BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, PESHAWAR

Appeal No. 707/2016

Date of Institution ... 14.06.2016

Date of Decision ... 29.11.2017

Niaz Gul,
PSHT, GPS Azer Khel, Karak. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary (Elementary and Secondary) Education Department, Peshawar and 2 others.
... (Respondents)

MR. TAJDAR AHMAD KHAN ... For appellant
Advocate

MR. KABIRULLAH KHATTAK,
Additional Advocate General, ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant is aggrieved from order of compulsory retirement dated 20.02.2016 against which he filed departmental appeal on 22.02.2016 which was

rejected on 06.04.2016 and communicated to him on 19.05.2016. Thereafter he filed the present service appeal on 14.06.2016.

ARGUMENTS.

3. The learned counsel for the appellant argued that the appellant was transferred to GPS Kaddu Khel on 31.08.2015. That the appellant assumed the charge on 01.09.2015. That the appellant never remained absent from duty. That the attendance register also is a proof of the attendance of the appellant. That the impugned order was passed without any notice to the appellant. That the impugned order was passed retrospectively which is nullity in the eyes of law.

4. On the other hand, the learned Additional Advocate General argued that all the codal formalities were fulfilled by issuing show cause notice. That notice was also published in the news paper. That the appellant remained absent from duty without any leave. That the whole proceedings are lawful. That the appellant did not perform his official duties.

CONCLUSION.

5. Regardless to the factual controversy of absence from duty the very impugned order has been passed retrospectively. In the light of the judgment reported as 1985 SCMR 1178 such order is a void order.

6. In view of the judgment mentioned above this appeal is accepted and the appellant is reinstated in service. The department is directed to hold *de-novo* proceedings within a period of two months after receipt of this judgment. The issue

of back benefits of the appellant shall be subject to final outcome of the *de-novo* proceedings. Parties are left to bear their own costs. File be consigned to the record room.

(NIAZ MUHAMMAD KHAN)
CHAIRMAN

(AHMAD HASSAN)
MEMBER

ANNOUNCED
29.11.2017

29.11.2017 Counsel for the appellant and Addl: AG for respondents present. . Arguments heard and record perused.

Vide our detailed judgment of today, this appeal is accepted. Parties are left to bear their own costs. File be consigned to the record room.

MEMBER CHAIRMAN

ANNOUNCED
29.11.2017

23.02.2017 Counsel for the appellant and Addl: AG alongwith Mr. Gul Faraz, ADEO for respondents present. Rejoinder not submitted. Requested for time to file rejoinder. Request accepted. To come up for rejoinder and final hearing on 29.05.2017 before D.B.

(MUHAMMAD AAMIR NAZIR)
MEMBER

(AHMAD HASSAN)
MEMBER

29.05.2017 Clerk to counsel for appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondent present. Clerk to counsel for appellant submitted fresh Wakalat Nama. Requested for time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 08.09.2017 before D.B.

(Muhammad Amin Khan Kundi)
Member

(Gul Zeb Khan)
Member

8/9/2017 Agent to counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. Arguments could not be heard due to non-availability of DB. To come up for arguments on 29/11/2017 before DB.

(Muhammad Hamid Mughal)
MEMBER

15.08.2016 Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal, the appellant has impugned order dated 20.02.2016 vide which the appellant was compulsorily retired from service. Against the impugned order the appellant filed departmental appeal which was rejected vide order dated 06.04.2016, hence the instant service appeal.

Since the instant appeal is within time and matter required further consideration of this Tribunal therefore, the same is admitted for regular hearing, subject to deposit of security and process fee within 10 days. Notices be issued to the respondents for written reply/comments for 31.10.2016 before S.B.

Appellant Deposited
Security & Process Fee

Member

31.10.2016 Appellant in person and Mr. Gul Faraz, Assistant alongwith Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 29.12.2016 before S.B.

Member

29.12.2016 Appellant in person and Mr. Gulfaraz, ADEO alongwith Addl. AG for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 23.2.2017.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 707/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04/07/2016	The appeal of Mr. Jani Malik resubmitted today by Mr. Tajdar Ahmad Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
	12-7-16	This case is entrusted to S. Bench for preliminary hearing to be put up there on. 14-7-16 MEMBER.
		No one is present on behalf of the appellant. Notices be issued to the appellant and his counsel. To come up for preliminary hearing on 15.8.2016 before S.B. Member

The appeal of Mr. Niaz Gul PSHT GPS Azer Khel Karak received to-day i.e. on 14.06.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Memorandum of the appeal may be got signed by the appellant.
2- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
3- Annexures of the appeal may be attested.
4- Annexures of the appeal may be flagged.
5- One copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

not removed

No. 1029 /S.T,

Dt. 14-6 /2016

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Tajdar Ahmad Khan Adv. Pesh.

28-6-16 Sir- Re-Submitted after completion.
Advocate

Objection no. 2 and 5 are still stand. Appeal is again returned to the counsel.

Registrar

No. 1106 /S.T,

Dt. 29/6 /2016

PTO

04-07-2016

Sir, we do not have the copies of the said documents, nor have we annexed them with the appeal. However, objection No.5 has been addressed. Re submitted please.

COUNSEL

In The Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No 707 /2016

Niaz Gul ....**Appellant**

versus

Governmentt of Khyber Pakhtunkhwa through
Secretary (E & S) Edu Deptt & others. ....**Respondents**

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S. No	Description of Documents	Dated	Annex	Pg No
1.	Service Appeal and Affidavit			1-3
2.	Copy of Order	20-02-16	A	4
3.	Copy of Departmental Appeal	22-02-16	B	5-7
4.	Copy of Order	06-04-16	C	8.
5.	Copy of the Attendance register		D	9-11
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Appellant,

Through

TAJDAR AHMAD KHAN
Advocate Peshawar

C

In The Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No 707 /2016

Niaz Gul,
PSHT, GPS Azer Khel,
Karak.

.....**Appellant**

Khyber Pakhtukhwa Service Tribunal
Diary No. 631
Dated 14-6-2016

Versus

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

.....**Respondents**

Service Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against Order dated 06-04-2016 received on 19-05-2016.

Prayer:

On acceptance of this Service Appeal the impugned Order dated 06-04-2016 whereby the Departmental Appeal of the Appellant against the Order dated 20-02-2016 is dismissed and the Appellant is Compulsory Retired from service may kindly be set aside and the Respondents may kindly be directed to reinstate the Appellant in service with all back benefits.

Filed to-day
Registrar
14/6/16

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

1. That the Appellant was appointed as PTC Teacher on 01-05-1978 in the respondent Department.

Re-submitted to -day and filed.
Registrar

2. That ever since his appointment the Appellant has performed his duties to the best of his abilities and to the entire satisfaction of his superiors.

3. That to the utter surprise of the Appellant the Respondent No 3 passed an Order dated 20-02-2016 whereby the Appellant was Compulsory Retired from service with effect from 31-08-2015. (Copy of Order dated 20-02-2016 is attached herewith as **Annex-A**)

4. That against the aforesaid Order, the Appellant filed Departmental Appeal on 22-02-2016 which is dismissed vide Order dated 06-04-2016. The Copy of the said order is communicated/received by the Appellant on 19-05-2016. (Copy of Departmental Appeal and Order dated 06-04-2016 are attached herewith as **Annex B & C** respectively)

5. That it is important to mention here that the impugned order whereby the Appellant is Compulsory Retired from service besides being ***coram non judice*** is passed without holding any inquiry, without issuing any show cause notice, without giving any chance of hearing and without giving any final show cause notice to the Appellant.

Hence the instant Service Appeal on the following amongst other grounds:

Grounds:

a. That the impugned order is against the law, illegal, unlawful, without lawful authority and void ab initio, hence untenable and liable to be set aside.

b. That the treatment met to the Appellant is against law, rules and policy on the subject matter, which is his inalienable right under the Article 4 of the Constitution of Islamic Republic of Pakistan, 1973.

c. That the impugned order whereby the Appellant is Compulsory Retired from service is passed without holding any inquiry, without issuing any show cause notice, without giving any chance of hearing, without giving any final show cause notice.

d. That the impugned Order whereby the Appellant is Compulsory Retired from service is based on malafide for extraneous consideration.

e. That the impugned order has been passed in utter disregard of the procedure laid down in the Khyber Pakhtunkhwa Servants (Efficiency and Discipline) Rules, 2011 and Khyber Pakhtunkhwa Police Rules, 1975.

f. That the appellant has never remained absent from his duties which is evident from the attendance register. (Copy of the Attendance register is attached as **Annex-D**)

g. That the impugned Order is ***Coram non Judice*** and against the principles of natural justice because no chance of hearing is given to the Appellant before passing the impugned order.

13

h. That the impugned order is against the fundamental rights enshrined and protected under the Constitution of Islamic Republic of Pakistan, 1973.

i. That the impugned Order is passed in utter disregard of the dictums of the Superior Courts.

j. That the Appellant craves permission of this Honorable Tribunal to rely on other grounds at the time of arguments and produce any additional document if required in support of his Service Appeal.

It is, therefore, prayed that on acceptance of this Service Appeal the impugned Order dated 06-04-2016 whereby the Departmental Appeal of the Appellant against the Order dated 20-02-2016 is dismissed and the Appellant is Compulsory Retired from service may kindly be set aside and the Respondents may kindly be directed to reinstate the Appellant in service with all back benefits.

Any other relief which has not been specifically prayed for and deemed fit and appropriate by this Honorable Tribunal in the circumstances may graciously be granted.

Appellant,

Through

TAJDAR AHMAD KHAN
Advocate Peshawar

Affidavit

I, Niaz Gul,PSHT, GPS Azer Khel,Karak. do hereby solemnly affirm and declare on oath that the contents of the accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Deponent

ATTESTED BY
OATH COMMISSIONER
IRFAN ULLAH
Advocate High Court

14-6-16

4 (A)

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KARAK

OFFICE ORDER:

1. Whereas you, Mr. **NIAZ GUL ,PSHT** was proceeded for having committed the following grass irregularities which constituted inefficiency and misconduct under rule Para No.4 sub Para No. B-III of the Khyber Pakhtunkhwa Efficiency and Discipline Rule 2011.
2. Whereas you have been remained absent and neither performed your duties in any school during the year.
3. Whereas you failed to produce any documentary proof of your services at your school.
4. Whereas Notice issued to you through SDEO (M) Karak vide his office No. 788 Dated 31/10/2015, 2858 Dated 17/11/2015 and No.2911 Dated 2/12/2015
5. Whereas a notice was published in the Daily Mashriq Dated 28/01/2016.
6. Whereas you were given the chance of Personal Hearing within Fifteen days, but you are not attended this office.

Now therefore, the competent authority in exercise of the power conferred upon me under Para No.4 sub Para No. B-II of the Khyber Pakhtunkhwa Efficiency and Discipline Rules 2011 is pleased to impose the major Penalty of "Compulsory Retirement Upon you Mr. Niaz Gul PSHT GPS Azar Khel with effect from 31/08/2015 (A.N) with full benefits of pension and gratuity.

sd/-

District Education Officer
(Male) Karak.

Endst: No 1128-33 Dated Karak the 20/02/2016.

Copy to the.

1. Director, Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. District Account Officer, Karak.
3. SDEO (Male) Karak is directed to recover the salary of absent period from his GP Fund/Pension with intimation to this office if paid to the official.
4. Dy: District Education Officer (Male) Karak.
5. District Monitoring Officer Karak.
6. Niaz Gul PSHT, GPS Azar Khel.

sd/-

District Education Officer
(Male) Karak.

Attested to be true copy
Advocate

To

The Director, Elementary Education
Khyber Pakhtunkhwa Peshawar

Subject: **APPEAL AGAINST COMPULSORY RETIREMENT OF MR. NIAZ GUL PSHT GPS AZER KHEL**

Most submissively I bag to lay down the following few lines for your kind consideration and favorable sympathetic action please:-

A. During the year 2015 I have been performing my duties in GPS Kando Khel and never absented from duty. To justify the fact a certificate to this effect of Head Teacher Kando Khel is attached for perusal please. This proof falsifies the views of office order serial 2.

B. Para 3 of office order is totally based on un-fact. Where as No office memorandum issued by any office that all teacher should forward their documentary proof of their attendance to SDEO/DEO office.

C. It is further stated for your information that Para No. 4 of office order revealed, that notice i.e no. 788 dated 31.10.2015 and 2858 dated 17.11.2015 have been issued to me. But I solemnly declare that no above notices have been issued to me NOR I seen any where. Broadly speaking I should request to your honour that DEO (Male) Karak order my retirement from 31.08.2015 and issue notices after my retirement i.e dates of notices 31.10.2015 and 17.11.2015 respectively.

D. To clear the statement of Para 5 office order of my retirement it is stated for your information that when the school situation is in such deserted area where no facilities of road, convince is available, how was possible to see any newspaper, To strengthen, this point further more that I had taken charge of such school on 01.09.2015, since the date no senior officer of mine visited this school till to date. And I only requested for my transfer keeping in view the

Attested Advocate

location of the school and also my personal problem, which my immediate officer did not, paid any heed on humanitarian bases.

E. Para 6 of office order says that I have been instructed for personal hearing. In response I say that when no notices and news paper I have seen but I my self decided to go to office of DEO and SDEO to convey my grievances. I my self visited SDEO and DEO on repeated bases but they did not pay any heed to my problem, and grievances.

F. More over it is stated for your kind information that inquiry on my apart was required to be held to justify his blames.

G. More DEO is not a competent authority to impose such major penalty of compulsory retirement without holding of inquiry and also its submission to higher authorities to get his essence

Keeping in view all the above, it is requested to your honor that I want to serve further and do not desirous of premature retirement. Hoping that "His Highness" will took pity on me and on my little kids to allow me for further service.

I shall be very grateful to you for your this act of kindness.

Yours Truly,

Date: 22.02.2016

Attested
Advocate

NIAZ GUL
Head Teacher
GPS Azer Khel Karak
Cell: 0334-9117285

2

DRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION KHYBER PAKHTUNKHWA.

No. 913 /F.No.162/Removal from Service/PST/TT/AT/Qari (M) Gen:

Dated Peshawar the 3/3 /2016

To,

The District Education Officer (M)
Karak.

Subject: - **APPEAL AGAINST COMPULSORY RETIREMENT.**

Memo:-

I am directed to refer to the subject cited above and to enclose herewith a copy of appeal alongwith its enclosure in respect of Mr. Niaz Gul Head Teacher GPS Azer Khel Karak for necessary action under the rules/policy and submit report/view comments to this office within a week.

3/3/16

Deputy Director (Estab:)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.

3/3/16

Endst: No._____/

Copy forwarded to the:-

1. P.A to Director Elementary and Secondary Local Office.

Deputy Director (Estab :)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.

Attested
Advocate.

DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION KHYBER PAKHTUNKHWA

ORDER.

1. WHEREAS, Mr. Niaz Gul PSHT GPS Azer Khel proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011.

2. AND WHEREAS the above named teacher was absent from duty w.e.f 01.09.2015 and the SDEO (M) Karak issued a notice against him vide his office No.788 dated 31.10.2015, No.2858 dated 17.11.2015 and 2911 dated 01.12.2015.

3. AND WHEREAS, the SDEO (M) Karak informed the DEO(M)Karak that the teacher concerned did not report for duty vide NO.2984 dated 17.12.2015 and published absent notice in the daily News paper vide 419 dated 18.01.2016. A show cause notice issued through daily news paper "Mashriq" dated 28.01.2016. Once again asking him to resume his duty within fifteen days and also called for personal hearing.

4. AND WHEREAS, the DEO (M) Karak after completion of the whole process being a competent authority imposed major penalty of compulsory retirement from service.

5. AND WHEREAS, the PST concerned lodged an appeal against his re-instatement to the appellant authority and the appeal was sent to the DEO (M) Karak to submit report/comments vide this office letter No.913 dated 03.03.2016.

6. AND WHEREAS, the DEO (M) Karak has submitted his report/comments vide letter No.1531 dated 17.03.2016.

7. AND WHEREAS, the competent authority Director Elementary and Secondary Education Khyber Pakhtunkhwa) after having considered the charges and evidence on record, is of the view that charges against the accused teacher have been proved.

8. NOW THEREFORE, in exercise of powers conferred under Khyber Pakhtunkhwa Servants (Efficiency & Discipline) Rules-2011 the appellate authority has decided to reject the appeal of Mr. Niaz Gul PSHT GPS Azer Khel Karak on the above mentioned ground.

Received today 19-5-2016

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 1157-61/F No.162/Removal from Service(M) Dated Peshawar the 6-4-/ 2016.

Copy forwarded for information and necessary action to the:-

1. District Education Officer (M) Karak w/r to his No.1531 dated 17.03.2016.
2. Mr. Niaz Gul PSHT GPS Azer Khel Karak.
3. P/A to Director E&SE, Khyber Pakhtunkhwa, Peshawar.
4. Master File.

6/4/16

Deputy Director (Estb:)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.

6/4/16

2015 (D)

رجسٹر حاضری مدرسین

کرک

بابت ماہ ستمبر

نام: مہار خیل

عہدہ: سینئر ٹیچر

تاریخ	آمد	دستخط	روانگی	دستخط	آمد	دستخط	روانگی	دستخط	آمد	دستخط	روانگی	دستخط	آمد	دستخط	روانگی	دستخط
1	8/30		1/30													
2	8/30		1/30													
3	8/30		1/30													
4	8/30		1/30													
5	8/30		1/30													
6																
7	8/30		1/30													
8	8/30		1/30													
9	Casual Leave															
10	8/30		1/30													
11																
12	8/30		1/30													
13	SUNDAY															
14	8/30		1/30													
15																
16	Casual Leave															
17	8/30		1/30													
18	8/30		1/30													
19	8/30		1/30													
20	SUNDAY															
21	8/30		1/30													
22	8/30		1/30													
23	8/30		1/30													
24	عید الاضحیٰ															
25	"		"													
26	"		"													
27	SUNDAY															
28																
29																
30																
31																

قسم رخصت	حال	سابقہ	میزان	حال	سابقہ	میزان	حال	سابقہ	میزان	حال	سابقہ	میزان
اتفاقیہ												
استحقاقیہ												
بیماری												
میزان												

ANNEXURE "D"

رجسٹر حاضری مدرسین

گورنمنٹ پرائمری اظہر خیل کرک

بابت ماہ اکتوبر 2015ء

نام: بہار خیل

عہدہ: سینئر ٹیچر

تاریخ	آمد	دستخط	روانگی	دستخط	آمد	دستخط	روانگی	دستخط	آمد	دستخط	روانگی	دستخط	آمد	دستخط	روانگی	دستخط
1	8/30		1/30													
2	8/30		1/30													
3	8/30		1/30													
4	Sunday															
5	8/30		1/30													
6	8/30		1/30													
7	8/30		1/30													
8	Casual Leave															
9	8/30		1/30													
10	8/30		1/30													
11	SUNDAY															
12	8/30		1/30													
13	8/30		1/30													
14	8/30		1/30													
15																
16	8/30		1/30													
17	8/30		1/30													
18	SUNDAY															
19	8/30		1/30													
20	Casual Leave															
21	8/30		1/30													
22	8/30		1/30													
23	8/30		1/30													
24	8/30		1/30													
25	8/30		1/30													
26	8/30		1/30													
27	8/30		1/30													
28	8/30		1/30													
29	8/30		1/30													
30	8/30		1/30													
31	SUNDAY															

قسم رخصت	حال	سابقہ	میزان	حال	سابقہ	میزان	حال	سابقہ	میزان	حال	سابقہ	میزان
اتفاقیہ												
استحقاقیہ												
بیماری												
میزان												

Advocate

(E)

(12)

Office of the District Education Officer (Male)

KARAK

Attested
Advocate

Office Order

Consequent upon the recommendation of the Departmental Promotion Committee and in pursuance of the Government of Khyber Pakhtunkhwa Elementary and Secondary Education Notification No So (PE) 4-5/ SSRC/Meeting/2012/Teaching Cadre dated the November 13, 2012 and further circulated by the Directorate of (E&SE) Khyber Pakhtunkhwa Peshawar No 1702-27/Promotion to B-16/Estab Dated Peshawar the 16.11.2012 , the following Senior Primary School Teachers (SPST)PST-B-14 are hereby promoted to the post of Primary Senior Head Teachers (PSHT) B-15 on regular basis under the existing policy of the Provincial Government, in Teaching Cadre on the terms and condition given below with immediate effect and further posted in the schools noted against each:-

S. #	Name	Present School	Place of Posting	Remarks
1	Abdur Rashid	GPS Ghar Kalla	GPS Kandao Sar	Promoted to B-15 with immediate effect
2	Sher Ali Khan	GPS Esak Khumari	GPS Esak Khumari	Promoted to B-15 with immediate effect
3	Umar Saddique	GPS Tor Dhand	GPS Zebi Chani Khel	Promoted to B-15 with immediate effect
4	Mukhtiar Gul	GPS Shanki Banda	GPS Shawa Hindu Kash	Promoted to B-15 with immediate effect
5	Maqbool Rehman	GPS Gul Khan Abad	GPS Shawanki Data Mine	Promoted to B-15 with immediate effect
6	Wazir Bad Shah	GPS Gul Khan Abad	GPS Darangi	Promoted to B-15 with immediate effect
7	Niaz Gul	GPS Kandu Khel	GP Bami Banda	Promoted to B-15 with immediate effect
8	Mashal Khan	GPS Yaghi Ghulam Khel	GPS Darga Shahedan	Promoted to B-15 with immediate effect
9	Asif Iqbal	GPS Kamali Zara Khel-1	GPS Dand Edal Khel	Promoted to B-15 with immediate effect
10	Wazir Rehman	GPS Zwahir Jan Koroona	GPS Buza	Promoted to B-15 with immediate effect
11	Muhammad Zahoor Shah	GPS Official Colony	GPS Kool Banda	Promoted to B-15 with immediate effect
12	Gul Shahzada	GPS Garori Chambi,	GPS Lawaghar Chani Khel	Promoted to B-15 with immediate effect
13	Gul Rauf	GPS Darsha Khel	GPS Sarwan Banda	Promoted to B-15 with immediate effect
14	Karim Nawaz	GPS Topi Killa	GPS shekhan MammiKhel	Promoted to B-15 with immediate effect
15	Jalees Najmi	GPS Shawal Algadda	GPS Azar Khel	Promoted to B-15 with immediate effect
16	Gul Dali	GPS Kiri Dhand	GPS Khozobi	Promoted to B-15 with immediate effect
17	Azwahir Shah	GPS Mammi Khel	GPS Shaker Khel	Promoted to B-15 with immediate effect

Terms and conditions:-

1. They would be on probation for a period of one year extendable for another one year.
2. They will be governed by such rules and regulations as may be issued from time to time by the Govt.
3. Their services can be terminated at any time, in case their performance is found unsatisfactory during probationary period. In case of misconduct, they will be preceded under the rules framed from time to time.

4 Charge report should be submitted to all concerned immediately.

5 Their Inter-Se- seniority on lower post will remain intact.

6 Necessary entries may be made in their service books.

7 No TA/DA is allowed for joining their duty.

District Education Officer
(Male) Karak

Endst: No. 3823-28 /: Dated Peshawar the 19/8/2015.

Copy forwarded for information and necessary action to the:-

1. District Account Officer Karak
2. Sub Divisional Education Officer (Male) Primary in District Karak
3. PA to the Director E & SE Khyber Pakhtunkhwa, Peshawar.
4. M/File

District Education Officer
(Male) Karak

OFFICE OF THE SUB DIVISIONAL EDU:OFFICER (M) PRIMARY KARAK.

Endst:No 538-40/ Dated karak the 20/8 /2015.

Copy to the:-

1. ASDEO (M) Primary Karak/Sabir Abad for information.
2. Head Teacher Concerned.
3. Local Office.

Sub Divisional Edu:Officer
(Male) Pry: Karak.

Attested
Advocate

National Bank of Pakistan

Account Statement

Account Title(s) NIAZ GUL S/O MIR DAD KHAN

Address: VILL GANDERI KHATTAK PO TEH T NASRATI

Town:
District:
City: KARAK
Province/State: KH.PAKHTOON
Country: PAKISTAN

Postal Code:

Product Name:

Branch Code/Name: 1918 Takht-E-Nusrati Branch

CIF No: 11192190

Region Name: Dera Ismail Khan

Account No: 4111941147

Statement of Account

IBAN: PK93NBPA1918004111941147

Statement Printing Date: 22-Feb-2016

B/F Balance: 36,925.00

From: 01-Jun-2014 To: 22-Feb-2016

S. No.	Date	Particulars	Instno	Memo	Debit	Credit	Balance
1	02-Jun-2014	CASH	53147642	02	10,000.00	0.00	26,925.00
2	11-Jun-2014	CASH	53147643	11	10,000.00	0.00	16,925.00
3	17-Jun-2014	CASH	53147644	17	10,000.00	0.00	6,925.00
4	23-Jun-2014	CASH	53147645	23	6,000.00	0.00	925.00
5	27-Jun-2014	SALARY	1	27	0.00	32,627.00	33,552.00
6	02-Jul-2014	CASH	53147646	02	10,000.00	0.00	23,552.00
7	04-Jul-2014	CASH	53147647	04	13,000.00	0.00	10,552.00
8	14-Jul-2014	CASH	53147648	14	10,000.00	0.00	552.00
9	30-Sep-2014	SALARY	1	30	0.00	140,745.00	141,297.00
10	01-Oct-2014	CASH	53147650	01	50,000.00	0.00	91,297.00
11	10-Oct-2014	CASH	961731	10	30,000.00	0.00	61,297.00
12	17-Oct-2014	CASH	961732	17	20,000.00	0.00	41,297.00
13	23-Oct-2014	CASH	961733	23	10,000.00	0.00	31,297.00
14	27-Oct-2014	CASH	961734	27	20,000.00	0.00	11,297.00
15	30-Oct-2014	SALARY	1	30	0.00	33,385.00	44,682.00
16	31-Oct-2014	CASH	961735	31	30,000.00	0.00	14,682.00
17	05-Nov-2014	CASH	961736	05	14,000.00	0.00	682.00
18	28-Nov-2014	SALARY	1	28	0.00	33,385.00	34,067.00
19	02-Dec-2014	CASH	961737	02	34,000.00	0.00	67.00
20	31-Mar-2015	SALARY	1	31	0.00	167,853.00	167,920.00
21	01-Apr-2015	CASH	961738	01	50,000.00	0.00	117,920.00
22	02-Apr-2015	CASH	961739	02	50,000.00	0.00	67,920.00
23	06-Apr-2015	CASH	961740	06	50,000.00	0.00	17,920.00
24	22-Apr-2015	CASH	32526326	22	16,000.00	0.00	1,920.00
25	30-Apr-2015	SALARY	1	30	0.00	37,790.00	39,710.00
26	04-May-2015	CASH	32526327	04	30,000.00	0.00	9,710.00
27	13-May-2015	CASH	32526328	13	8,000.00	0.00	1,710.00
28	30-May-2015	SALARY	1	30	0.00	37,990.00	39,700.00
29	01-Jun-2015	CASH	32526329	01	18,000.00	0.00	21,700.00
30	05-Jun-2015	CASH	32526330	05	21,000.00	0.00	700.00
31	30-Jun-2015	SALARY	1	30	0.00	35,816.00	36,516.00
32	02-Jul-2015	CASH	32526331	02	36,000.00	0.00	516.00
33	31-Jul-2015	SALARY	1	31	0.00	38,566.00	39,082.00
34	13-Aug-2015	DR VOUCHER	20003	13	10,031.00	0.00	29,051.00

This is a computer generated statement and does not require any signature

Attested
Advocate

National Bank of Pakistan

Account Statement

Account Title(s) NIAZ GUL S/O MIR DAD KHAN

Address: VILL GANDERI KHATTAK PO TEH T NASRATI

Town:
District:
City:
Province/State:
Country:

Postal Code:

Branch Code/Name: 1918 Takht-E-Nusrati Branch

Region Name: Dera Ismail Khan

Statement of Account

Statement Printing Date: 22-Feb-2016

Product Name:
CIF No: 11192190
Account No: 4111941147
IBAN:

B/F Balance: 36,925.00

From: 01-Jun-2014 To: 22-Feb-2016

S. No.	Date	Particulars	Instno	Memo	Debit	Credit	Balance
35	13-Aug-2015	CASH	32526333	13	20,000.00	0.00	9,051.0(
36	24-Aug-2015	CASH	32526334	24	9,000.00	0.00	51.0(
37	31-Aug-2015	SALARY	1	31	0.00	40,041.00	40,092.0(
38	07-Sep-2015	CASH	32526337	07	40,000.00	0.00	92.0(
39	21-Sep-2015	SALARY	1	21	0.00	42,812.00	42,904.0(
40	21-Sep-2015	CASH	32526335	21	42,000.00	0.00	904.0(

Total 11 Credit transactions of amount: 641,010.00

Total 29 Debit transactions of amount: 677,031.00

Attested
Advocate

This is a computer generated statement and does not require any signature

(15) فارغ خطی

(OTHER)

بحوالہ آرڈر نمبر 538-40 مورخہ 20-8-2015

مستمی نیاز گل SPST گورنمنٹ پرائمری سکول کندو خیل کا 30 اگست 2015ء کو BPS-15 میں گورنمنٹ پرائمری سکول آزار خیل میں تعیناتی کیا ہے۔

آج مورخہ 31 اگست 2015ء کو قبل از دوپہر ایم نیاز گل کو فارغ کیا جاتا ہے۔ اور مذکورہ سکول میں اپنے عہدے کی چارج سنبھالنے کی ہدایت کی جاتی ہے۔

SBShah.
HEAD TEACHER
G.P.S. Kando Khel
Karak

نوٹ = خط و کتابت نمبر 54
31-8-2015

Attested
Haider Ali
Advocate

قیمت 10 روپے

38503

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

PESHAWAR BAR ASSOCIATION PBA

ایڈوکیٹ / دستخط: Mazhar

بار کونسل / بار ایسوسی ایشن نمبر: 2313

رابطہ نمبر: 0321-9886436

بعدالت جناب: سروسز ٹریبونل پشاور

منجانب: اپیلانٹ

دعویٰ:

علت نمبر:

مورخہ:

جرم:

تھانہ:

بنام نیاز محمد اور ایس آف KPK

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام پشاور کیلئے ناصر اراحمد خان اینڈ صاحبزادہ احمد خان ایڈوکیٹس کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث وفیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف دینے کا حقدار ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المرقوم: 14-06-16

گواہ شد

العبد — العبد

مقام پشاور کے لئے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

BEFORE THE HON'ABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. .

Service Appeal No. 707/2016

Niaz Gul ----------Appellant

VERSUS

Govt: of KPK through Secretary (E & S) Edu: Deptt: Peshawar & others ----------Respondents.

AFFIDAVIT

I, Taus Khan, District Education Officer (M), Karak do hereby solemnly affirm and declare on oath that all the contents of accompanying written statement are true and correct to the best of my knowledge and belief, nothing is lie and nothing has been concealed from this Hon'able court.

Dated -22------/10/2016

Deponent

TA 22/10

District Education Officer (M), Karak

BEFORE THE HON'ABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. .

Service Appeal No. 707/2016

Niaz Gul ----------Appellant

VERSUS

Govt: of KPK through Secretary (E & S) Edu: Deptt: Peshawar & others ----------Respondents.

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3	Copy of letter No. 788 dated 31-10-2015	A	6
4	Copy of letter No. 2858 dated 17-11-2015	B	7
5	Copy of letter No. 2911 dated 02-12-2015	C	8
6	Copy of letter No. 419 dated 18-01-2016	D	9
7	Copy of Daily News paper Mashriq	E	10-11
8	Copy of order No. 1128-33 dated 20-02-2016	F	12
9	Copy of dismissal order of departmental appeal vide order No. 1157-64 dated 06-04-2016	F-1	13
9	Copy Attendance Registered	G	14-

BEFORE THE HON'ABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. .

Service Appeal No. 707/2016

Niaz Gul ----------Appellant

VERSUS

Govt: of KPK through Secretary (E & S) Edu: Deptt: Peshawar & others ----------Respondents.

WRITTEN COMMENTS.

Respectfully Sheweth

Parawise written comments on behalf of Respondents No.1 to 3

Preliminary Objections.

1. That appellant has got no cause of action to file the instant appeal.

2. That the appellant has got no locus standi.

3. That the instant service appeal is against the law and facts.

4. That the appellant is estopped to file the instant service appeal.

5. That the instant service appeal is not maintainable & entertainable in its present form.

6. That the appellant has not come to this Hon'able Tribunal with clean hands and concealed the facts.

8. That the service appeal is liable to be dismissed being wrong and incorrect.

Factual Objections

1. That Para No. 1 of the appeal is correct. .

2. Para No. 2 of the of the appeal is totally wrong and incorrect. The appellant being teacher has not performed his official duties rather he was warned several times to ensure his regularities but the appellant utterly failed, therefore issued show cause notices against him.

3. Reply of Para No. 3 of the of the instant service appeal is that when it was brought into the notice of respondent No. 3 about the absenteeism period of the appellant w.e.f 01-09-2015 by the Sub Divisional Officer (M) Karak whereby the SDEO(M), Karak has issued several notices against the appellant vide letter No. 788 dated 31-10-2015 (Copy is **Annexure "A"**), letter No. 2858 dated 17-11-2015 (Copy is **Annexure "B"),** letter No. 2911 dated 01-12-2015 (Copy is **Annexure "C").** Through the above mentioned notices, the appellant was directed / warned to resume his duties but he badly failed. Lastly a show cause notice was issued against the appellant in daily Mashriq vide letter No. 419 dated 18-01-2016 (Copy of letter is **Annexure "D"** and Daily News paper Mashriq is **Annexure "E"**). Through the said show cause notice, the appellant was directed to appear before the respondent No. 3 within 15 days after the publication but the appellant once again also failed to appear before the respondent No. 3 hence taken action against the appellant by issuing compulsory retirement order of the appellant vide order No. 1128-33 dated 20-02-2016 (Copy is **Annexure "F").** The compulsory order is based on facts and has not been issued on mala-fide intention.

4. The respondent No. 2 has rightly dismissed the departmental appeal of the appellant in view of the above mentioned facts noted under para No. 3.

5. Para No. 5 of the service appeal is wrong and incorrect. All the pre-requisite legal obligations have been fulfilled before compulsory retirement of the appellant.

GROUNDS

a. This Para of the ground is totally wrong and incorrect.

b. The appellant has been treated as per rules, regulations and policy in vogue. No steps has been taken against the law and service rules but fulfilled the entire legal obligation before issuing compulsory retirement order of the appellant.

c. This para of the grounds is also wrong and incorrect. The appellant was served several show cause notices and finally informed through daily News paper to appear before the respondent No. 3 but he badly failed. So the allegations leveled by the appellant are totally baseless and not based on facts.

d. Incorrect. No mala-fide intention is involved by passing the compulsory retirement order of the appellant.

e. Incorrect. The compulsory retirement order of the appellant has been passed as per procedure laid down in the Khyber Pakhtunkwha Servants (Efficiency and Discipline) Rules 2011.

f. Incorrect. The appellant has been remained absent from his duty 01-09-2015 till the last show cause notice which is clearly evident from the Attendance Register. Copy of Attendance Register is **Annexure "G".**

g The details reply of this para has already been given in the above mentioned para.

h. The compulsory retirement order has been passed in accordance with rules and regulation and no fundamental rights have been violated while passing the compulsory retirement order.

i. Para "I & J" are legal one hence need no reply.

So it is, therefore, most humbly and respectfully prayed that keeping in view the above mentioned written statement this Hon'able Tribunal may very kindly be dismissed the instant Service Appeal with cost throughout.

Dated:-29---/10/2016

1. Distinct Education Officer (Male), Karak.

District Education Officer(M)
Karak

2. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.

3. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

_____ OF 2018

Niaz Gul (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

Govt. of KPK (RESPONDENT) (DEFENDANT)

I/We Niaz Gul

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. 29 / 5 /2018

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

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 2607 /ST Dated 05 /12/2017

To

The District Education Officer (Male),
Govt: of Khyber Pakhutnkhwa,
Karak.

Subject: **JUDGEMENT IN APPEAL NO. 707/16, MR. NIAZ GUL.**

I am directed to forward herewith a certified copy of Judgment dated 29/11/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.