

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 1174/2016

Date of Institution... 11.11.2016

Date of decision... 20.03.2018

Sanwar Khan son of Zardad Khan, PST Maktub School Kolai Battaira Teshsil
Palas, District Kohistan. ... (Appellant)

Versus

1. The Secretary, Elementary & Secondary Education, Peshawar and two
others. (Respondents)

MR. ABDUL SABOOR KHAN,
Advocate

... For appellant.

MR. USMAN GHANI,
District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER

JUDGMENT

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

FACTS

2. The appellant was removed from service on 01.12.2015 for wilful absence
against which he filed departmental appeal on 27.12.2015 which was rejected on 19.7.2016
and thereafter, the appellant filed the present service appeal on 11.11.2016.

ARGUMENTS

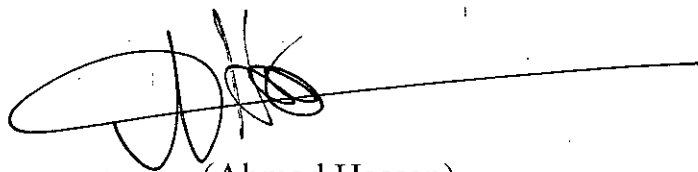
3. The learned counsel for the appellant argued that the department had not followed
the procedure of Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules,
2011. That as per version of the department the appellant was abroad and he did not reply to

the show cause notice. That in such situation there was no other option with the department but to have resorted to procedure under Rule 9 mentioned above.

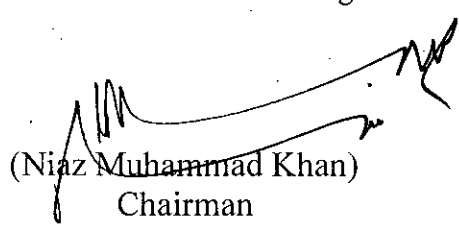
4. On the other hand, the learned District Attorney argued that the appellant was absent and absence of a single days was a misconduct. That the appellant was rightly removed from service.

CONCLUSION.

5. Rule 9 mentioned above has been given overriding effect by inserting *non obstante* clause. The department in their written reply and in the impugned order has held that the appellant was willfully absent. That he did not reply to the show cause notice and he could not be served. In the situation, resort to Rule 9 was all the more mandatory by informing the appellant through advertisement in the newspaper and then to proceed ex-parte. This Tribunal is therefore, of the view that the procedure adopted in the present case was not in accordance with law. The impugned order is therefore, set aside and the appellant is reinstated in service. However, the department is directed to hold denovo proceedings under Rule 5 of the above mentioned rules as the appellant has now appeared before the department and proceedings under Rule 9 are not possible. The denovo proceedings should be concluded within a period of ninety days from the date of receipt of this judgment. The issue of back benefits etc. shall be subject to the final outcome of the denovo proceedings and rules on the subject. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan)
Member



(Niaz Muhammad Khan)
Chairman
Camp Court, A/Abad


ANNOUNCED

20.03.2018

1174/16


5. 22.06.2017


Appellant in person and Mr. Muhammad Bilal, Deputy District Attorney alongwith Shah Waliullah, KPO for the respondents present. Written reply submitted by representative of the respondents. The appeal is assigned to D.B for arguments on 20.12.2017 at camp court, Abbottabad.


Chairman
Camp court, A/Abad

20.12.2017

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Shah Wali Ullah, Computer Operator for the respondents also present. Learned counsel for the appellant requested for time for filing of rejoinder. Adjourned. To come up for rejoinder and arguments on 20.03.2018 before D.B at Camp Court Abbottabad.

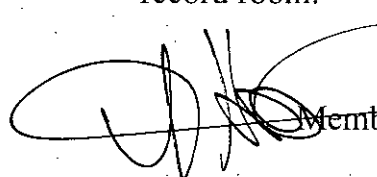

(Gul Zeb Khan)
Member (Executive)
Camp Court Abbottabad

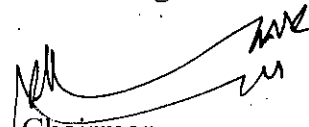

(Muhammad Amin Khan Kundi)
Member (Judicial)
Camp Court Abbottabad

20.03.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Muhammad Alam, ADO for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman
Camp Court, Abbottabad.

ANNOUNCED
20.03.2018

22.12.2016


Learned counsel for the appellant argued that the appellant was serving as PST abroad when proceeded abroad after obtaining departmental permission and EOL w.e.f. 01.06.2014 to 03.03.2015. That vide impugned order dated 01.12.2015 appellant was removed from service on the allegations of wilful absence w.e.f. 01.01.2015 where-against his departmental appeal dated 27.12.2015 was also rejected on 19.09.2016 constraining the appellant to prefer the instant service appeal on 25.11.2016.

That the allegations of wilful absence are unfounded as the appellant was on leave sanctioned by the competent authority vide order dated 24.06.2014.

Points raised need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents. To come up for written reply/comments on 17.03.2017 before S.B at camp court, Abbottabad.


Appellant Deposited
Security & Process Fee

27-01-2016
2016-12-22


Chairman
Camp court, A/Abad

17.03.2017



Appellant in person and Mr. Shah Waliullah, Assistant alongwith Mr. Muhammad Siddique, Sr.GP for the respondents present. Requested for adjournment. To come up for written reply/comments on 22.06.2017 at camp court. Abbottabad.


Chairman
Camp court, A/Abad

Form- A
FORM OF ORDER SHEET

Court of _____


Case No. 1174/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1.	25/11/2016	<p style="text-align: center;">The appeal of Mr. Sanwar Khan resubmitted today by post through Mr. Abdul Saboor Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	13-12-16	<p style="text-align: center;">This case is entrusted to Touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>22-12-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Sanwar Khan son of Zardad Khan PST Maktub School Kolai Battaira Distt. Kohistan received today i.e. on 11.11.2016 is returned to the counsel for the appellant with the direction to submit one spare copy/set of the memorandum of appeal along with annexures i.e. complete in all respect within 15 days.

No. 1192 /S.T,

Dt. 11/11 /2016



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Abdul Saboor Khan Adv.
High Court Mansehra.

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

Service Appeal No. 1174 of 2016

Sanwar KhanAppellant

VERSUS

The Secretary, Elementary and Secondary
Education, Peshawar etc.....Respondents

SERVICE APPEAL

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4	Copy of the order dated 24.06.2014 alongwith better copy.	"A"	12-13
5	Copy of the application.	"B"	14
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Dated 08.11.2016

Sanwar Khan
Sanwar Khan
...Appellant

Through


ABDUL SABOOR KHAN,
Advocate High Court,
Mansehra.

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

Service Appeal No. 1174 of 2016

Sanwar Khan son of Zardad Khan, PST,
Maktub School Kolai Battaira, Tehsil Palas,
District KohistanAppellant

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1147

Dated 11-11-2016

VERSUS

1. The Secretary, Elementary and Secondary Education, Peshawar.
2. The Director, Elementary and Secondary Education, Peshawar.
3. The District Education Officer (Male), Kohistan.....Respondents.

**SERVICE APPEAL UNDER SECTION 4
OF KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER NO.12882-84 DATED
01.12.2015 ISSUED BY RESPONDENT NO.3
WHEREBY MAJOR PENALTY OF
REMOVAL FROM SERVICE WAS
IMPOSED UPON THE APPELLANT
W.E.F. 01.04.2015.**

Filed to-day
Registrar
11/11/16

PRAYER:-

On acceptance of the instant appeal, the impugned order dated 01.12.2015 issued by the respondent No:3 may please be set aside being illegal and the appellant be reinstated into service with all back benefits.

Re-submitted to -day
and filed.

Registrar
25/11/2016

Respectfully Sheweth!

1. That, the appellant was appointed as Primary School Teacher (PST) on 03.12.2006, since then, the appellant had been performing his duties at posted schools regularly.
2. That, due to enmity in the area, the appellant applied for extra ordinary leave without pay which was duly sanctioned by competent authority/respondent No.3 vide order dated 24.06.2014 and the said leave was granted with effect from 01.06.2014 to 03.03.2015 (10 months) as admissible under leave rule 1981.

(Copy of the order dated 24.06.2014 is annexed as annexure "A").

3. That, the appellant reported to respondent No.3 on 03.03.2015 and started his duties at posted school.
4. That, as the appellant was at dagger drawn/enmity in the area and he was completely unable to move freely to perform his duties at posted school because the said school was located

in the area where the appellant was at enmity, due to which, he again applied for leave to respondent No.3 which was not responded and in the meanwhile respondent No.3 without issuing any show cause notice imposed major penalty from removal from service vide impugned order dated 01.12.2015.

(Copies of application and impugned order are annexed as annexure "B&C" respectively).

5. That, the appellant has been allegedly removed from service on the ground of being abroad but it is totally baseless and without initiating proper inquiry into the matter/allegation, the appellant was removed from service in a slip shod manner which is unwarranted under the law and natural justice.
6. That, being aggrieved from the impugned order dated 01.12.2015, the appellant preferred a departmental appeal on 27.12.2015 which was rejected by respondent No.2/Appellate Authority on 18.07.2016 but it was never communicated to the appellant and the appellant got the same from the

office of respondent No.2 on 07.11.2016 when he had gone to inquire into the fate of his departmental appeal.

(Copies of departmental appeal and order dated 18.07.2016 are annexed as annexure "D" & "E").

7. That, feeling aggrieved, the appellant having no other remedy except to file the instant appeal for his reinstatement into service, inter alia, on the following grounds: -

GROUND

- a. That, no show cause notice was ever issued to the appellant nor he was provided an opportunity of personal hearing before the imposition of major penalty of removal from service.
- b. That, no inquiry into the alleged allegations mentioned in the impugned order dated 01.12.2015 was ever initiated and without inquiry/evidence, major penalty of removal from service was imposed which was unwarranted in the

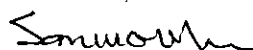
circumstances of the case and against the concept of proportionality.

- c. That, the charges against the appellant were never proved despite this, the appellant was removed from service in a slip shod manner and without observing the legal formalities on the subject.
- d. That, the fact of serving show cause notice upon the appellant as claimed in the impugned order is totally false because no show cause notice whatsoever, was ever served upon the appellant before taking action in the shape of impugned order dated 01.12.2015.
- e. That, the appellant never went abroad as alleged in the impugned order and to prove this fact, respondent No.3 was under obligation to initiate proper inquiry, provide personal hearing to the appellant and then, after proving the charges in accordance with law, the impugned order should have been passed but here in the case in hand, otherwise has been done which is unwarranted under the law.

- f. That, even preliminary inquiry was never initiated and the appellant has unblemished service career and major penalty of removal from service has been imposed upon him without observing legal formalities resulting into grave miscarriage of justice.
- g. That, the impugned order on its very face value, is illegal, unwarranted and against the concept of natural justice.

It is, therefore, very humbly prayed that on acceptance of the instant appeal, the impugned order dated 01.12.2015 issued by the respondent No.3 may please be set aside being illegal and the appellant be reinstated into service with all back benefits.

Dated 08.11.2016


Sanwar Khan
...Appellant

Through

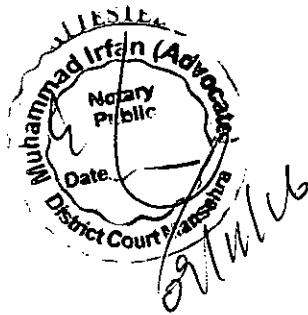

ABDUL SABOOR KHAN,
Advocate High Court,
Mansehra.

AFFIDAVIT.

I, Sanwar Khan son of Zardad Khan, PST, Maktub School Kolai Battaira, Tehsil Palas, District Kohistan, Appellant, do hereby solemnly affirm and declare on oath that the contents of the foregoing service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

Dated 08.11.2016

Sanwar Khan
Sanwar Khan
(DEPONENT)



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

C.M No. _____ of 2016

IN

Service Appeal No. _____ of 2016

Sanwar KhanAppellant

VERSUS

The Secretary, Elementary and Secondary
Education, Peshawar etc.....Respondents

SERVICE APPEAL

**APPLICATION UNDER SECTION 5 OF
LIMITATION ACT, 1908 FOR CONDONATION
OF DELAY IN FILING THE ABOVE-
TITLED APPEAL.**

Respectfully Sheweth!

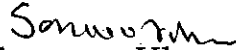
1. That, this application may please be considered as part and parcel of the above-titled appeal.
2. That, the departmental appeal of the appellant was rejected vide order dated 18.07.2016 and it was never communicated to the appellant. On 07.11.2016, the appellant went to the office of Director Elementary and Secondary Education, Peshawar to inquire into the fate/decision of his departmental appeal where he was

informed that it was rejected on 18.07.2016 and the appellant got the copy of the order on 07.11.2016 from the office of Appellate Authority.


3. That, there is a delay of about 03 months and 20 days in filing the instant appeal as the appellant was not communicated/provided the copy of the order of rejection of his departmental appeal in time and he got the same from the office of Appellate Authority on 07.11.2016 so, there is a sufficient cause for the condonation of delay.
4. That, fundamental rights of the appellant are involved and in the circumstances of the case, the delay in filing the instant appeal is liable to be condoned off.

It is, therefore, very humbly prayed that on acceptance of the instant appeal, delay of about 03 months and 20 days in filing the instant appeal, may please be condoned off and the appeal of the appellant may please be decided on merits.

Dated 08.11.2016


Sanwar Khan
...Appellant

Through

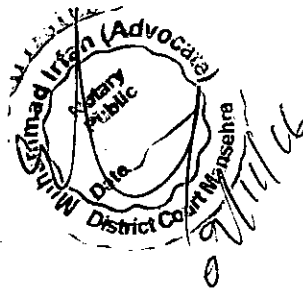

ABDUL SABOOR KHAN,
Advocate High Court,
Mansehra.

AFFIDAVIT

I, Sanwar Khan son of Zardad Khan, PST, Maktub School Kolai Battaira, Tehsil Palas, District Kohistan, Appellant, do hereby solemnly affirm and declare on oath that the contents of the foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

Dated 08.11.2016

Sanwar Khan
Sanwar Khan
(DEPONENT)



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

Service Appeal No. _____ of 2016

Sanwar KhanAppellant

VERSUS

The Secretary, Elementary and Secondary
Education, Peshawar etc.....Respondents

SERVICE APPEAL

CORRECT ADDRESSES OF THE PARTIES

APPELLANT

Sanwar Khan son of Zardad Khan, PST,
Maktub School Kolai Battaira, Tehsil Palas,
District Kohistan.


RESPONDENTS

1. The Secretary, Elementary and Secondary
Education, Peshawar.
2. The Director, Elementary and Secondary
Education, Peshawar.
3. The District Education Officer (Male),
Kohistan.

Dated 08.11.2016

Sanwar Khan
Sanwar Khan
...Appellant

Through


ABDUL SABOOR KHAN,
Advocate High Court,
Mansehra.

Handwritten signature and date: 8/11/14

P. 12

OFFICE OF THE DISTRICT EDUCATION OFFICER, (MALE) KOHISTAN.

Ph: & Fax No. 0998 071233

Annex A

SANCTION

Sanction is hereby accorded to the grant of extra ordinary leave without pay in respect of Mr. Sunwar Khan Pst GMPS Kolai w.e.f 01/06/2014 to 31/03/2015 (Ten Month) as admissible to him under leave rule 1981.

Note:-

- 1. Entry to this effect may be made in his service book as well as leave accounts.
- 2. The pay of official may also be stopped.

Handwritten signature
District Education Officer
(Male) Kohistan.

E/N 10/Estab: 739-4 DEO (M) KH:

Dated: 21/06/2014.

Copy of the above forwarded to:

- 1. PA to Director, Elementary and Secondary Education KPK Peshawar.
- 2. District Account Officer Kohistan.
- 3. Sub-Divisional Education Officer (M) Kohistan.
- 4. Mr. Sunwar Khan Pst GMPS Kolai.

Handwritten signature
District Education Officer
(Male) Kohistan.

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Approved
g
9/11/14

P
Annex
13
A

OFFICE OF THE DISTRICT EDUCATION
OFFICER (MALE), KOHISTAN

SANCTION.

Sanction is hereby accorded to the grant of extra ordinary leave without pay in respect of Mr. Sanar Khan Pst GMPS Kolai w.e.f. 01.06.2014 to 03.03.2015 (Ten Month) as admissible to him under leave rule 1981.

Note: -

1. Entry to this effect may be made in his service book as well as leave accounts.
2. The pay of official may also be stopped.

Sd/-

*District Education Officer
(Male) Kohistan.*

E/N-10/Estab/2739-4/DEO(M) KH: Dated 24.06.2014

Copy of the above forwarded to:

1. PA to Director Elementary and Secondary Education KPK Peshawar.
2. District Account Officer Kohistan.
3. Sub-Divisional Education Officer (M) Kohistan.
4. Mr. Sanwar Khan Pst GMPS Kolai.

Sd/-

*District Education Officer
(Male), Kohistan.*

لکھنؤ
8/4/16

بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ) ضلع کوہستان

Annex (B)

عنوان: درخواست برائے توسیع چھٹی بغیر تنخواہ۔

جناب عالی! درخواست ذیل پیش ہے۔

(۱) یہ کہ سائل کی Extra ordinary leave بروئے حکم نمبری
2739-4/DEO(M) KH: مورخہ 24.06.2014 کے تحت
مورخہ 03.03.2015 کو ختم ہو رہی ہے۔

(۲) یہ کہ سائل علاقہ میں قتل مقابلے کی دشمنی کی وجہ سے اور سکول بھی اسی علاقہ
میں واقع ہونے کی وجہ سے اپنی ڈیوٹی سرانجام دینے سے قاصر ہے۔ بدیں
وجہ ان حالات کو مد نظر رکھتے ہوئے سائل کی یا تو چھٹی میں توسیع فرمائی
جائے یا سائل کو کسی دیگر جگہ پر ٹرانسفر کیا جائے۔

لہذا استدعا ہے کہ درخواست ہذا پر ہمدردانہ غور فرماتے ہوئے مناسب
کارروائی فرمائی جائے۔

المترقوم 30.02.2015

سنور خان

سنور خان وول زرداد خان (PST) مکتب سکول کولہی بیٹوہ ضلع کوہستان
سائل.....

P. 15

Annex C

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) KOHISTAN

OFFICE ORDER FOR REMOVAL FROM SERVICE

Sanawar Khan PST M/S Koluli Batiara.

As per report of SDEO (M) Kohistan you was appointed as PST w.e.f 03/12/2003.

Whereas you applied for FOL w.e.f 01/06/2014 to 31/03/2015.

Whereas as per report of circle ASDLO, you did not report your arrival after the expiry of above till date.

Whereas as on enquiring it found that you are abroad.

Whereas a showcause notice was served to you but you failed to reply, final showcause notice was also served but with no result, you was called for personal hearing but you did not come to office for your defence, that clearly indicates that you are abroad.

As result of will full long absence and traveling abroad without any departmental permission / ROC / Without Ex-Pakistan leave / without bringing the matter in the notice of department.

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

As a result of above mentioned facts, I Masat Khan DFO (M) Kohistan being a competent Authority is fully satisfied to impose upon you, the major penalty of REMOVAL FROM THE SERVICE w.e.f. 01/04/2015

[Signature]
District Education Officer
(M) Kohistan

Endst. No. 12882-84 dt. 01/12/15
Copy of the above is forwarded to the:-

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

[Signature]
District Education Officer
(M) Kohistan

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P. (16)

ANNEX (C)

Handwritten signature and date: 2/11/16

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE), KOHISTAN

Office order for removal from service

Sanwar Khan PST M/S Koluli Battaira.

As per report of SDEO(M) Kohistan you was appointed as PST w.e.f. 03.12.2006.

Whereas you applied for FOL w.e.f. 01/06/2014 to 31.03.2015.

Whereas as per report of circle ASDEO, you did not report your arrival after the expiry of leave till date.

Whereas on enquiring it found that you are abroad.

Whereas a show cause notice was served to your but you failed to reply, final showcause notice was also served but with no result, you was called for personal hearnig but you did not came to office for your defense, that clearly indicates that you are abroad.

As result of will full long absence and traveling abroad without any departmental permission/NOC/Without Ex-Pakistan leave/without bringing the matter in the notice of department.

Whereas you have concealed the facts/cheat/misuse the department.

As a result of above mentioned facts, I Riasat Khan DEO(M) Kohistan being a competent Authority is fully satisfied to impose upon you, the major penalty of REMOVAL FROM THE SERVICE w.e.f. 01.04.2015.

*Sd/-
District Education Officer
(M) Kohistan.*

Endst. No.2882-84 dated 01.12.2015

Copy of the above is forwarded to the: -

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

*Sd/-
District Education Officer,
(M) Kohistan.*

لکھنؤ
پستل

P-17

خدمت جناب ڈائریکٹر صاحب محکمہ ایلینٹری اینڈ سیکنڈری ایجوکیشن پشاور خیبر پختونخوا کابل ۱۹
عنوان: درخواست برادر بھائی پی ایس ٹی (PST) پوسٹ

جناب عالی!

گزارش کی جاتی ہے کہ ساکس گاؤں بیڑہ تحصیل پالس ڈسٹرکٹ کوستان کارپاشی و سکوتی باشندہ ہے۔ ساکس بحیثیت PST سال 2006ء میں بھرتی ہوا ہے۔ ساکس اپنے فرائض منصبی بطریق احسن سرانجام دے رہا تھا کہ سال 2015ء میں گھریلو دشمنی کی بناء پر ڈیوٹی دینے سے قاصر ہوا اور ساکس نے عرصہ ایک سال کے لئے چھٹی لی۔ لیکن عرصہ ایک سال کے بعد بھی گھریلو مسئلہ حل نہ ہو پایا جس کی وجہ سے ساکس ڈیوٹی پر حاضر ہونے سے قاصر رہا۔ دریں اثنا ساکس کو بوجہ غیر حاضری نوکری سے برخواست کیا گیا۔ ساکس نے اپنی برخاستگی کے احکامات کے خلاف آپ جناب کے خدمت میں بحالی کے لئے اپیل جمع کرائی۔ لیکن ساکس کو باوثوق ذرائع سے معلوم ہو کہ ساکس کے اپیل کو بوجہ ملک سے باہر ہونے کے خارج کیا گیا ہے۔ اور ساکس کے درخواست پر کوئی شنوائی نہیں ہوئی۔

جناب عالی!

ساکس کا گھریلو تنازعہ اب حل ہو چکا ہے اور ساکس پھر سے گاؤں میں رہائش پذیر ہے۔ ساکس کے ذمہ اپنے خاندان کی کفالت کا بوجھ ہے اور ساکس ایک غریب خاندان سے وابستہ میروڈ گارنٹ ہے۔ ساکس پر لگا ہو ملک سے باہر جانے کا الزام ہے بنیاد ہے اور اس میں کسی قسم کی کوئی صداقت نہیں ہے۔ ساکس عرض گزار ہے کہ اس سلسلے میں دوبارہ انکو نوکری کرائی جائے اور مسئلہ کی نوعیت کو واضح ہونے کے بعد دوبارہ اپنے پوسٹ پر بحال کیا جائے۔ ساکس تاحیات دعا گو رہے گا۔

العارض

سنور خان

سنور خان ولد زرداد خان (PST)

مکتب سکول کولائی بیڑہ

گاؤں بیڑہ تحصیل پالس ضلع کوستان

موبائل نمبر: 0345-6003630

۲۷-۱۲-۲۰۱۵

Accepted
19/11/16

P.
ANNA

18
E

DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA

ORDER.

1. WHEREAS, Mr. Sanwar Khan PST M/S Koluli Batiara District Kohistan proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011.
2. AND WHEREAS the above named teacher applied for Extra Ordinary leave wef 01.06.2014 to 31.03.2015. The teacher concerned did not report for duty after the expiry of leave. At the time of enquiry he was serving abroad.
3. AND WHEREAS, A show cause notice was served upon him and final show cause was also served upon him ^{but} in vain.
4. AND WHEREAS, the competent authority served a major penalty of removal from service w.e.f. 01.04.2015.
5. AND WHEREAS, the above named teacher lodged an appeal to the appellate authority. The same appeal was sent to DEO (M) Kohistan for comments vide this office letter No.6044 dated 26.05.2016. The DEO (M) Kohistan submitted his report /comments vide his letter No.3029 dated 03.06.2016.
6. 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.
7. 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. Sanwar Khan PST M/S Koluli Batiara District Kohistan on the above mentioned ground.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 1193-95 /F No. 162/Vol: II/Removal from Service/PST/TT/AT/Qari (M)
Dated Peshawar the 19/11 2016.

Copy forwarded for information and necessary action to the:-

1. District Education Officer (M) Swabi w/r his No.3029 dated 03.06.2016.
2. Mr. Sanwar Khan PST M/S Koluli Batiara District Kohistan
3. P/A to Director E&SE, Khyber Pakhtunkhwa, Peshawar.
4. Master File.

19/11/16
Deputy Director (Estb.)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.

وکالت نامہ

P. 19

K.P.K Service Tribunal Rehaver بعدالت جناب
 دعویٰ یا ترمیم
 Service appeal

Sanam Khan نام Govt of K.P.K through Secretary Education etc
 Appellant منجانب

باعث تخریب آنکہ

K.P.K Service Tribunal

عبدالعزیز بن سید سید علی گورکھ صاحب ایس ایف ایف ایف

اندریں مقدمہ عنوان میں اپنی طرف سے برائے بیرونی وجوہ دی بہ مقام
 کو بدیں شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا اور بوقت پکارے
 جانے وکیل صاحب موصوف کو اطلاع دیکر حاضر کروں گا اگر کسی پیشی پر مظہر حاضر نہ ہوا اور غیر حاضری کی وجہ سے کسی طور
 پر مقدمہ میرے خلاف ہو گیا تو وکیل صاحب اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب صدر مقام کچہری کے علاوہ
 کسی اور جگہ کچہری کے مقررہ اوقات سے پہلے یا بروز تعطیل بیرونی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ مقام کچہری کے علاوہ
 کسی اور جگہ سماعت ہو یا کچہری کے اوقات کے آگے یا پیچھے سماعت ہونے پر مظہر کو کوئی نقصان پہنچے تو صاحب موصوف ذمہ دار
 نہ ہوں گے اور صاحب موصوف کو عرضی اور درخواست اجراء ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست و
 بیان غلطی و تصدیق کرنے اور اس پر دستخط کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کاروبار وصول
 کرنے اور رسید دینے اور داخل کرنے کا ہر قسم کا بیان دینے اور سپردنہاشی و راضی نامہ و دستبرداری و اقبال دعویٰ کا اختیار بھی ہوگا
 اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا نظر فرسودہ درخواست حکم امتناع یا فیصلہ قبل از ڈگری و اجراء ڈگری بھی وکیل
 صاحب کو بشرط ادا ہوگی علیحدہ محتاتاً ادا کرنے کا مجاز ہوگا اور بصورت ضرورت بدوران مقدمہ یا اپیل و نگرانی کسی دوسرے وکیل یا
 بیرونی کو بجائے خود یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے وکیل
 صاحب موصوف کو "پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب وکیل موصوف کو پورا اختیار ہوگا کہ مقدمہ کی بیرونی
 نہ کریں اور ایسی حالت میں میرا مطالبہ وکیل صاحب موصوف کے برخلاف نہیں ہوگا" مجھے کل ساختہ پر داختم وکیل مثل ذات
 خود منظور و قبول ہوگا۔ لہذا وکالت نامہ لکھ دیا ہے تاکہ سند ہے۔ مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

مورخہ 08.11.2016ء

Sanam

ATTESTED & ACCEPTED

8/11/16
 ADVOCATE MANSEHRA

Sanam Khan of Sardar
 Pst m/s Kolia, Bahana, Tehsil
 Faldas District Kohistan
 (Appellant)

Sanam

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.
(CAMP COURT ABBOTTABAD)

APPEAL NO 1174 OF 2016

Sanwar Khan -----

Appellant

VERSUS

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

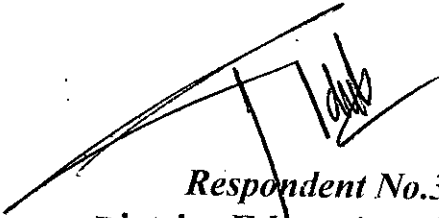
Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENT NO.1, 2,& 3.

INDEX

S#	Particulars of documents	Annexure	Pages
1	Comments along with affidavit		1-6
2	Copy of Leave Sanction Order	"A"	7
3	Copies of SDEO and ASDEO Reports	"B"	8-9
4	Copy of Show Cause Notice	"C"	10
5	Copy of final Show Cause Notice	"D"	11
6	Copy of Removal order	"E"	12
7	Copy of Appeal rejection by Director	"F"	13

Dated 28 -11-2016


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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.
(CAMP COURT ABBOTTABAD)

APPEAL NO 1174 OF 2016

Sanwar Khan

Appellant

VERSUS

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

Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENT NO.1, 2, &3

Respectfully Sheweth:

PRELIMINARY OBJECTIONS

- I. That the appellant did not come to this Honorable Court with clean hands.
- II. That the appellant has got no cause of action /locus standi to file the
Instant appeal
- III. That the appellant is estopped to sue through his own conduct
- IV. That the present appeal is not maintainable due to non-joinder and
mis-joinder of necessary parties.
- V. That the appellant has concealed the material facts from this Honorable
Court, hence appeal is liable to be dismissed without any further proceeding.
- VI. That the appellant has already been removed from Service after
Completion of all codal formalities vides DEO (M) Kohistan Office Endst:
No.12882-84 dated 01-12-2015, as well as Director E&SE KPK Endst:
No.1193-95 dated 19-07-2016; hence appeal is liable to be dismissed.
- VII. That the appeal is time bared hence not maintainable and liable to be
Dismissed
- VIII. That the appeal is time bared hence liable to be dismissed on this score
alone

Actual Objections:

1. Correct to the extent that the appellant was a PST teacher since 03-12-2006 and strongly denied regarding his service record to be unblemished
2. Correct to the extent that the appellant was granted extra ordinary leave without pay w.e.f. 01-06-2014 to 31-03-2015 (10Months) vide DEO (M) Office Endstt: No. 2739-43 dated 24-06-2014 **(Copy of Leave Sanction Order is annexed as annexure -A)**

As per report of SDEO (M) Kohistan and ASDEO Circle Palas the appellant did not join his duty after expiry of his EOL leave and willfully absented himself from the School w.e.f. 01-04-2015 04-05-2015 **(Copies of SDEO and ASDEO reports are annexed as annexure -B)**

Due to his long absence a show cause notice was served upon the appellant charging him Guilty of misconduct and willfull long absence from his duty **(Copy of show cause notice is annexed as annexure -C)** vide DEO (M) Office Endstt: No.7273 dated 19-05-2015, but the appellant neither submitted the reply of show cause notice nor attended his duty at the school, hence in the continuation of that show cause another final show cause notice was served upon him vide DEO (M) Office Endstt: No.1001 dated 06-07-2015 **(Copy of Final show cause notice is annexed as annexure -D)**, but the appellant did not reply this time again, and after inquiring it was found that the appellant was abroad

As a result of willfull long absence and travelling abroad without any departmental permission/NOC/ without Ex-Pakistan leave/ without bringing the matter in the notice of department and concealing the facts/ cheat/mis use the department, after fulfilling of all codal formalities the appellant was removed from service being a Competent Authority under Efficiency & Disciplinary rule 2011. Vide DEO (M) Kohistan Endstt: No.12882-84 dated 01-12-2015 with effect from 01-04-2015 **(Copy of Removal Order is annexed as annexure -E)**

As the charges and evidence on record against the concerned teacher have been proved, hence the departmental appeal of the appellant was also rejected by the Honourable Director E&SE KPK Peshawar Vide his Endst: No 1193-95 dated 19-07-2016 **(Copy of Appeal Rejection is annexed as annexure -F)**

3. Incorrect strongly denied that the charges and evidence on record against the concerned teacher have been proved, hence there is no question to perform further duty
4. Incorrect strongly denied that on no reply of show cause a final show cause notice was served upon him by DEO (M) Office Kohistan vide Endst: No.1001 Dated 06 -07-2015 and he was asked to submit his reply of the show cause notice within seven days, but the appellant neither reply to the show cause notices nor attended the office for personal hearing and lastly after fulfilling of all codal formalities the appellant was removed from service, being a Competent Authority under Efficiency & Disciplinary rule 2011. Vide DEO (M) Kohistan Endstt: No.12882-84 dated 01-12-2015 with effect from 01-04-2015
5. Incorrect strongly denied that as stated in the Para "2 & 4" above of factual objections
6. Incorrect strongly denied that a show cause notice was served upon the appellant charging him Guilty of misconduct and willfull long absence from his duty vide DEO (M) Office Endstt: No.7273 dated 19-05-2015, but the appellant neither submitted the reply of show cause notice nor attended his duty at the school, hence in the continuation of that show cause another final show cause notice was served upon him vide DEO (M) Office Endstt: No.1001 dated 06-07-2015, but the appellant did not reply this time again, and after inquiring it was found that the appellant was abroad further stated that the charges and evidence on record against the concerned teacher have been proved, hence the departmental appeal of the appellant was rejected by the Honourable Director E&SE KPK Peshawar Vide his Endst: No 1193-95 dated 19-07-2016 **(Copy of Appeal Rejection is annexed as annexure -F)**
7. Incorrect strongly denied that the charges and evidence on record against the concerned teacher have been proved, hence the appellant has not been aggrieved and seeks extra ordinary relief

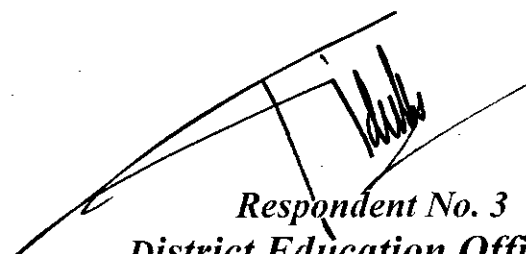
GROUNDS

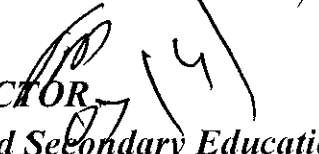
- a. Incorrect, strongly denied that the appellant removed from service after fulfilling of all codal formalities, as stated in Para 2 above of factual objections.
- b. Incorrect strongly denied as stated in Para 2 above of factual objections.
- c. Incorrect strongly denied that the appellant has been treated in accordance with law, where as he failed to reply the final show cause notices and a

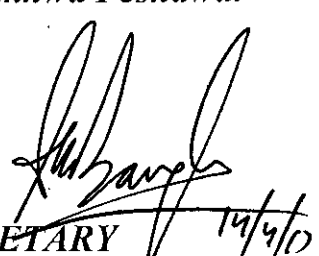
chance of personal hearing was also given to him but he did not attend the office to defend himself as stated in Para "2" above of factual objections.

- d. Incorrect strongly denied as stated in Para "2" above of factual objections
- e. Incorrect strongly denied that the appellant has been treated in accordance with law, after fulfilling of all codal formalities as stated in Para "2" above of factual objections.
- f. Incorrect strongly denied as stated in Para "2" above of factual objections.
- g. Incorrect strongly denied that all the show cause notices have been served upon the appellant through post/ by ASDEO Circle on his home and School address, but the appellant did not reply the show cause notice and also not attend the office for reply to another show cause notice and personal hearing, so lastly after fulfilling of all codal formalities the appellant was removed from service with retrospective effect by DEO (M) Kohistan being a Competent Authority under Efficiency & Disciplinary rule 2011.vide Endost No.12882-84 dated 01-12-2015, with effect from 01-04-2015

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


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


DIRECTOR,
Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar


SECRETARY
Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar
14/4/15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.
(CAMP COURT ABBOTTABAD)

APPEAL NO 1174 OF 2016

Sanwar Khan

Appellant

VERSUS

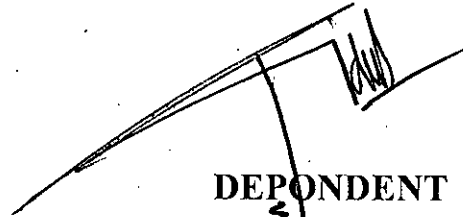
1. Govt of Khyber Pakhtunkhwa through Secretary
Elementary Secondary Education Peshawar
2. Director Elementary & Secondary Education KPK Peshawar
3. District Education Officer (Male) Kohistan.

Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENT NO.1, 2, & 3

AFFIDAVIT

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


DEPONENT



16A

OFFICE OF THE DISTRICT EDUCATION OFFICER, (MALE) KOHISTAN.

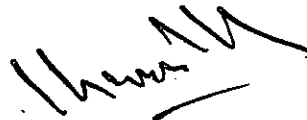
Ph: & Fax No.0998407128

SANCTION.

Sanction is here by accorded to the grant of extra ordinary leave without pay in respect of Mr. Sunwar Khan Pst GMPS Kolai w.e.f 01/06/2014 to 31/03/2015 (Ten Month) as admissible to him under leave rule 1981.

Note:-

1. Entry to this effect may be made in his service book as well as leave accounts.
2. The pay of official may also be stopped.

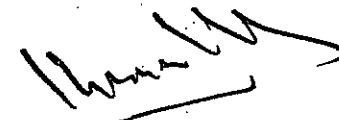

District Education Officer
(Male) Kohistan.

E/N.10/Estab./-2739-43 DEO (M) KH:

Dated 24/06/ /2014.

Copy of the above forwarded to:

1. PA to Director Elementary and Secondary Education KPK Peshawar.
2. District Account Officer Kohistan.
3. Sub-Divisional Education Officer (M) Kohistan.
4. Mr. Sanwar Khan Pst GMPS Kolai.


District Education Officer
(Male) Kohistan.

"B"

To

The DFO (M)
Rawatstan:

Sub: Absent Report & Final decision:
IRO Sanwar Khan PST SPS Kotali (Bates)

Memo:

The teacher failed to submit reply of showcause notice as he is wilfully absent w.e from 01-04-2015 to date

It is further added that reliable sources told that he is serving abroad. Final showcause has already been issued now please ~~take~~ take further step to dispose off the case.

Mamnoon
SDEO (M)

صا - SDE لاء روزانہ نوٹس

عنوان: - ایجوکیشنل آفیسر، حسی سکول، PST
Emps کلک -

ضابطہ عالی
حسی سکول، PST نوٹس

1-5-2014 نو 3/2015 (10 مہینے)

Grand leave دفتر لاء 2739-43 نوٹس 24 مئی 2014

گھنٹہ بھر لیا۔ 4/1 سے اب تک غیر حاضر ہے۔
2015

حورف 5-15 سٹوڈنٹس لاء 7273 نوٹس جواب
2015

تیس دیات۔ حورف 7/8 لاء 1001 نوٹس
2015
سٹوڈنٹس لاء نوٹس جواب لیا۔

ایجوکیشنل آفیسر

Mufti Mahmood

ASDEO Palas.

04 05-2015

Assistant Sub Divisional
EDUCATION OFFICER
District Kohistan

cc C
OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) KOHISTAN

Email: emiskohistan@yahoo.com

Phone: 0998-407128

SHOW CAUSE NOTICE

I, Riasat Khan, District Education Officer, (Male) Kohistan, as competent authority under the Khyber Pakhtunkhwa Govt. Servants (E&D) Rules 2011, do hereby serve you, Sanaullah Khan JST as follows:

M/s Kulabi

That as per report of Sub Divisional Education Officer (M) /ASDEO (M) Kohistan you have committed the following acts/omissions specified in rule 3 of the said rules.

- c) Guilty of mis-conduct.
- d) Willful absent from your duty w.e.f. 13/5 to 13/5

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

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

If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

Ends: No. 7273 / Dated Kohistan the 13/5 /2015

Sir
SDEO not reply
Submitted
[Signature]

[Signature]
COMPETENT AUTHORITY

Nazim Hussain

Put up original
Serve both alle
wsi rakawul.

[Handwritten mark]

[Handwritten mark]
31910

CD

OFFICE OF THE DISTRICT EDUCATION OFFICER

(MALE) KOHISTAN

Phone # 0998-407128

FINAL SHOW CAUSE NOTICE

I, Riasat Khan District Education Officer (Male) Kohistan as competent authority under the Khyber Pakhtunkhwa Govt: servant (E&D) Rules 2011, do hereby serve you Sunwar Khan P.S.T

Final show cause notice as you not to submit reply of show cause notice served vide this office Endstt No: 7273 dated 19/05/2015

therefore you are directed to submit reply of final show cause notice within 7 days positively otherwise you will be removed from service.

Endstt; 1001 / Dated Kohistan The 06 / 7 / 2015

[Signature]
COMPE TENT AUTYORITY.

D/A
Post Hon
Sunwar Khan P.S.T
GRAMPS Kula Balistan
Village Karim Batarya
Teh. Pulus Distt: Kohistan

[Signature]

19/05/2015
[Signature]

"E"

(102)

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) KOHISTAN

OFFICE ORDER FOR REMOVAL FROM SERVICE

Sanawar Khan PST M/S Koluli Batiara.

As per report of SDEO (M) Kohistan you was appointed as PST w.e.f 03/12/2006.

Whereas you applied for EOL w.e.f 01/06/2014 to 31/03/2015.

Whereas as per report of circle ASDEO , you did not report your arrival after the expiry of leave till date.

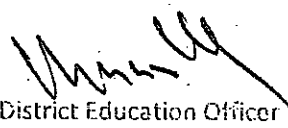
Whereas as on enquiring it found that you are abroad.

Whereas a showcause notice was served to you but you failed to reply, final showcause notice was also served but with no result, you was called for personal hearing but you did not come to office for your defence, that clearly indicates that you are abroad.

As result of will full long absence and traveling abroad without any departmental permission / NOC / Without Ex-Pakistan leave / without bringing the matter in the notice of department

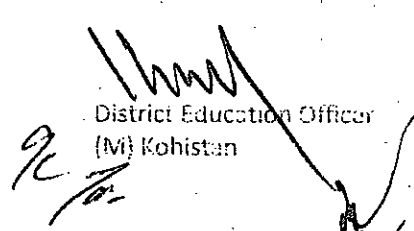
Whereas you have concealed the facts / cheat/ miss use the department.

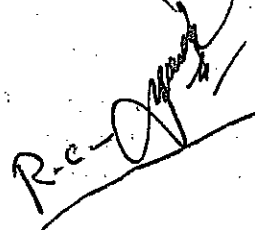
As a result of above mentioned facts, I Riasat Khan DEO (M) Kohistan being a competent Authority is fully satisfied to impose upon you, the major penalty of REMOVAL FROM THE SERVICE with w.e.f. 01/04/2015.


District Education Officer
(M) Kohistan

Endst ; No. 12882-84 dt. 01/12/15
Copy of the above is forwarded to the:-

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


District Education Officer
(M) Kohistan

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Anwar

DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA

ORDER.

1. WHEREAS, Mr. Sanwar Khan PST M/S Koluli Batiara District Kohistan proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011.
2. AND WHEREAS the above named teacher applied for Extra Ordinary leave wef 01.06.2014 to 31.03.2015. The teacher concerned did not report for duty after the expiry of leave. At the time of enquiry he was serving abroad.
3. AND WHEREAS, A show cause notice was served upon him and final show cause was also served upon him ^{but} in vain.
4. AND WHEREAS, the competent authority served a major penalty of removal from service w.e.f. 01.04.2015.
5. AND WHEREAS, the above named teacher lodged an appeal to the appellate authority. The same appeal was sent to DEO (M) Kohistan for comments vide this office letter No.6044 dated 26.05.2016. The DEO (M) Kohistan submitted his report /comments vide his letter No.3029 dated 03.06.2016.
6. 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.
7. 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. Sanwar Khan PST M/S Koluli Batiara District Kohistan on the above mentioned ground.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 1193-95 /F No. 162/Vol: II/Removal from Service/PST/TT/AT/Qari (M)
Dated Peshawar the 19/7 2016.

Copy forwarded for information and necessary action to the:-

1. District Education Officer (M) Swabi w/r his No.3029 dated 03.06.2016.
2. Mr. Sanwar Khan PST M/S Koluli Batiara District Kohistan
3. P/A to Director E&SE, Khyber Pakhtunkhwa, Peshawar.
4. Master File.

Deputy Director (Estb.)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.
19/7/16