

Secretary Education etc

I N D E X

S.No	Particulars	Annexure	Pages
1	Memo of Appeal		1-3
2	Order dated 24-02-2016	"A"	4
3	Departmental Appeal	"B"	5-6
4	Appointment Order	"C"	7
5	Promotion Order	"D"	8
6	Order dated 01-10-2014	"E"	9
7	Arrival Report	"E1"	10
8	Order dated 01-12-2015	"F"	11
9	Vakalatnama		12

Peshawar, dated
9 March, 2016


(Muhammad Zafar Tahirkheli)
Advocate

(Ansar Ullah Khan)
Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 212 /2016

Nadar Khan s/o Fawas Khan,
Ex-C.T. (BPS-15),
r/o Vill Jano, P.O & Tehsil Khwaza Khela,
District Swat

N.W.F. Province
Service Tribunal

Diary No. 193

Date 09-3-2016

..... Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa
through Secretary Elementary & Secondary
Education, Peshawar.
2. Director Elementary and Secondary
Education (Male), Government of Khyber Pakhtunkhwa,
Peshawar
3. District Education Officer (Male)
Kohistan

..... Respondents

=====
**Service Appeal U/S 4 of NWFP Service Tribunal Act, 1974, for
Modification of Order Dated 24-02-2016 (Annex "A"), Whereby
the Departmental Appeal of the Appellant Dated 15-12-2015
(Annex "B") was Partially Accepted and Major Penalty of
Removal from Service was Converted into "Compulsory Retirement"**
=====

PRAYER IN APPEAL

By accepting this appeal and reinstating the appellant in service with all back benefits, by modifying the impugned order dated 24-02-2016 (Annex "A"), whereby departmental appeal dated 15-12-2015 (Annex "B") was partially accepted and the major penalty of dismissal from service was converted into compulsory retirement;

And setting aside the impugned recovery of pay w.e.f October 2012 to August 2014, being imposed without any proof or lawful justification.

...

RESPECTFULLY SHEWETH

1. The Appellant was initially appointed as PTC Teacher (BPS-07) on 24-09-1987. The appellant was promoted as CT (BPS-09) on 01-04-1990. That since his appointment, the appellant served the department at various places of posting to the utmost satisfaction of his superiors. (Copies annexed hereto marked "C" & "D")

- 2
2. That an Extra Ordinary Leave of 365 days without pay w.e.f 01-10-2014 to 30-09-2015 was sanctioned by the competent authority vide sanction order dated 01-10-2014. That the appellant on completion of his sanctioned leave, submitted his arrival report on 19-11-2015, to which he was informed that his services would be adjusted later on. (Copies annexed hereto marked "E" & "E1")
 3. That on 02-12-2015, on his inquiry, the office of DEO (Male) Kohistan informed the appellant that he has been removed from service vide impugned order dated 01-12-2015. (Copy annexed hereto marked "F")
 4. That the appellant submitted his departmental representation (Annex "B") on 15-12-2015, which was taken into consideration and the penalty of removal from service was converted into "Compulsory retirement".

More so, the amount of salary since October, 2012 to August 2014 (23 months) was to be recovered from the appellant and to be deposited in the Govt Treasury.

5. Feeling aggrieved and finding no other remedy, the appellant was constrained to approach the Hon'ble Service Tribunal for the redress of his grievance inter alia on the following;

GROUNDS:

- a. The impugned action being ultra-vires of the law and the rules, discriminatory, arbitrary, malafide and without lawful authority is liable to be set right by the Hon'ble Service Tribunal.
- b. The appellant has been terminated from service without affording any chance of defence. That the appellant was neither served with any charge sheet or show cause notice nor was any inquiry proceedings initiated or conducted against him. The appellant was thus condemned unheard.

The impugned action on the part of authority is ultra-vires of the law against the rules regulating the service, hence calling for interference by the Hon'ble Services Tribunal.

- c. The appellant availed his leave after due sanction by the competent authority and had always reported on time after completion of his Extra Ordinary Leave. The appellant has neither cheated the department nor has tried to mislead in any manner whatsoever.
- d. That all the departmental proceedings were kept concealed and the impugned order was passed in a surreptitious manner. The appellant was told by the respondent department on his arrival that he would be adjusted according to the availability of post. However, instead of his adjustment, the impugned removal from service order was passed in most arbitrary manner.
- e. That the impugned order of removal from service has been issued with retrospective effect from 31-08-2014, which is illegal, unlawful and void ab-initio.

That the penalty cannot be awarded with retrospective effect, under the circumstances, whereby the competent authority has duly sanctioned 365 days EOL vide order dated 01-10-2014 up to 30-09-2015. The order was neither cancelled nor recalled, thus the impugned order is liable to be rescinded on this count alone.

- f. That the appellant served during the period from October 2012 to August 2014 and received pay, perks and privileges for services rendered by him during this period. The recovery of salary during the said period is devoid of any logic and proof and is liable to be set aside.
- g. The appellant is a law abiding citizen and has done nothing which would fall within the definition of in efficiency or misconduct. The impugned action has thus been taken in complete disregard to the principles of equity, law, justice and propriety, subject to correction by the worthy authority.

In view of the above it is most humbly requested that, on acceptance of this appeal, the impugned order dated 24-02-2016 may kindly be modified and the major penalty of "Compulsory Retirement" may be converted into reinstatement in service with all the benefits due,

More so, the order of recovery of salary w.e.f October, 2012 to August 2014 may also be set aside being without any lawful justification.

Any other relief deemed appropriate may also be granted in addition to the relief claimed above.


Appellant

Through,

Peshawar, dated
9 March, 2016


(Muhammad Zafar Tahirkheli)
Advocate


(Ansar Ullah Khan)
Advocate

Affidavit

I, the appellant, do hereby stat on Oath that the contents of the above appeal are true and correct and nothing has been concealed or withheld from this Hon'ble Tribunal.

ATTESTED




DEPONENT

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHWA, PESHAWAR

OFFICE ORDER.

1. WHEREAS, the District Education Officer (M) Kohistan to impose major penalty of removal from service upon Mr. Nadir Khan Ex CT GMS, Bela Rustam Khel District Kohistan vide No. 12885-87 dated 01-12-2015 for the charges wilful absent from his duty.
2. AND WHEREAS, Mr. Nadir Khan Ex CT GMS, Bela Rustam Khel to appeal the appellat authority vide dated 15-12-2015.
3. AND WHEREAS, the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar to send his appeal for comments to District Education Officer (M) Kohistan vide letter No. 2902 dated 22-12-2015.
4. AND WHEREAS, the District Education Officer (M) Kohistan to send his comments/report vide letter No. 192 dated 09-01-2016.
5. AND WHEREAS, the competent authority to call the said CT for personal hearing vide letter No. 2934 dated 15-01-2016.
6. AND WHEREAS, the competent authority having considered the evidence on record/ given the opportunity of personal hearing to the Ex CT is of the view that the charges leveled upon Mr. Nadir Khan Ex CT GMS Bela Rustam Khel District Kohistan have partially been proved.
7. NOW THEREFORE, in exercise of powers conferred under the Government of Khyber Pakhtunkhwa, Government Servants (E&D) Rules, 2011, the appeal in respect of Mr. Nadir Khan Ex CT GMS Bela Rustam Khel District Kohistan is accepted and the major penalty of Removal from service is hereby converted in to Major penalty of "Compulsory retirement".
8. Furthermore, the amount of salary since October, 2012 to August, 2014 (23 months) is hereby recovered from and be deposited in Government treasury.

DIRECTOR

Endst: No. W123-25 /F. No.281/A-15/KC(A) Dated Peshawar the 24/02 2016

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

1. District Education Officer (M) Kohistan.
2. District Accounts Officer Kohistan.
3. Official concerned.
4. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
5. Master File.

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

[Stamp]
[Signature]

To,

The Director Education (Male),
Khyber Pakhtunkhwa, Peshawar.

DEPARTMENTAL APPEAL / REPRESENTATION AGAINST ORDER
DATED 01-12-2015

Nadar Khan s/o Fawas Khan, C.T (BPS-15) GMS Bela Rustam Khel Kohistan, the appellant, submits most respectfully the following for your kind consideration and favour of acceptance.

1. The Appellant was initially appointed as PTC Teacher (BPS-07) on 24-09-1987. The appellant was promoted as CT (BPS-09) on 01-04-1990. That since his appointment, the appellant served the department at various places of posting to the utmost satisfaction of his superiors.
2. That an Extra Ordinary Leave of 365 days without pay w.e.f 01-10-2014 to 30-09-2015 was sanctioned by the competent authority vide sanction order dated 01-10-2014. That the appellant on completion of his sanctioned leave, submitted his arrival report on 19-11-2015, to which he was informed that his services would be adjusted later on.
3. That on 02-12-2015, on his inquiry, the office of DEO (Male) Kohistan informed the appellant that he has been removed from service vide impugned order dated 01-12-2015.
4. That the competent authority vide impugned order dated 01-12-2015 has held,

"Whereas you have concealed the facts / cheat the department and miss use the department. As result of above mentioned facts, I Riasat Khan DEO (Male) Kohistan being a competent authority is fully satisfied to impose upon you the major penalty of REMOVAL FROM SERVICE w.e.f 31-08-2014 with the recovery of salary for the period w.e.f October, 2012 to August, 2014 (23 months)

5. That the appellant was neither served with any show cause nor has submitted any reply to the same. That no departmental proceedings in accordance with the law were initiated against the appellant.
6. That the appellant has been condemned unheard and has not been provided with an opportunity in support of his defence.
7. The appellant has always availed his leave after due sanction by the competent authority and has always reported on time after completion of his EOL. The appellant has neither cheated the department nor has tried to mislead in any manner whatsoever.
8. That all the departmental proceedings were kept concealed and the impugned order was passed in a surreptitious manner. The appellant was told by the respondent department on his arrival that he would be adjusted according to the availability of post. However, instead of his adjustment, the impugned removal from service order was passed in most arbitrary manner.

1996
15/12/2015
D


D

- 6
9. That the impugned order of removal from service has been issued with retrospective effect from 31-08-2014, which is illegal, unlawful and void ab-initio.

That the penalty cannot be awarded with retrospective effect, under the circumstances, whereby the competent authority has duly sanctioned 365 days EOL vide order dated 01-10-2014 up to 30-09-2015. The order was neither cancelled nor recalled, thus the impugned order is liable to be rescinded on this count alone.

10. That departmental proceedings by the way of proper inquiry, regarding the allegation in question were never initiated against the appellant. The allegations mentioned therein are incorrect and devoid of any logic or proof.
11. The appellant is a law abiding citizen and has done nothing which would fall within the definition of in efficiency or misconduct. The impugned action has thus been taken in complete disregard to the principles of equity, law, justice and propriety, subject to correction by the worthy authority.

In view of the above, it is most humbly requested that by accepting this departmental appeal / representation, the impugned removal from service order dated 01-12-2015, may kindly be set aside and the appellant may be reinstated in service with all the benefits of continuous service.


Nadar Khan, C.T
Village Jano, Tehsil & P.O
Khwaza Khela, District,
Swat.
Cell No. 0342-9152106

Dated: 15-12-2015

TRUE COPY


A

7

ATTACHED C

OFFICE ORDER.

APPOINTMENT.

The following appointments of trained PTC teachers are hereby ordered in RPS-No.7 @ Rs.750-31-1370/-P.M, plus usual allowances admissible under the rules against vacant PTC Posts in the schools noted against each with effect from the date of his/their taking over charge in the interest of public service.

S.No.	Name & Qualification.	Parentage.	Residence.	Name of School where appointed.	Remarks.
1.	Mohammad Iqbal, PTC	Mohd. Malik,	Salmanpota, Kotli,	Govt. School, Peshawar	
2.	Nadeem Khan, PTC	Farooq Khan,	Jalisco,	Govt. School, (Peshawar)	

CONDITIONS:

1. Charge report should be submitted to all concerned in duplicate.
2. NO TA/DA & transfer grant is allowed being first appointment under the rules.
3. The appointment is purely temporary and subject to termination at any time without notice and assigning any reason. In case of resignation he/they should have to submit one Month's prior notice to the Deptt. or forfeit one month's pay to the Govt. lieu thereof.
4. He/they should produce his/their Health and Age Certificate from the Medical Superintendent concerned.
5. The Head of the Institution concerned is required to check the original certificates of the candidate concerned before handing over the charge.
6. The candidate is/are required to take over charge within 10 days failing which his/their appointment order will stand automatically cancelled.
7. The candidate should not be handed over the charge if his/their age exceeds 28 years or below 18 years.

sd/-
 (Sd/-I-Room Khan)
 DISTRICT EDUCATION OFFICER (MALES),
 SWAT SAIDU SHARIF.

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALES) SWAT SAIDU SHARIF.

Endst:No. 2113-5 /A-58/PTC Dated 24-2-1987.

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

- 1-3. The Sub Divl: Education Officers (M) Saidu/Dagpur/Walpurai, Swat.
4. The Headmasters/Headteachers Concerned.
5. The candidate concerned.

TRUE COPY

[Signature]

[Signature]

DEPUTY D.E.O.
 District Education Officer (Male),
 Swat, Saidu Sharif.

(B) 8

APPOINTMENTS.

The following Candidates are hereby temporarily appointed against G.T. Post in the Schools noted against each in EPS. No.9 @ Rs. 830/- P.M. Fixed plus usual allowances as due and admissible to them under the rules with effect from the date of their taking over charge in the interest of public service subject to the following terms & conditions:-

S.No.	Name, Qualification & Address.	School where appointed.	Remarks.
1.	Mr. Nadir Khan, P.T.C. GPS: Janc, Distt: Swat.	GHS: Shalpin, Swat	Against newly created GT post.

TERMS & CONDITIONS:-

- 1- No T.A./D.A. is allowed.
- 2- Charge reports should be submitted to all concerned.
- 3- The appointments are made on purely temporarily basis and liable to termination at any time without notice and assigning any reason. In case of resignation they will have to submit one month's prior notice to the Deptt: or forfeit one month's pay in lieu thereof to the Government.
- 4- The Candidates shall produce their health and age certificates from the Civil surgeon concerned in case they are not already in service.
- 5- The Heads of the Institutions are required to check the original academic/professional Certificates of the Candidates before handing over charge to them.
- 6- In case the Candidates failed to take over charge within 15 days of the issue of this order, their appointments shall stand automatically cancelled.
- 7- The Candidates shall not be handed over charge if their age exceed 28 years or below 18 years.

(GHULAM MOHAMMAD),
DIRECTOR OF EDUCATION,
MALAKAND DIVISION
AT GUL KADA SWAT.

Dated 1-4 / 1990

Endst: No. 3528-31

- Copy forwarded to :-
- 1- The Distt: Education Officer (M) Swat.
 - 2- The S.D E.O. (M) Matta Sanozal, Swat.
 - 3- The Headmaster/Headmistress.
 - 4- The Candidates concerned.

Taj Mohamad/

For/
[Signature]

Dy: Director (S) / A.D.E.O. Attested
DIRECTOR OF EDUCATION,
MALAKAND DIVISION
AT GUL KADA SWAT.

[Signature]
Headmaster/Headmistress
Govt. Primary School,
LAKHAWAN, Shina, Swat.

1/4/90



9

ADP (W)

E

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
KOHISTAN

SANCTION

Under the pervasion of leave rule 12(i) Govt. of KPK revised leave rule 1981; Sanction is hereby accorded to the grant of Extra ordinary Leave without pay in respect of Nadar Khan CT GMS Bela Rustum Khel for the period wef 1/10/2014 to 30/9/2015 (365-days) as recommended by Deputy District Education Office (M) Kohistan vide his No Nil date 30/9/2014.

Necessary entries may be made in the service book accordingly.

District Education Officer
(Male) Kohistan.

Endst: NO 11130-32 Dated Kohistan the 01/10 /2014

Copy of the above is forwarded to the:-

1. District Accounts Officer Kohistan
2. Deputy District Education Officer (M) Kohistan.
3. The Teachers/Officials concerned.


District Education Officer
(Male) Kohistan.

TRUE COPY


6


Charge/Arrival report E,

(0)

After completion of Extra ordinary leave granted vide DEO (M) UH order No: 11130-32 Dated 01/11/2014, of Nadea Ushan CT Girls Bela Rastan Uhel do her by Submit my arrival as CT teacher today on 19/11/2015

(FN)

19/11/2015
 Nadea Ushan
 CT Girls Bela
 Rastan Uhel.


 Head Master: 19-11-2015
 CMS Bela Rastan Uhel
 Bankac Kohistan

TRUE COPY





11
SIGNATURE

**OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) KOHISTAN**

OFFICE ORDER FOR REMOVAL FROM SERVICE

Mr. Nadar Khan CT GMS Bela Rustam Khel.

As per your service book, you were appointed as PST on 24-09-1987 in District Swat being a resident of that district and you were promoted to the post of CT on 01-04-1990.

Whereas you got study leave w.e.f 10-11-1992 to 30-11-1993 and again got study leave w.e.f 01-10-1996 to 31-05-1997.

Whereas you got EOL w.e.f 01-11-2003 to 31-12-2005 and after joining the duties on 01-01-2006, you again got EOL w.e.f 20-03-2006 to 04-12-2006. You further got EOL 01-11-2007 to 31-12-2009.

Whereas you have been transferred from Swat to District Kohistan Vide Director E&SE Khyber Pakhtunkhwa Peshawar Endst: No.5679-88/ F.No.496/ A-15 CT/ DM/ Posting Transfer/ Kohistan dated 24-09-2010 at GMS Banil Qila.

Whereas during your service at Kohistan you remained hidden from the system and your salary was stopped in the month of September 2014. Mean while an application on your name was received in office for EOL w.e.f 01-10-2014 to 30-09-2015 and the leave was granted in your favour.

Whereas on expiry of that leave, you did not report for arrival and a show cause notice was served to you with no reply from your side. Again final show cause was served to you and in reply of that show cause you came to office on 18-19/11/2015 for adjustment.

Whereas on personal hearing with Dy:DEO (M) Kohistan and enquiring the matter it came in the notice that you have travelled abroad (Saudi Arabia) by flight No.SV 793 from Peshawar Airport on 27/09/2012 and returned back through flight No.SV 724 dated 13/11/2015 at Islamabad Airport.

Whereas during your stay abroad you got the salary w.e.f October, 2012 to August 2014 (23 months) without performing duties.

Whereas your service history reflect that during your whole service, the period of EOL is much more than your duties and during that period, you have remained abroad with out any departmental permission / NOC / Without Ex-Pakistan leave / without bringing the matter in the notice of department.

Whereas you have concealed the facts / cheat the department and miss use the department.

As result of above mentioned facts, I Riasat Khan DEO (M) Kohistan being a competent authority is fully satisfied to impose upon you the major penalty of REMOVAL FROM SERVICE w.e.f 31/08/2014 with the recovery of salary for the period w.e.f October, 2012 to August 2014 (23 months).

[Signature]
District Education Officer
(M) Kohistan

Endst; No. 12885-87 dt 07/12/15

Copy of the above is forwarded to the:-

1. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
2. Additional Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. PS to Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.

TRUE COPY
[Signature]

[Signature]
District Education Officer
(M) Kohistan

7
① Date

② Date 2-10-2014

VAKALATNAMA

In the Court of

Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No. _____ of 2016

Petitioner
Plaintiff
Applicant
Appellant
Complainant
Decree-Holder

NADAR KHAN

VERSUS

Respondent
Defendant
Opponent
Accused

SECY Education etc

Judgment-Debtor


I / We Nadar Khan the above noted Appellant do hereby appointed and constitute, **Muhammad Zafar Tahirkheli & Ansar Ullah Khan, Advocates High Court**, to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

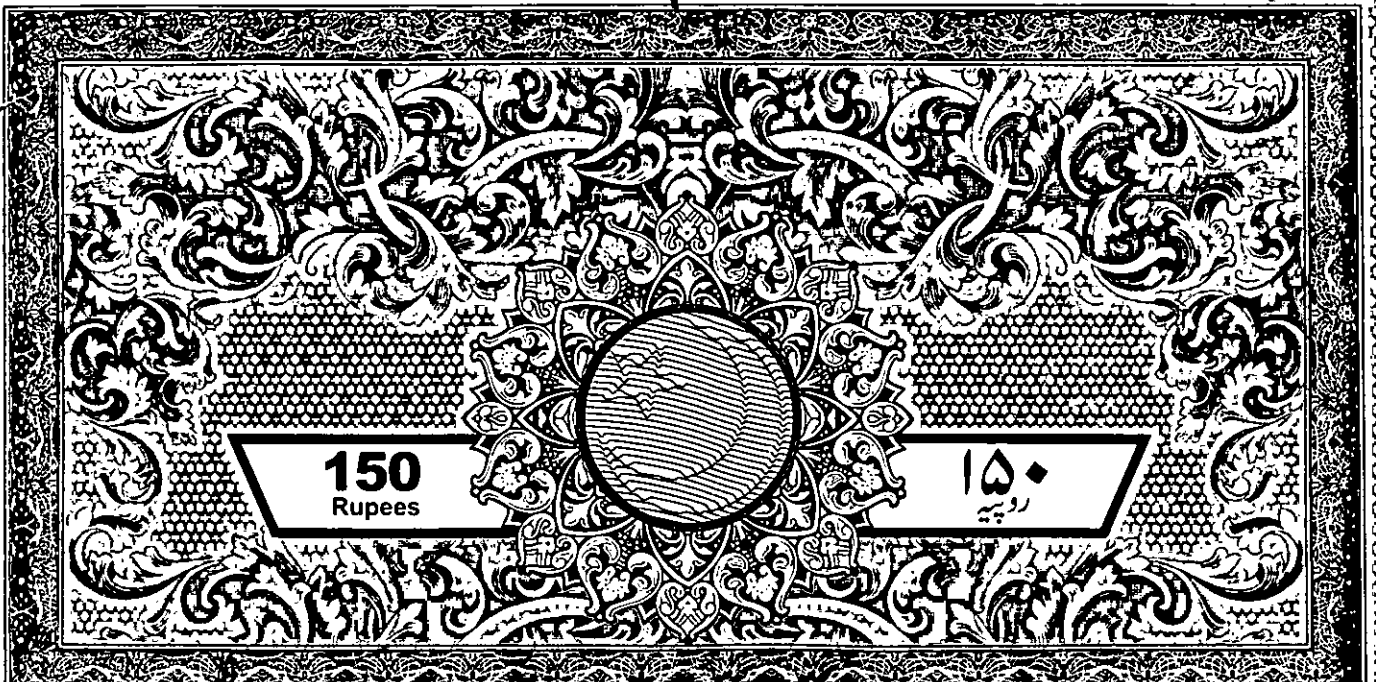
I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.

Dated 9 / 3 / 2016

Office **ATIQ LAW ASSOCIATES,**
87, Al-Falah Street, Besides State Life Building,
Peshawar Cantt, Phone: 091-5279529
E-mail : zafartk.advocate@gmail.com


Client
M. Zafar Tahir
Attested & Accepted (Advocates)


Ansar Ullah Khan
0900-9597670



حضرت نامہ عباس مورخ ۳۱/۱۶/۱۸

حضرت نامہ نادر خان ولد فوس خان صاحب پیرا جانو جسٹس خوارزم پور

گاموں اور اور کھڑا کرتا ہوں، نادر خان پنج صاحبان عدوت دارالکرامۃ

سروس ایڈیٹر سروس ریڈیو لیسٹا اور میں زیر مسافت جو جمعیت ائمہ

تاریخ پریشی مورخ ۳۱/۱۶/۱۸ حضرت صاحبان صاحبان پیران

خوارزم پور اور پیرا جانو کے لئے لکھا ہوا ہے۔ لکھنؤ اور جمہوریت

میں حضرت صاحبان کے لئے لکھا گیا ہے اور نادر خان صاحبان

خوارزم پور کو پیرا جانو کے لئے لکھا گیا ہے اور نادر خان صاحبان

کے لئے لکھا گیا ہے اور نادر خان صاحبان کے لئے لکھا گیا ہے اور

نادر خان صاحبان کے لئے لکھا گیا ہے اور نادر خان صاحبان کے لئے

لکھا گیا ہے اور نادر خان صاحبان کے لئے لکھا گیا ہے اور نادر خان

صاحبان کے لئے لکھا گیا ہے اور نادر خان صاحبان کے لئے لکھا گیا ہے

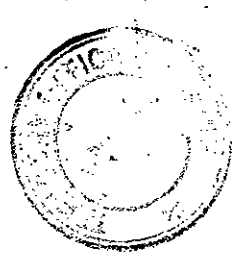
اور نادر خان صاحبان کے لئے لکھا گیا ہے اور نادر خان صاحبان کے لئے

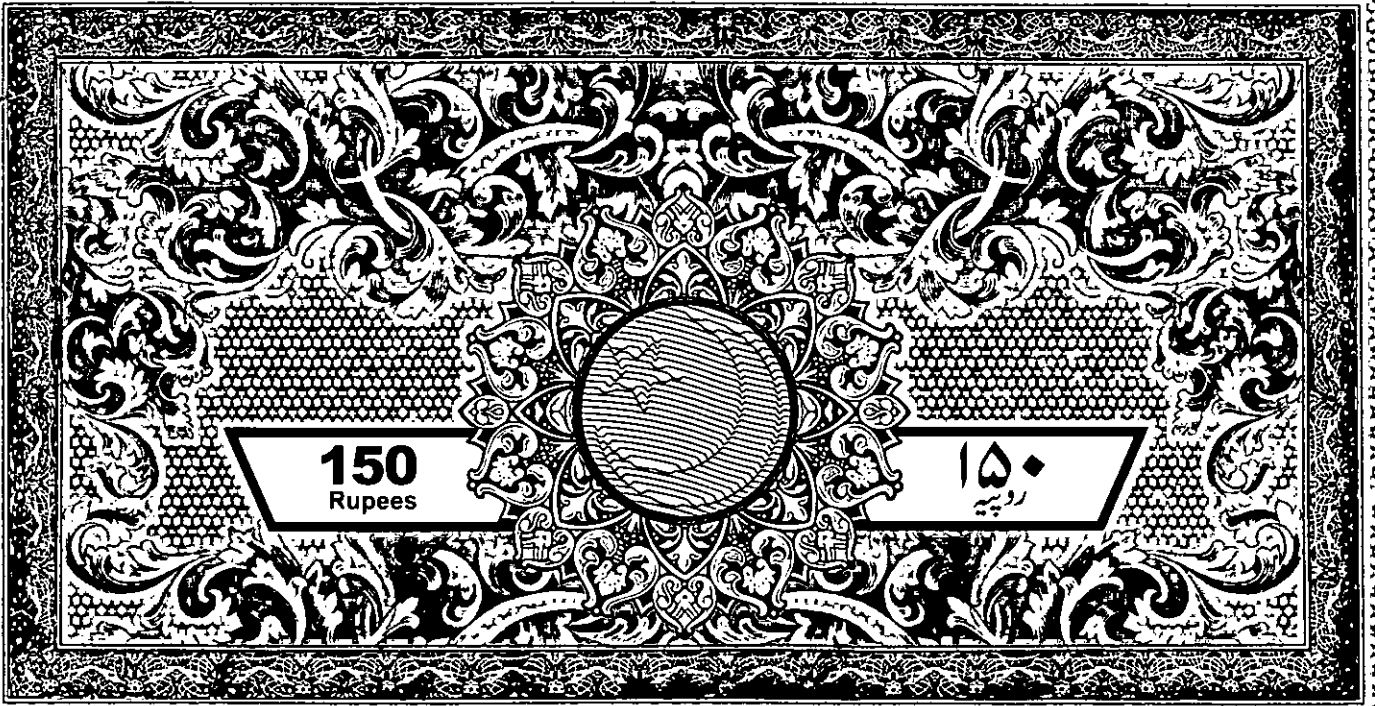
لکھا گیا ہے اور نادر خان صاحبان کے لئے لکھا گیا ہے اور نادر خان

نادر خان ولد فوس خان سن جانو صغر خواره عبد الحق صير علي ولد فوس خان سن خانو
صغر خواره عبد الحق سن خان

Muhammad Yousof Shah
Stamp Vendor Matta Swat
S.No. 090 Date 18-3-06

[Handwritten signature]





تذکرہ بابت بارک میں جو بس و سونہ لاروای ہو کر
لیڈر ختم و نام حذر سند آ کر تیرم

امیر علی
صدر علی مختار خاص
۱۵۶۰۲۰۱۸۷۳۵۱۵۰۹

امیر علی
نادر خان
۱۵۶۰۲۰۸۹۸۶۸۳۳۰۵

تذکرہ
مختار عبود
مختار عبود در لدر مختار خاص
تاریخ ۱۵۶۰۲۰۱۸۷۳۵۱۵۰۹

تذکرہ
مختار عبود
مختار عبود در لدر مختار خاص
تاریخ ۱۵۶۰۲۰۱۸۷۳۵۱۵۰۹

ATTESTED



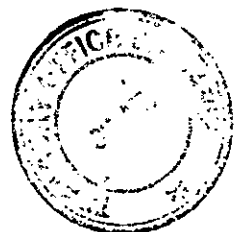
M. Halim
18-3-16

8
3/16

Muhammad Youisq Shah
Stamp Vendor Matta Swat
S.No. 091 Date 18-3-06



090
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090



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.
CAMP COURT ABOTTABAD

APPEAL NO 212 OF 2016

Nadar khan -----

Petitioner

VERSUS

- 1. Govt of Khyber PakhtunKhwa through
Secretary (E&S) Education Peshawar**
- 2. Director Elementary & Secondary Education KPK Peshawar**
- 3. District Education Officer Male Kohistan ----- Respondents**

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS NO1,2 & 3.

INDEX

S#	Particulars of documents	Annexure	Pages
1	Comments along with affidavit		1-4
2	Copy of show cause notice	A	5
3	Copy of letter of director	B	6
4	Copy of reply of director letter	C	7
5	Copy of decision of director	D	8

Dated 23.5.2016


Respondent No.3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.
CAMP COURT ABBOTTABAD

APPEAL NO 212 OF 2016

Nadar Khan -----

Petitioner

VERSUS

- 1. Govt of Khyber Pakhtunkhwa through
Secretary (E&S) Education Peshawar**
- 2. Director Elementary & Secondary Education KPK Peshawar**
- 3. District Education Officer Male Kohistan ----- Respondents**

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS NO1,2 & 3.

Respectfully Sheweth:

PRILIMINARY OBJECTIONS:-

- I. That the appellant has not come to this Honorable Court with clean hands.
2. That the appellant has got no cause of action/ locus standi to file the instant appeal.
3. That the appeal has been filed to pressurize the respondents.
4. That the appellant is estopped to sue through his own conduct.
5. That the present appeal is not maintainable due to mis-joinder and non-jonder of necessary parties.
6. That the appellant has concealed the material facts from this Honourable Court.
7. That the appellant has been removed from service due to willful long absence and travelling abroad without NOC/Ex Pakistan leave for job with effect from September 2010 to November 2015 and got the salary for that period, hence the appeal is liable to be dismissed.
8. That the competent authority has removed the appellant after fulfillment of all codal formalities, hence the instant appeal is liable to be dismissed.
9. That the appellant authority has already converted his major penalty into "Compulsory Retirement" hence the appellant is not entitled for any further relief.
10. That any other ground & case law will be submitted at the time of humble submissions at the bar.

Factual Objections:

1. Para No 1 is correct to the extent of appointment and promotion of appellant to the post of CT on 01.04.1990 in District Swat. The appellant himself got transferred from home district Swat to district Kohistan on 24.09.2010 and after that, the appellant did not perform his duties in the posted school and travelled abroad for job. Therefore the remaining part of Para No 1 is incorrect, hence denied.
2. Para No 2 is incorrect, strongly denied with the facts that someone has submitted an application of appellant for EOL without pay with effect from 01.10.2014 to 30.9.2015 (365 days) and the EOL was granted but the appellant was reported absent from duty by school staff, field staff and local community since September 2012 and therefore a show cause notice was served to appellant Vide No 12207 dated 13.10.2015 (**Copy of show cause notice is attached as Annexure A**) and on receiving no reply, the appellant was called for personal hearing and the appellant in the reply of personal hearing attend the office on 18-19/11/2015 but could not defend himself.
3. Para No 3 is incorrect, as stated in facts that the appellant was removed from service Vide No 12885-87 dated 01.12.2015 w.e.f 31.8.2014 along with the recovery of salary for the period October 2012 to August 2014 (23 months) on the charge of willful long absent from duty, travelling abroad for job and getting the salary for that period. The appellant was removed from service after observing all the pre requisite codal formalities and with the satisfaction that the appellant willfully absented himself from duties.
4. Para No 4 is correct to the extent that the appellant submitted a departmental appeal before the respondent No 2 (Director Elementary and Secondary Education KPK Peshawar) and the respondent No 2 in the response of appeal asked to respondent No 3 (DEO) Vide letter No 2902 dated 22.12.2015 to submit detailed report/comments on the appeal of appellant at the earliest (**Copy is attached as Annexure B**) and in the response of director letter the detailed report/ comments has been submitted Vide letter No 192 dated 09.01.2016 (**Copy is attached as annexure C**) and the respondent No 2 (Director being appealing authority) having considering the evidence on record/ giving the opportunity of personal hearing and accepted the appeal of the appellant and converted the major penalty of Removal from service in to Compulsory retirement Vide No 4123-25 dated 24.02.2016 (**Copy is attached as annexure D**).
5. Incorrect, as stated that the appealing authority has also extended relief to the appellant, hence he is no more entitled for any further relief under the law. Furthermore the grounds taken by the appellant are strongly denied.

GROUNDS

- a. Incorrect, strongly denied with the facts that the action of the competent authority is under the law and rules and no discriminatory, arbitrary and malafidy is involved. The appellant was removed from service only on the charge of willful long absent from duty, travelling abroad for job and getting the salary for that period.
- b. Incorrect, strongly denied. As stated in Para No 2 of the facts that the appellant was reported absent from duty by school staff, field staff and local community and a show cause notice was served to the appellant but on having no response a chance of personal hearing was provided to the appellant and the appellant attend the office on 18-19/11/2015 but could not defend himself and therefore the appellant was removed from the service after fulfilling all the pre requisite formalities with the satisfaction that the appellant had remained willfully absent from duties.
- c. Incorrect, strongly denied that the appellant was provided a chance of personal hearing and the appellant attend the office on 18-19/11/2015 but could not defend himself.
- d. Incorrect, strongly denied.
- e. Incorrect, strongly denied. As stated in Para No 3 and 4 of the facts.
- f. Incorrect, strongly denied. As stated in Para No 3 and 4 of the facts.
- g. Incorrect hence denied. As stated in Para 3 and 4 above of the facts and that the respondents seeks permission for arguing the other points at the time of arguments.

It is therefore, in the light of above stated facts and circumstances, Very humbly prayed that the appeal in hand may please be dismissed with cost.

Humayun
Respondent No. 3
District Education Officer,
(Male) Kohistan

DIRECTOR
Elementary and secondary Education
Khyber Pakhtun Khawa peshawar

[Signature]
SECRETARY
Elementary and secondary Education
Khyber Pakhtun Khawa peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.
CAMP COURT ABBOTTABAD

APPEAL NO 212 OF 2016

Nadar khan

Petitioner

VERSUS

- 1. Govt of Khyber PakhtunKhwa through
Secretary (E&S) Education Peshawar**
- 2. Director Elementary & Secondary Education KPK Peshawar**
- 3. District Education Officer Male Kohistan ----- Respondents**

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS NO1,2 & 3.

AFFIDAVIT.

I, Riasat Khan DEO (Male) Kohistan do hereby solemnly affirm and declare that the contents of Para wise comments in the above titled case are true and correct to the best of my knowledge and belief, and that nothing, material has been suppressed from this Honourable court.

Identified by,



DEPONENT.



OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) KOHISTAN

Email: emiskohistan@yahoo.com

Phone # 0998-407128

(5)

Amr A

SHOW CAUSE NOTICE

I, Riasat Khan, District Education Officer, (Male) Kohistan, as competent authority under the Khyber Pakhtunkhwa Govt: Servants (E&D) Rules, 2011, do hereby serve you, Mr, Nadar Khan CT GMS Bela Rustam Khel Kohistan as follows:

That as per public voice you have committed the following omissions specified in rule 3 of the said rules.

- Willful absent from your duty since 24/09/2010 to date.
- You have travel abroad Saudi Arabia on 27/09/2012 and stay there upto 13/11/2015 without any NOC or Departmental permission/ Ex- Pakistan leave.
- You got the salary for period mentioned above.
- Concealing of facts.

As a result thereof, I have tentatively decided to impose upon you the penalty of RECOVERY OF SALARY FOR THE ABSENT PERIOD AND REMOVAL FROM SERVICE. Under rule 4 of the said rule.

You are, thereof required to reply the show cause as to why the aforesaid penalty should not be imposed upon you and also intimate **whether you desired to heard in person.**

If your reply will not receive within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.

Endstt: No 12207 /Dated Kohistan the 13/10 /2015


COMPETENT AUTHORITY

(6) Annex B

63

OFFICE OF THE DIRECTOR ELEMENTARY &
SECONDARY EDUCATION KHYBER
PAKHTUNKHWA PESHAWAR
NO. 2902/F.No.281/A-15/KC(A)
Dated Peshawar the 22/12/2015

To
The District Education Officer
(Male) Kohistan

SUBJECT:- DEPARTMENTAL APPEAL
Memo:-

I am directed to enclose herewith a photo copy of appeal in respect of Nadar Khan S/O Fawas Khan CT BPS-15 GMS Bela Rustam Khel Kohistan on the subject cited above and to ask you to submit report views/comments to this office please.

Encls:As Above

[Signature]
Deputy Director Establishment
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

/Noor/15

A/E
PR Put up
to D.E.O.
[Signature]
supd:
30/12/15

Executive District Officer
Distt. No. 57
Date 30/12/15
Education & Literacy Activities

(7) Am C

OFFICE OF THE DISTRICT EDUCATION OFFICER

(M) KOHISTAN

No. 192 / Dated Kohistan the 9/01 / 2016

To,

The Director,
E&SE Department,
Khyber Pakhtunkhwa Peshawar.

Subject: **DEPARTMENTAL APPEAL.**

Memo:-

Reference your letter No. 2902/F No.281/A-15/KC(A) dated Peshawar the 22/12/2015 on the subject cited above.

It is submitted that in the reply of departmental appeal in R/O Nadar Khan S/O Fawas Khan CT BPS-15 GMS Bela Rustam Khel is as under:

Mr. Nadar Khan was appointed as PST on 24-09-1987 in District Swat being a resident of that district and he was promoted to the post of CT on 01-04-1990.

Whereas he got study leave w.e.f 10-11-1992 to 30-11-1993 and again got study leave w.e.f 01-10-1996 to 31-05-1997.

Whereas he got EOL w.e.f 01-11-2003 to 31-12-2005 and after joining the duties on 01-01-2006, he again got EOL w.e.f 20-03-2006 to 04-12-2006. He further got EOL 01-11-2007 to 31-12-2009.

Whereas he have been transferred from Swat to District Kohistan Vide Director E&SE Khyber Pakhtunkhwa Peshawar Endst: No.5679-88/ F.No.496/ A-15 CT/ DM/ Posting Transfer/ Kohistan dated 24-09-2010 at GMS Banil Qila.

Whereas during his service at Kohistan he remained hidden from the system and your salary was stopped in the month of September 2014. Mean while an application on his name was received in office for EOL w.e.f 01-10-2014 to 30-09-2015 and the leave was granted in his favour.

Whereas on expiry of that leave, he did not report for arrival and a show cause notice was served to him with no reply from his side. Again final show cause was served to him and in reply of that show cause he came to office on 18-19/11/2015 for adjustment.

Whereas on personal hearing with Dy:DEO (M) Kohistan and enquiring the matter it came in the notice that he has travelled abroad (Saudi Arabia) by flight No.SV 793 from Peshawar Airport on 27 /09/2012 and returned back through flight No.SV 724 dated 13/11/2015 at Islamabad Airport.

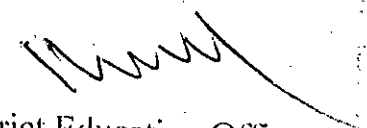
Whereas during his stay abroad you got the salary w.e.f October, 2012 to August 2014 (23 months) without performing duties.

Whereas his service history reflect that during his whole service, the period of EOL is much more than his duties and during that period, he has remained abroad without any departmental permission / NOC / Without Ex-Pakistan leave / without bringing the matter in the notice of department.

Whereas he has concealed the facts / cheat the department and miss use the department.

As result of above mentioned facts, I Riasat Khan DEO (M) Kohistan being a competent authority is fully satisfied to impose upon him the major penalty of REMOVAL FROM SERVICE w.e.f 31/08/2014 with the recovery of salary for the period w.e.f October, 2012 to August 2014 (23 months).

The report is submitted for your kind perusal and further necessary action please.


District Education Officer
(Male) Kohistan

4

(8) Am D A

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

OFFICE ORDER.

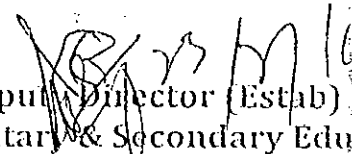
1. WHEREAS, the District Education Officer (M) Kohistan to impose major penalty of removal from service upon Mr. Nadir Khan Ex CT GMS, Bela Rustam Khel District Kohistan vide No. 12885-87 dated 01-12-2015 for the charges wilful absent from his duty.
2. AND WHEREAS, Mr. Nadir Khan Ex CT GMS, Bela Rustam Khel to appeal the appellant authority vide dated 15-12-2015.
3. AND WHEREAS, the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar to send his appeal for comments to District Education Officer (M) Kohistan vide letter No. 2902 dated 22-12-2015.
4. AND WHEREAS, the District Education Officer (M) Kohistan to send his comments/report vide letter No. 192 dated 09-01-2016.
5. AND WHEREAS, the competent authority to call the said CT for personal hearing vide letter No. 2934 dated 15-01-2016.
6. AND WHEREAS, the competent authority having considered the evidence on record/ given the opportunity of personal hearing to the Ex CT is of the view that the charges leveled upon Mr. Nadir Khan Ex CT GMS Bela Rustam Khel District Kohistan have partially been proved.
7. NOW THEREFORE, in exercise of powers conferred under the Government of Khyber Pakhtunkhwa, Government Servants (E&D) Rules, 2011, the appeal in respect of Mr. Nadir Khan Ex CT GMS Bela Rustam Khel District Kohistan is accepted and the major penalty of Removal from service is hereby converted in to Major penalty of "Compulsory retirement".
8. Furthermore, the amount of salary since October, 2012 to August, 2014 (23 months) is hereby recovered from and be deposited in Government treasury.


DIRECTOR

Endst: No. W/23-25 /F. No.281/A-15/KC(A) Dated Peshawar the 24/02 2016

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

1. District Education Officer (M) Kohistan.
2. District Accounts Officer Kohistan.
3. Official concerned.
4. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
5. Master File.


Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. _____/2016

Nadar Khan

VERSUS

Govt. of KP & others

APPELLANT'S REJOINDER TO RESPONDENT'S NO.1, 2 & 3 REPLY
=====

RESPECTFULLY SHEWETH:

REPLY TO PRELIMINARY OBJECTIONS

1. All the 10 preliminary objections of Respondents No 1, 2 & 3 are a gross misstatement and irrelevant assertion designed to mislead. These are factually incorrect and legally untenable, and as such are to be ignored.

REJOINDER ON FACTS

1. Para-1 of the appeal is correct and that of reply is incorrect.
2. Para 2 of the appeal is correct and that of reply is incorrect. The show cause notice dated 13-10-2015 was never served upon the Appellant. The charges mentioned in the show cause notice state the appellant's absence w.e.f 24-10-2010 till date i.e 13-10-2015.

The Ex-ordinary leave for 365 days sanctioned vide notification No. Endst. No.11130-32, dated 01-10-2014 (Annexure-E Page-9) and appellant's arrival report dated 19-11-2015 (Annexure E-1-Page-10) has been completely ignored by the respondent's department without showing any plausible reason.

3. Para 3 of the appeal is correct and that of reply is incorrect. That the appellant performed his duties and was allowed Ex-ordinary leave in accordance with the law. The appellant was condemned unheard without initiating any departmental proceedings.
4. Para 4 has been admitted correct by the respondents.
5. Para 5 of the appeal is correct and that of reply is incorrect.

REPLY TO THE GROUNDS

All the grounds taken in para "a" to "g" are incorrect without any lawful and factual justifications.

The appellant availed his leave after due sanction by the competent authority and had always reported on time after completion of his Extra Ordinary Leave.

That all the departmental proceedings were kept concealed and the impugned order was passed in a surreptitious manner. The appellant was told by the respondent department on his arrival that he would be adjusted according to the availability of post. However, instead of his adjustment, the impugned removal from service order was passed in most arbitrary manner.

That the impugned order of removal from service has been issued with retrospective effect from 31-08-2014, which is illegal, unlawful and void ab-initio.

That the penalty cannot be awarded with retrospective effect, under the circumstances, whereby the competent authority has duly sanctioned 365 days EOL vide order dated 01-10-2014 up to 30-09-2015. The order was neither cancelled nor recalled, thus the impugned order is liable to be set aside on this count alone.

In view of the above, the appellant's appeal may kindly be accepted as prayed for.

Appellant,

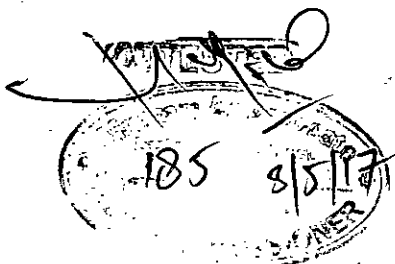
Through,

(Muhammad Zafar Tahirkheli)
Advocate High Court, Peshawar

Peshawar, dated
27/April, 2017

Affidavit

I, Nadar Khan s/o Fawas Khan, the appellant, do hereby state on Oath that the contents of the above rejoinder are true and correct to the best of my knowledge and belief, and nothing has been kept concealed from this Hon'ble Tribunal.



DEPONENT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 24 /ST

Dated 08/01/2018


To

The District Education Officer (Male),
Government of Khyber Pakhtunkhwa,
Kohistan.

Subject: **JUDGEMENT/ORDER IN APPEAL NO. 212/16 MR.NADAR KHAN.**

I am directed to forward herewith a certified copy of Judgment/Order dated 18/12/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.