

Sl. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	04.07.2017	<p style="text-align: center;"><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b></p> <p style="text-align: center;">Appeal No. 1397/2015</p> <p style="text-align: center;">Date of Institution ... 17.12.2015 Date of Decision ... 04.07.2017</p> <p style="text-align: center;">Mir Azam Shah, Ex Junior Clerk (BPS-11), R/O Village Prang, Tehsil and District Charsadda.</p> <p style="text-align: center;">Versus</p> <p>1. The Government of Khyber Pakhtunkhwa through Secretary (E&amp;SE) Department, Khyber Pakhtunkhwa, Peshawar and others.</p> <p style="text-align: center;"><b><u>JUDGMENT</u></b></p> <p style="text-align: center;"><b><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u></b> - Appellant, learned counsel for the appellant and Mr. Usman Ghani, District Attorney on behalf of the official respondents present.</p> <p>2. In this service appeal bearing No. 1397/2015 the appellant Mir Azam Shah, while in the connecting appeals other affectees have made impugned order dated 8.8.2015 regarding termination of their service from the post of Junior Clerk in the Education Department Charsadda and prayed for reinstatement with all back benefits.</p> <p>3. Argument heard. File perused.</p>

D. M. W. 1

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

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

Dr. M. A. Q.

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

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

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

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

Usman Qamar

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

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

  
(GUL ZEB KHAN)  
MEMBER

  
(MUHAMMAD HAMID MUGHAL)  
MEMBER

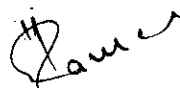
ANNOUNCED  
04.07.2017

11. 04.07.2017

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

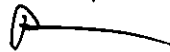
ANNOUNCED  
04.07.2017

  
(Gul Zeb Khan)  
Member

  
- (Muhammad Hamid Mughal)  
Member

16.11.2016

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



(ABDUL LATIF)  
MEMBER



(PIR BAKISH SHAH)  
MEMBER

13.02.2017

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



(AHMAD HASSAN)  
MEMBER



(ASHFAQUE TAJ)  
MEMBER

13.04.2017

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



(Ahmad Hassan)  
Member



(Muhammad Amin Khan Kundi)  
Member

04.01.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Junior Clerk when terminated from service vide impugned order dated 8.8.2015 on the allegations of irregular appointment where-against he preferred departmental appeal on 8.9.2015 which was not responded and hence the instant service appeal on 17.12.2015.

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

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

Appellant Deposited  
Security & Process Fee

  
Chairman


01.03.2016

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

  
Chairman

23.06.2016

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




  
Member

  
Member

Form- A  
FORM OF ORDER SHEET

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

Case No. 1397/2015

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



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

APPEAL NO. 1397 /2015

**Mir Azam Shah**

**VS**

**Education Department**

**INDEX**

<b>S.NO.</b>	<b>DOCUMENTS</b>	<b>ANNEXURE</b>	<b>PAGE</b>
1.	Memo of Appeal	.....	1- 4.
2.	Advertisement	<b>A</b>	5.
3.	Education testimonials	<b>B</b>	6- 8.
4.	Appointment order	<b>C</b>	9.
6.	Medical certificate	<b>D</b>	10.
7.	Up-gradation order	<b>E</b>	11.
8.	Judgment	<b>F</b>	12- 18.
9.	Impugned order	<b>G</b>	19.
10.	Departmental appeal	<b>H</b>	20- 24.
11.	Vakalat nama	.....	25.

**APPELLANT**

**THROUGH:**

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



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

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

**GROUND:**

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

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

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

Dated: 8.12.2015

**APPELLANT**



**MIR AZAM SHAH**

**THROUGH:**



**NOOR MOHAMMAD KHATTAK  
ADVOCATE**

10

Annex: A A-5

# صوبائی قومی بین الاقوامی



پاکستان کے انتخابی ادارے

## خالی آسامیاں

11	BPS-07	کرمانشہ کی خالی آسامیاں	کرمانشہ کی خالی آسامیاں
10/05/2011	03/05/2011	10/05/2011	03/05/2011

دیکھ کر درخواستیں ایکریڈٹڈ سٹریٹ آفیسر ایجنسیوں کے ذریعہ پیش کی جائیں گی۔ 2۔ امیدواروں کو مطلع کیا جائے گا کہ وہ  
 3۔ درخواست کنندہ کی عمر 20 اپریل 2011ء کو 18 سے 30 سال تک ہونی چاہیے۔ 4۔ سرکاری ملازمین اپنے نکلے کے توسط سے درخواستیں  
 نہ بھیجیں۔ 5۔ ہمارے ذمے کو اختیار حاصل ہے کہ وہ اختیار کو قبول کرے اور اس کے بعد اس کی تصدیق کی جاسکتی ہے۔ 6۔ درخواست  
 کے ساتھ کسی استاد کے نام پر یا کسی اور شخص کے نام پر درخواستیں قبول نہیں کی جائیں گی۔ 7۔ ہیکل  
 پر درخواستیں کے بعد ارسال ہونے والی درخواستوں پر نوٹس کیا جائے گا۔ 8۔ تمام تقرریاں برسر کی بنیاد پر ہوں گی۔ 9۔ ٹیسٹ انٹرویو کے لئے کسی قسم کی  
 ایوان کے پاس دیا جائے گا۔ 10۔ درخواستیں مورخہ 20/04/2011ء کو ارسال ہونے چاہئیں۔ تمام درخواستوں کے لئے درخواستیں ذمہ دار  
 ایجنسیوں کی۔ 11۔ تین ماہ کے لئے پھیلنے والی درخواستیں قبول کی جائیں گی۔ 12۔ 33% پر درجہ شہادت کی کمی کی بنیاد پر ہوں گی۔ درخواست نام  
 AIEDO کی پیشکش آفس سے حاصل کریں۔

عطاء اللہ خان مینا خیل ایگزیکٹو ڈسٹریکٹ آفیسر  
 ایگزیکٹو ایجنسی کی پیشکش خلیج چار سندھ

روزنامہ 3 06 اپریل 2011ء

ATTESTED

*(Handwritten signature)*

B-6

S. No. PBR-A 4142



Roll No. 134018

# BOARD OF INTERMEDIATE AND SECONDARY EDUCATION



## Peshawar N.W.F.P. Pakistan Secondary School Certificate Examination

SESSION ~~1997~~ (Annual)  
(SCIENCE GROUP)

THIS IS TO CERTIFY THAT Mir Azam Shah  
Son/Daughter of Dost Muhammed Badshah  
and student of Govt High School Prang Charsadda.  
has passed the Secondary School Certificate Examination  
of the Board of Intermediate and Secondary Education, Peshawar held in April, 1997  
as a *Regular candidate*. He/She Obtained 455 Marks out of 850  
and has been placed in Grade  C  Representing Good

The Candidate passed in the following subjects.

- |            |                     |                |              |
|------------|---------------------|----------------|--------------|
| 1. English | 3. Islamiyat        | 5. Mathematics | 7. Chemistry |
| 2. Urdu    | 4. Pakistan Studies | 6. Physics     | 8. Biology   |

He/She has been awarded Grade  A  on the basis of internal assessment by the Institution concerned.

Date of birth according to admission form is Second April,  
one thousand nine hundred and Eighty Only (02-4-1980)

Issued in lieu of Oc, No. CO9437.

*[Signature]*  
Secretary

*[Signature]*  
Secretary

This certificate is issued without alteration or erasure.

*[Handwritten mark]*

S.No. 75110

Roli No. 16024

Group. Humanities



7

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

This is to Certify that Mir Azam Shah Son of Dost Muhammad  
and a resident of Charsadda District Registered No. 400-B/CH-97  
has passed the Intermediate Examination of the Board of Intermediate & Secondary Education, Peshawar  
held in November, 2000 as a Private Candidate. He obtained 443 Marks out of 1100  
and has been placed in Grade D Representing Fair He has been awarded Grade - on the  
basis of internal assessment by the institution concerned. The Examination was taken in parts.

Asstt. Secretary

Secretary

This certificate is issued without alteration or erasure.



S: No. 00137

8

# Soft Zone Computer College



## DIPLOMA

Awarded to

Mr/Miss/Mrs. Mir Azam Shah S/D of

Mian Dost Muhammad Bacha on successful completion of one year Computer

### 1st Semester (Six Months)

1. Fundamental of Computer System:
  - i) Electronic Data Processing.
  - ii) Introduction to Operating System.
  - iii) Programming in BASIC Language.
2. Programming in COBOL Language.
3. Fundamentals of Accounting with Spread Sheet (Lotus 123/Excel)
4. Software Packages:
  - i) Word Processing (Word perfect/MS-Word)
  - ii) DBASE III Plus.

### 2nd Semester (Six Months)

1. UNIX/XENIX.
2. Programming in C-Language.
3. Foxpro/ Oracle/ Informix.
4. Data Communication & Retrieval (Ms-windows, LAN).
5. System Analysis and Design.

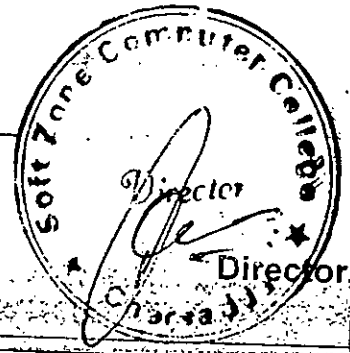
## Thereof this DIPLOMA

is awarded to him/her at Charsadda. on the 14th day of Sep: 2004



Principal

### ATTESTED



Director

~~Handwritten scribbles at the top of the page.~~

C-9 ~~Annex A~~  
~~Handwritten scribbles~~

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

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

TERMS & CONDITIONS.

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

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

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

No. 4363-66 /

Dated Charsadda B. 11 / 02 / 2012.

Copy for information and necessary action to these

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

*(Signature)*  
Executive District Officer  
(E&SE) Charsadda.

*All entries entered*  
*(Signature)*  
D.O. (E&SE) Charsadda

**ATTESTED**

D-10

N.W.F.P. Med. No-4

GS & PD NWFP 37 FS-2000 P of 100 29-7-98-(16)

MEDICAL CERTIFICATE

Name of Official MR. MIL AZAM SHAH

Caste or race DOST Aghan

Father's Name M. Muhammad Badshah

Residence village Prang Tehsil and Distt Charsadda

Date of birth 02/04/1980

Exact height by measurement 5'6"

Personal mark of identification 17/01-0354831-3

Signature of the Official [Signature]

Signature of head of office [Signature]

HEAD MASTER  
GHS Khat Khat  
Prang Charsadda

Seal of Office [Seal]

I do hereby certify that I have examined Mr MR AZAM SHAH a candidate for employment in the office of the Education Deptt Chd and can not discover that he had any disease communicable or other constitutional affection or bodily infirmity except None

I do not consider this as disqualification for employment in the office of the Education Deptt Chd. His age according to his own statement is 32 years years and by appearance about 170.50 years.

LEFT HAND THUMB AND FINGER IMPRESSIONS [Impressions]

[Signature]  
Medical Superintendent  
DHO Hospital Charsadda  
11/2/2012

Medical Superintendent  
DHO Hospital Charsadda



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)

Dated Peshawar, the 20-05-2014

E - (11)

NOTIFICATION

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

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

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

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

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

Encl No. & Date even.

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

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

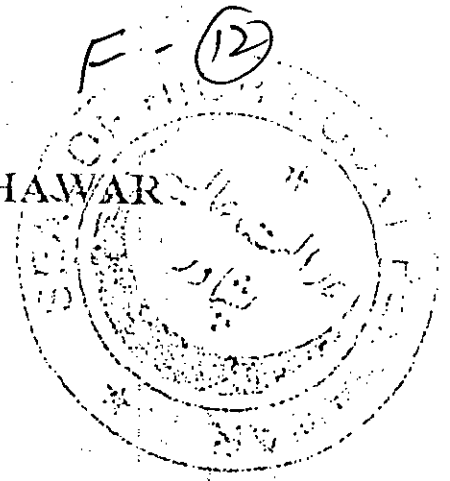
ATTESTED

*[Handwritten signature]*

*[Handwritten signature]*

Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR  
(Judicial Department)



WP No. 2225-P/2014.

JUDGMENT

Date of hearing. 4.6.2015

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

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

\*\*\*\*\*

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

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

ATTESTED

*[Signature]*

ATTESTED

EXAMINER  
Peshawar High Court

25 JUN 2015

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

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

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

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

ATTESTED  
[Signature]

ATTESTED  
EXAMINER  
[Signature]

(14)

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

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

7. The case of the petitioners has surfaced eminently in that enquiry report whereby certain candidates were accommodated without...

ATTESTED

*[Handwritten signature]*

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

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

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

Witnessed:

**ATTESTED**

JUDGE

JUDGE



IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

16

PRESENT:

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

C. P. No. 2251 of 2015.

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

Sabir Jan and others. ...Petitioners.  
Versus  
Govt. of KPK thr. Chief Secretary, Peshawar, etc. ...Respondents

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

For the respondents: N.R.

Date of hearing: 09.10.2015.

O R D E R

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

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

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

ATTESTED

*[Handwritten signature]*

ATTESTED

*[Handwritten signature]*

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

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

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

**ATTESTED**

**ATTESTED**

18

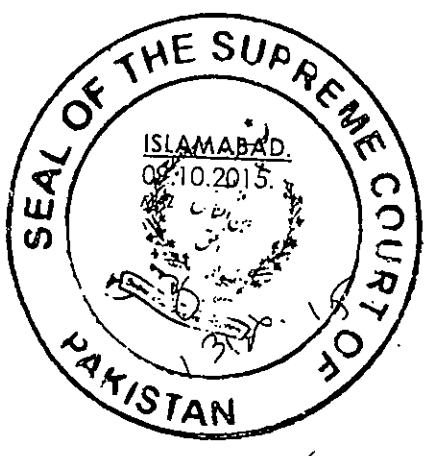
petitioners, but in the peculiar circumstances of the case we are afraid we cannot help him. He, however, could approach the D. G. Population Welfare Department and seek his redress therefrom. We have been told that he has already approached the said D. G., if so let him pass an appropriate order in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

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

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

Certified to be True Copy

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



14263/15

CR No: \_\_\_\_\_

Date of Presentation: 13.10.15

No. of Words: 900

No. of Folios: 9

Requisition Fee Rs: 500

Copy Fee in: 500

Stamp Fee stamps: 10.00

Date of Completion of Copy: 15/10/15

Date of delivery of Copy: 15-10-15

ATTESTED

*[Handwritten Signature]*

OFFICE OF  
THE DISTRICT EDUCATION OFFICER  
(MALE) CHARSADEA

Annex-E

NOTIFICATION.

G-19

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

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

03. AND WHEREAS, a show cause notice was served upon Mr Mir Azam Shah GHS Khat Killi Prang Charsadda dated 15/07/2015.

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

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

(SIRAJ MUHAMMAD)  
DISTRICT EDUCATION OFFICER  
(M) CHARSADEA

Endstt No: 8308-92 / Dated 08/08 2015

- Copy forwarded for information to the:
01. Director (E&SE) KPK Peshawar
  02. District Account Officer Charsadda
  03. Official concerned
  04. Principal/Head Master concerned
  05. Office file

ATTESTED

DISTRICT EDUCATION OFFICER  
(M) CHARSADEA

H-20

TROUGH PROPER CHANNEL

To:

THE DIRECTOR  
Elementary and secondary Education (E & SE)  
Khyber Pukhtoon Kehwa, Peshawar

Subject: DEPARTMENTAL APPEAL UNDER KPK CIVIL SERVANT (APPEAL RULES) 1986 FOR SEEKING THE QUASHMENT/SETTING ASIDE OF THE PENALTY ORDER/ENDORSEMENT NO. 8388-92 DATED: 08-08-2015

Respected Sir!

With profound respect and humble veneration the Appellant Mr. Mir Azam Shah beseeches for quashment and setting aside the penalty orders dated: 8<sup>th</sup> August 2015, received by appellant on 12<sup>th</sup> August 2015 on following factual and legal grounds:-

1. That the appellant is a young person and fully qualified/ eligible to hold and perform the duties for the post of the Jr. Clerk with utmost punctuality/ regularity, with honesty and integrity and hearty devotion, dedication and with great zeal and zest under your kind and benign administrative control in the Education Department at KPK.
2. That appellant was inducted/ recruited in Education Department at District Charsada vide appointment order dated: 11<sup>th</sup> February 2012, copy as annex "A" in the prescribed manner, <sup>after</sup> completion of all the procedural and legal requirements in accordance with Rules on the subject after undergoing cumbersome procedure of selection and qualifying the written Test/ Typing and interview on the specific valid recommendation of DSC by the Competent Authority.
3. That the appellant was appointed as Jr. Clerk on regular basis by the competent Authority vide order dated: 11<sup>th</sup> February, 2012 and on completion of the prescribed period of probation successfully, the appellant has attained the legal status of a regular/ confirmed employee under Rules 15(2) of KPK Civil Servants (Appointment, Promotions & transfer) Rules 1989.
4. That all of a sudden and due to political victimization and for extraneous consideration the services of the appellant have been terminated vide order dated: 8<sup>th</sup> August 2015 without following prescribed procedure laid down in the KPK

ATTESTED

*[Handwritten signature]*

Annex B

Government servants E & D Rules 2011 and particularly without holding any formal inquiry in the case of appellant and without issuing any show cause notice and without providing any opportunity/ legal defense to the appellant. Neither any charge sheet/ show cause has been served upon the appellant nor any formal/ regular inquiry has been held in the case by the Authorized officer with the approval of Competent Authority and consequently the appellant has been condemned unheard.

5. That no formal inquiry has been held before the imposition of major penalty of dismissal/ Termination of services.

6. That the penalty order dated: 8<sup>th</sup> August 2015 is potently illegal and suffers from serious and grave illegalities due to the following valid legal reasons:-

a. The appellant has been imposed the punishment of the termination of service only on the basis of inquiry report in the case of Mr. Atta Ullah Khan Ex- DEO Charsada and neither any independent formal/regular inquiry has been held in the case of the appellant under relevant applicable Rules nor any opportunity of defense has been provided to the appellant to cross examine the witnesses deposing against him.

b. That, legally speaking, the appellant can't be legally imposed the punishment of termination of service of the appellant on the basis of inquiry report conducted in the case of Mr. Atta Ullah Ex-DEO Charsada and under the law an independent/ separate and formal inquiry was essentially required to be held by the Authorized officer with the approval of Competent Authority in the case of appellant under the relevant Rules. Consequently for want of formal regular inquiry in the case of appellant, the penalty orders dated: 8<sup>th</sup> August, 2015 stands vitiated.

c. That Para 4/N, of the penalty order dated: 8<sup>th</sup> August, 2015 is patently illegal with regard to personal hearing committee under the Rules and law laid down by APEX in the following reported judgments wherein it has been held that:-

**"The personal hearing is to be given to the accused person only by the Authorized officer and not a personal hearing Committee"**

- i. PLD 1980, Supreme Court Page-279
- ii. PLD 2008, Supreme Court Page-451
- iii. 2007 SC MR Page-1726
- iv. 2009 SC MR Page-339
- v. 1994 SCJ Page-743

ATTESTED



7. That vide penalty order dated: 8<sup>th</sup> August, 2015, the services of the appellant, after having attaining the status of regular employee have been terminated illegally and in colorable exercise of powers merely for extraneous considerations and political victimization and consequently the penalty order isn't legally sustainable in the absence of any complaint from the immediate officer of the appellant on the grounds of any misconduct in performance of his duties. Since the appellant has rendered more than three years continuous service as Jr. Clerk after such appointment having completed and taking legal effect, the departmental authorities have ceased to have any such powers of the terminating his services under legal principle of "Locus Poententiae" as laid down in the following reported judgments of APEX Court:-

- i. 2006 PLC (SC) Page-03
- ii. 2006 SCMR Page-678
- iii. 2004 SC MR Page-158 Annex-E
- iv. 2007 PLC (SC) Page-179

8. That the impugned penalty order/notification dated: 8<sup>th</sup> August 2015 is totally illegal, unlawful and gross violation of the well settled principles of the law laid down by Full bench of Honorable Supreme Court of Pakistan in a similar case in the case of province of Punjab versus Zulfiqar Ali reported in 2006 SCMR-678 wherein the full bench of the Apex court of Pakistan has laid down the legal principles which are reproduced as under. In the cited case the APEX court has upheld the judgment of service tribunal by reinstating a junior clerk whose services were terminated after the completion of his probation period

**"Illegal appointment - Termination of service- Imposition of penalty by Appointing Authority responsible for making illegal appointment validity-Appointment of an employee if made illegally could not be canceled under Efficiency Discipline Rules, Instead of taking action against such employee. Action must be taken against the appointing Authority for committing misconduct by making illegal appointment as per his own admission- Principles illustrated"**

9. That Para No-01 and Para No-05 of the impugned penalty Order/Notification dated: 08/08/2015 both are self contradictory and inconsistent with each other. The so called perfunctory disciplinary action taken against the Appellant on the ground of baseless allegation of misconduct under the Govt. servants (E&D) rules 2011 and the

ATTESTED

1/9

XII  
Annex-C

punishment of Termination of service imposed upon the Appellant in Para No. 05 of the impugned order/Notification dated: 8<sup>th</sup> August, 2015 has nowhere been envisaged/mentioned in KPK Government Servants (E &D) Rules 2011 and consequently the termination of service of the Appellant is not legally sustainable under the law.

10. That it is also a well settled law laid down by the APEX Court in the following reported judgments that when major penalty of the Termination of Service was to be awarded by the department to the civil servant then a proper charge sheet, statement of allegations and regular inquiry is to be conducted in the case of Appellant. Even the services of a probationer or contract employee can't be terminated on the ground of misconduct without holding formal inquiry in the case.

- i. PLD 2008 SC451
- ii. 1998 PCS-337
- iii. 1997 SCMR 1552

11. That since the Appellant has attained the status of a regular employee in view of clause 8 of his order of appointment dated 11/2/2012 read with rule 15(2) of the KPK Govt. Servants ( Appointment, Promotions and Transfer Rules 1989, therefore , on the completion/expiry of his probation period his services can't be legally terminated under the well known legal principle of laws "Locus Poententiae" and law laid down in the judgment reported in 2006 PLC (CS) 3 where in the strength of APEX court judgment reported in PLD 1969 SC407, 1997 SCMR 15 AND 2003 SCMR 410 the following principles of law have been laid down in a similar case for guidance.

"Selection and appointment of petitioner against advertised post after completion of procedural formalities- subsequent direction of Railway Board requiring petitioner to appear in suitability test to be given to determine his suitability/merit and further retention in service , validity, performance of petitioner could be considered and judged during the period of probation. After such appointment having completed and taken effect, Authority ceased to have any such powers, No Rules existed justifying such suitability test which could be used as an instrument/weapon to remove an un-wanted employee with change of regime/management, High Court accepted constitutional petition.

ATTESTED

3



while declaring impugned direction to be wholly unjustified and unwarranted by Law"

Prayer:-

In view of the above, humble submissions, it is most respectfully prayed that the penalty order dated: 8<sup>th</sup> August, 2015 may kindly be quashed/ Set aside and the appellant may kindly be re-instated in service alongwith Service benefits including pay and allowances/pension for the intervening period in the best interest of justice and valuable service career of the appellant

May God bless you paradise for this kindness.

  
APPELLANT

Mir Azam S/o Dost Muhammad Bacha  
Ex-Jr. Clerk, Government High School  
Khat Killi Parang District Charsada

Dated: 8<sup>th</sup> September, 2015 ✓

Comments/views/recommendations  
Of immediate officer:-

See Next Page

ATTESTED



**VAKALATNAMA**

IN THE COURT OF KPK Service Tribunal Peshawar

OF 2015

Mir Azam Shah

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Education Department

(RESPONDENT)  
(DEFENDANT)

I/We Mir Azam Shah

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

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



CLIENT

  
**ACCEPTED**

**NOOR MOHAMMAD KHATTAK  
(ADVOCATE)**

OFFICE:

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

Phone: 091-2211391

Mobile No.0345-9383141

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICES

TRIBUNAL PESHAWAR

Service Appeal No.1397/2015

Mr Azam  Shah

Vs

District Education Officer & others

INDEX

S No	Description	Annexure	Page
1	Comment		1-4
2	Affidavit		5
3	Copy of the enquiry report	A	6-9
4	Copy of Show cause notice	B	10
			/
			/
			/

DISTRICT EDUCATION OFFICER  
(MALE) CHAIRMAN



Page 1

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

Service Appeal No.1397/2015

Mir Azam Shah

Vs

District Education Officer & others

**Written comments on behalf of Respondents**

**Preliminary Objections:**

Respectfully Sheweth:

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

**PARA WISE REPLY ON FACTS:**

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

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

**(Copy of show cause notice is attached as Annexure B).**

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

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

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

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

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

**PARA WISE REPLY ON GROUNDS:**

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

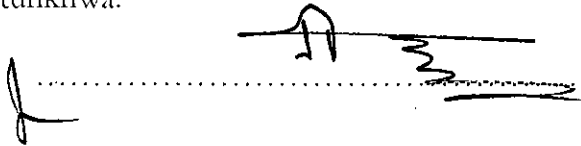
- G. The Para as stated reveals that the appellant have been appointed irregularly and illegally, therefore, have been subjected to test and was failed to qualify, having served the department nearly for three years still have no experience and knowledge of his job. Hence illegal act can't create right.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

**PRAYER:**

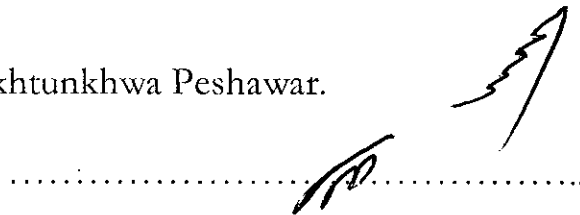
That in the light of enquiry report and recommendations of the said enquiry, the appellant have been terminated after due process of law and procedure. Therefore, the appellant has no right to be reinstated as the issue has already been decided once for all by the Hon'ble Supreme Court of Pakistan and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

Respondents

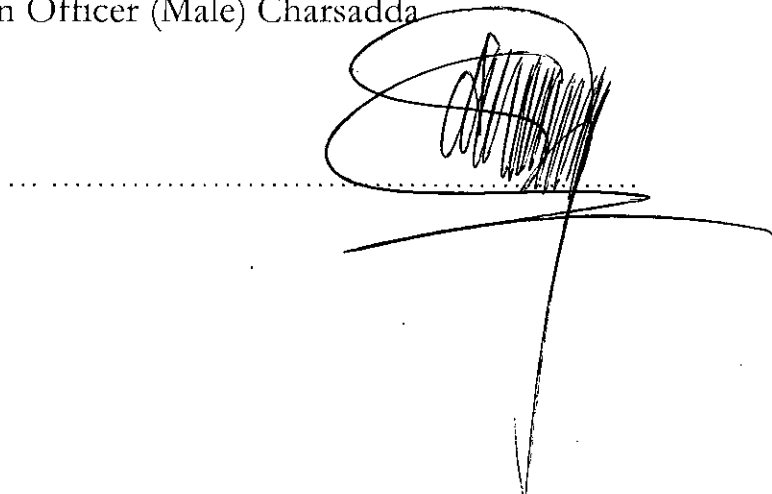
- 1. Secretary (E&SE) Khyber Pakhtunkhwa.

.....  


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

.....  


- 3. District Education Officer (Male) Charsadda

.....  


5

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICES  
TRIBUNAL PESHAWAR

Service Appeal No.1397/2015

Mir Azam Shah

Vs

District Education Officer & others

AFFIDAVIT

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

Deponent

Identified by:

Advocate General Khyber Pakhtunkhwa  
Peshawar

Wisal Muhammad Khan  
Litigation, O/O DEO (MALE)  
Charsadda CNIC: 17101-0330479-9



Handwritten signature of Wisal Muhammad Khan and another signature.



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

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

To

The District Education Officer (Male & Female)  
Charsadda.

ANNEX A  
6

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

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

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

Encl: As Above:

*Copy to Special Secy*

*Aliya*  
(MIJEEB-UR-REHMAN)  
SECTION OFFICER (SCHOOLS/MALE)

Endst: Even No. & Date:

Copy forwarded to the:-

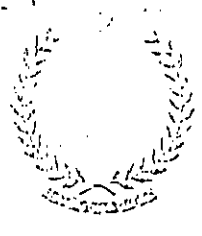
1. PS to Special Secretary, E&SE Department Khyber Pakhtunkhwa Peshawar.

SECTION OFFICER (SCHOOLS/MALE)

*In the case  
of Rules/Policy  
4/12/14*

7

7



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

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

Para-8 of the Summary refers.

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

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

Observations:

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

Recommendations:

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

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

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

- ii. Members of District Selection Committee are equally responsible therefore action may also be taken against them except M/S Roolul Qudus & Khisro Pervez who had retired from service and Mr. Maqsood Jan who has died.
- iii. Class-IV Employees who were promoted out of turn as Junior Clerks may be reverted and promotion be made purely on the basis of seniority and service record of Class-IV employees. Junior Clerks appointed by initial recruitment who do not know the typing may be terminated after serving Show Cause Notices.
- iv. Mr. Muhammad Hayat PET who has been illegally reinstated in service may be served with show cause notice and his service may be terminated and Mr. Alam Zeb PET may be re-instated against the said vacancy.
- v. Since DCO Charsadda was appointing authority in respect of AT, TT and Qari. Moreover, sacked employees were also reinstated in service with his approval therefore he may be asked to explain reasons for according approval of irregular appointments.
- vi. Mr. Shah Hussain S/O Hussan Zada, was reinstated as CT teacher vide office order No.5505-10/Appointment/CT dated 31-12-2012. Perusal of record reveals that Mr. Shah Hussain passed professional examination of CT (General) in 1998. His reinstatement is not covered under the Sacked Employees Act.
- vii. Mr. Jehanzeb Khan S/O Adam Khan was reinstated as CT teacher vide office order No. 3505-10/Appointment/CT dated 31-12-2012. Perusal of record reveals that Mr. Jehanzeb Khan passed professional examination of CT

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

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

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

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

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

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

SHOW CAUSE NOTICE

M (B) Page 10

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

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

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

- (a) Your appointment as J/Clerk was considered as irregular by the inquiry committee constituted by the Govt; for checking the appointment record of all cadres made in the tenure of Mr Attaullah Khan Ex-DEO (M) Charsadda.
  - (b) You were given opportunity of the test in typing as per decision of the Honorable High Court held at Session Court Charsadda under the supervision of Session Judge Charsadda.
  - (c) You could not qualify typing test as evident from the judgment of Honorable Court (Copy enclosed)
2. As a result thereof. I as competent authority have tentatively decided to impose upon the penalty of REMOVAL under rules 4 of the said rules.
  3. You are therefore required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person on 5/8/2015.
  4. If no reply to this notice is received within 7 days or not more than 15 days of its delivery it shall be presumed that you have no defense to put in and in that case an ex-parte shall be taken against you.
  5. A copy of findings of the inquiry officer/inquiry committee is enclosed.

  
COMPETENT AUTHORITY

Mir Azam Shah J/Clerk  
GHS Khat Killi