


FORM OF ORDER SHEET

Court of _____

Appeal No. _____

641/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1.	2	3
1-	09/05/2024	<p>The appeal of Mr. Muhammad Nabi presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 13.05.2024. Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal NO. _____/2024

M. Nabi

VS GOVT. OF KPK & OTHERS

APPLICATION FOR FIXATION OF THE ABOVE TITLED *Appeal* AT
PRINCIPAL SEAT, PESHAWAR

Respectfully Sheweth:

1. That the above mentioned *Appeal* is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
2. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.
3. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.
4. That any other ground will be raised at the time of arguments with the permission of this Hon'ble tribunal.

It is therefore prayed that on acceptance of this application the _____ may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Appellant/Applicant

Dated: 09/05/24

Through


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO 641 / 2024

MUHAMMAD NABI

v/s

EDUCATION DEPTT:

INDEX

S. NO.	DOCUMENTS	ANNEX	PAGE
1.	Memo of appeal with affidavit	1-3
2.	Copy of the Appointment Order dated 19/12/2008	A	4
3.	Copy of the order dated 09/09/2021	B	5
4.	Copy of Departmental Appeal and Rejection Letter dated 05/09/2022	C&D	6-7
5.	Copy of grounds of appeal and order dated 30/10/2023	E&F	8-14
6.	Copy of the order dated 28/12/2023	G	15
7.	Copy of departmental appeal	H	16
8.	Copy of the Duty Certificate	I	17
9.	Copy of the judgment	J	18-22
10.	Vakalat Nama	23

Dated: -04-2024

APPELLANT

THROUGH:


NOOR MUHAMMAD KHATTAK,
ADVOCATE SUPREME COURT

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO 641 / 2024

Muhammad Nabi, Chowkidar (BPS-01),
GGPS, Sigloo Seo, Kohistan.

..... APPELLANT

VERSUS

- 1- The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 2- The District Education Officer (F), District Kohistan, Khyber Pakhtunkhwa

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 28/12/2023, WHEREBY THE APPELLANT WAS REINSTATED INTO SERVICE W.E.F 24/11/2023 INSTEAD OF W.E.F. 9.9.2021 AND THE INTERVENING PERIOD W.E.F 09/09/2021 TO 23/11/2023 (805 DAYS) WAS TREATED AS EXTRA ORDINARY LEAVE WITHOUT PAY (EOL) AND AGAINST THE INACTION OF THE RESPONDENT BY NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the impugned order dated 28/12/2023 may very kindly be modified/rectified to the extent of back benefits of intervening and the respondent may kindly be directed to treat the intervening period w.e.f 09/09/2021 to 23/11/2023 (805 days) period spent on duty with all consequential back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

1. That the appellant was appointed as Chowkidar in the respondent department vide order dated 19/12/2008 after fulfilling all the legal & codal formalities required for the post. Copy of the Appointment Order dated 19/12/2008 is attached as annexureA

2. That after posting in GGPS Saglo Seo, Kohistan the appellant took over the charge of his post and started performing duty with full devotion.
3. That the appellant started performing his duty quite efficiently, whole heartedly and to the entire satisfaction of his high ups.
4. That astonishingly the appellant was compulsory retired from his service vide order dated 09/09/2021 without any lawful justification and without fulfilling the codal formalities. Copy of the order dated 09/09/2021 is attached as annexure.....B
5. That the appellant filed departmental appeal against the order dated 09/09/2021 to the respondent but was rejected by the respondents vide appellate order dated 05/09/2022 without any good reason. Copy of Departmental Appeal and Rejection Letter dated 05/09/2022 are attached as annexure.....C&D
6. That appellant feeling highly aggrieved from the said order as well as from the appellate order, filed Service Appeal No 1372/2022, which was decided appeal of the appellant in his favour vide judgment dated 30/10/2023. Copy of grounds of appeal and Judgment/order dated 30/10/2023 are attached as annexure.....E&F
7. That the respondent department in compliance with the Judgement of this Hon`ble tribunal has reinstated the appellant vide order dated 28/12/2023 besides treating the intervening period w.e.f 09/09/2021 to 23/11/2023 (805 days) as Extra Ordinary Leave without Pay. Copy of the order dated 28/12/2023 is attached as annexure.....G
8. That although the appellant was reinstated in service however remained aggrieved from the said order to the extent of treating the intervening period i.e. w.e.f 09/09/2021 to 23/11/2023 (805 days) as Extra Ordinary Leave without Pay which is a impugned one, hence preferred departmental appeal which yielded no fruit despite lapse of statutory period of ninety days. Copy of departmental appeal is attached as annexure.....H
9. That now the appellant feeling aggrieved from the impugned order dated 28/12/2023 and having no other remedy but to file the instant appeal on the following grounds amongst the others.

GROUND:






- A- That impugned order dated 28/12/2023 as he was reinstated into service, but intervening period w.e.f 09/09/2021 to 23/11/2023 (805 days) was considered as Extra Ordinary Leave Without Pay

is against the law, facts and norms of natural justice, hence not tenable in the eyes of law, and is liable to be set aside.

- B- That appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the Headmistress of the appellant's school has issued Duty Certificate to the appellant for good performance. Copy of the Duty Certificate is attached as annexure.....I
- D- That, the respondents acted in an arbitrary and malafide manner while issuing impugned order dated 28/12/2023.
- E- That the impugned order dated 28/12/2023 is against the law and precedents of the superior courts.
- F- That as per judgment of the larger bench of this august tribunal, if the civil servant is not gain fully employed during the intervening period, then the civil servant upon re-instatement is entitled for the grant of back benefits of the intervening period. Copy of the judgment is attached as annexure.....J
- G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: -04-2024


APPELLANT
THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

UMAR FAROOQ MOHMAND

WALEED ADNAN

MAHMOOD JAN
ADVOCATES HIGH COURT

AFFIDAVIT

I, Muhammad Nabi, Chowkidar (BPS-01), GGPS, Sigloo Seo, Kohistan, do hereby solemnly affirm and declare on oath that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble tribunal.


DEPONENT

PA
4-

NOTATIONS

The above mentioned E&S Health Surveys from EDO Kohistan dated 19/10/2019 are hereby
Classified

Executive District Officer
E&S Education Kohistan

Sl. No. 19/10-21 Date: Kohistan, 19/10/2019

- 1. District Director Schools & LHS NWFP Peshawar
- 2. District Nazim Kohistan
- 3. District Coordination Officer Kohistan
- 4. District Accounts Officer Kohistan
- 5. D.O. (F) E&S Education Kohistan.
- 6. Candidate concerned.

Executive District Officer
E&S Education Kohistan

Better copy 4

OFFICE OF THE EXECUTIVE DISTRICT OFFICER
ELEMENTARY & SECONDARY EDUCATION, KOHISTAN

APPOINTMENT:

Consequent upon the recommendation of District Selection Committee of Department Mr. Muhammad Nabi S/O Jamdad R/O Saglo Seo, Kohistan is hereby appointed as Chowkidar in GGPS Sagleo Seo Kohistan against the vacant post in BPS-1 (Rs.2980-90-5670) plus usual allowance as due and admissible under the rules with immediate effect in the interest of public service, subject to the following conditions.

CONDITIONS:

1. Charge report should be submitted to all concerned.
2. No TA/DA is allowed to him
3. His appointments is purely on temporary basis and liable to termination at any time without assigning any reason/notice.
4. He will be governed by such rules & regulation enforced and as prescribed by the Government servants to which he belong.
5. In case the above candidate failed to assume the charge of his post within 15-days, his appointment will automatically stand cancelled.
6. He should not be allowed to take over charge if his age is less than 18-years and above 35-years.
7. He should produce Age & Health Certificate from EDO Health Kohistan before taking over Charge.

Executive District Officer
E & S Education Kohistan

Endst: No. 6266-71

DATED: 19/12/2008

**OFFICE OF DISTRICT EDUCATION, PESHAWAR
KOHISTAN**

- 5 - "B"

OFFICE ORDER CONCERNING DISCIPLINARY ACTION

- 01 WHEREAS as per the numerous complaints received to the undersigned through various means the following Chowddars remained absent from their duties without any prior permission or leave for several years.
- 02 WHEREAS their schools remained closed/Non-functional during the repeated visits of EVA
- 03 WHEREAS they were reported absent by EMA time and again during the visits of the concerned DG/As.
- 04 WHEREAS they did not take attendance in the school registers at their home.
- 05 WHEREAS the concerned ASDEOs were directed to verify their absenteeism.
- 06 WHEREAS the concerned ASDEOs confirmed/verified their absenteeism as per their report.
- 07 WHEREAS show cause notices were issued to them vide the references made against their names.
- 08 WHEREAS they failed to reply their show cause/Incomprehensible reply within the stipulated period.
- 09 WHEREAS they failed to avail the chance of personal hearing.

Therefore the undersigned being the competent authority, do hereby impose Major Penalty of Compulsory Retirement, upon the following Chowddars (under Rule 4(b) 2 of ESD Rules 2011) with immediate effect, in the interest of public service:

S.No.	Name of Teacher with designation	Name of School	Show cause reference	Remarks
01	Muhammad Nabil Chow	GGPS Sigloo	No.4152-57 dated:02/08/2021	
02	Aiah Khan Chow	GGPS Thood	No.4164-69 dated:02/08/2021	
03	Muhammad Kabir Chow	GGPS Karung	No.4182-87 dated:02/08/2021	
04	Imran Khan Chow	GGPS Taryab Abad	No.4217-22 dated:02/08/2021	

**MUHAMMAD AMIN
District Education Officer
(Female) Kohistan**

Order No: 1587-466 DEO (F) KH Dated: 09/09/2021

Copy of the above forwarded to the:

- 01-PS to Secretary, Elementary & Secondary Education Department KPT, Peshawar.
- 02-PA to Director, Elementary & Secondary Education KPT, Peshawar.
- 03- Deputy Commissioner, Kohistan Upper.
- 04- District Monitoring Officer, Kohistan Upper.
- 05- District Accounts Officer, Kohistan Upper.
- 06- SDEO/DDO (F) concerned with the directions to stop their pay and make necessary entries in the service books.
- 07- ASDEO Circle concerned.
- 08- PA to DEO (F) local office.
- 09- Teachers concerned.
- 10- O.M. File.

**District Education Officer
(Female) Kohistan**

Better copy S

OFFICE OF THE DISTRICT EDUCATION OFFICER KOHISTAN

OFFICE ORDER COMPULSORY RETIREMENT.

01. WHEREAS per the numerous complaint received to the undersigned through various means the following chowkidar remained absent from their duties without any prior permission of leave for several years.
02. WHEREAS their school remained close/non-functional during the repeated visits of EMA.
03. WHEREAS they were report absent by EMA time and again during the visits of concerned DCMAs.
04. WHEREAS they put their fake attendance in the school registers at their home.
05. WHEREAS the concerned ASDEOs were directed to verify their absenteeism.
06. WHEREAS the concerned ASDEOs confirmed/verified their absenteeism as per their report.
07. WHEREAS show cause notices were issued to them vide the references made against their names.
08. WHEREAS they failed to reply their show causes/inconvincible reply within the stipulated period.
09. WHEREAS they failed to avail the chance of personal hearing.

Therefore the undersigned being the competent authority do hereby impose Major Penalty of Compulsory Retirement upon the following Chowkidars under Rules 4(b) ii of E&D Rules, 2011 with immediate effect, in the interest of public service.

S.N	Name of Teacher with designation	Name of School	Show Cause	Remarks
1	Muhammad Nabi Chow	GGPS Siglo	No.4152-57 Dated:02/08/2021	
2	Ajab Khan Chow	GGPS Thootl	No.4164-69 Dated:02/08/2021	
3	Muhammad Kabir Chow	GGPS Karang	No.4182-87 Dated:02/08/2021	
4	Imran Khan Chow	GGPS Tayyab Abad	No.4217-22 Dated:02/08/2021	

MUHAMMAD AMN
District Education Officer
(Female) Kohistan

Endst: No. 4597-4606/DEO(F)KH

DATED: 09/09/2021

خدمتِ حجابی خاتون بیکٹس ایسٹڈ سینڈرائی ایجوکیشنل سوسائٹی
"C" - 6 -

دفعہ 5 - حکمانہ اپیل لہ خراف حکم مورخہ 09-09-2021
حجاب کی رو سے سائل کو نوکری سے لہ خرافت کیا گیا ہے

حجاب عالی!

موصبانہ لہ خرافت ہے۔ کہ سائل آئیے زیر سایہ صلح

کوستان میں لہ خرافت جو کیدار خدمات سے انجام دے رہا تھا۔ یہ کہ سائل نے

بعد از نقبتائی اپنی ڈیوٹی نیابت ایمانداری، خوش اسلوبی اور جان

فشان سے ادا کی ہے۔ اور تمام سروسز ریٹائرڈ میں سائل کے

خلاف نہ تو کوئی کمیشن ہوگی ہے۔ اور سائل کا تمام سروسز ریٹائرڈ

صاف ہے۔ یہ کہ لہ خرافت حکم مورخہ 09-09-2021 کو بعد کسی حکمانہ کارروائی

اور شوکار کے بغیر نوکری سے لہ خرافت نہ دیا گیا۔ جو کہ غیر قانونی غیر آئینی

اور غیر انصاف کے اصولوں کے خلاف ہے۔ حکم مذکورہ کے چاروں اصولوں

سے یہ سائل کسی ضمنی دفاع کا موقع بھی فراہم نہیں کیا۔ لہذا

وہ اس حکم زیر بحث بغیر قانونی ہے۔ اور قابل منسوخ ہے۔

لہذا استدعا کی جاتی ہے۔ کہ سائل کی حکمانہ اپیل کو منظور

فرمائے حکم مورخہ 09-09-2021 کو منسوخ فرما دیا جائے۔ اور سائل کو صلح نامہ

پر مہربانی / تنخواہ جاری نوکری لہ خرافت کے حکم لیا جائے۔ سائل تمام

حکم و قانون سے لگا۔

السلام

المرحومہ مورخہ 04-2-22

محمد نبی
محمد نبی

جو کیدار

سنگھو سبھو کوستان



'D' 7-10-22

7

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR
P.O. No. 291/A-20/C-19/Kohistan Vol-5-6
Dated Peshawar the 10/10/2022
Phone: (091-9225341) Email: ddndm.eso@gmail.com

The District Education Officer,
(Fazala) Kohistan.

Subject: APPEAL AGAINST REJECTION OF APPEAL

It is directed to refer to the subject cited above and to state that the appeal of Muhammad Nabi S/o Jamdad Ex-Chowkidar GGPS Saglo Kohistan Upper, Hajab Khan S/o Khusra Ex-Chowkidar GGPS Tayyab Abad Kohistan and Hajab Khan S/o Khan Badshah Ex-Chowkidar GGPS Thooti Kohistan & Muhammad Kabir Chowkidar have been examined/analyzed by this office hence inform the appellants concerned that their appeals have been rejected by the appellate authority.

Assistant Director (Admin)
Directorate of Secondary Education
Khyber Pakhtunkhwa, Peshawar

Copy forwarded to the:-

Muhammad Nabi S/o Jamdad Ex-Chowkidar GGPS Saglo Upper, Mr. Imran Khan S/o Khusra Ex-Chowkidar GGPS Tayyab Abad and Hajab Khan S/o Khan Badshah Ex-Chowkidar GGPS Thooti Kohistan Muhammad Kabir Chowkidar
PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
Master File.

2/10/22
Assistant Director (Admin)
Directorate of Secondary Education
Khyber Pakhtunkhwa, Peshawar

Better copy 7

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

No. _____/F.No.291/A-20/C-IV/Kohistan/Vol-5-6

Dated Peshawar the 05/09/2022

To,

The District Education Officer,
(Female) Kohistan.

Subject: APPEAL FOR RE-INSTATEMENT.

Memo:

I am directed to refer to the subject cited above and to state that the appeal in r/o Muhammad Naboli S/o Jamdad Ex-Chowkidar GGPS Saglo Kohistan Upper, Mr. Imran Khan S/o Khusra Ex-Chowkidar GGPS Tayyab abad Kohistan and Ajab Khan S/o Khan Badshah Ex-Chowkidar GGPS Thooti Kohistan & Muhammad Kabir Chowkidar has been examined/analyzed by this office. Hence inform the appellant concerned that their appeals have been rejected by the appellate authority.

Assistant Director (Admn)
Directorate E& Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 1265-66/

8

"E"

-2-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1372 /2022

MUHAMMAD NABI, Chowkidar (BPS-01),
GGPS, Sigloo Seo, Kohistan.

..... APPELLANT

VERSUS

- 1- The Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar
- 2- The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer (F), District Kohistan, Khyber Pakhtunkhwa, ~~Peshawar~~

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 09-09-2021 WHEREBY MAJOR PENALTY OF COMPULSORY RETIREMENT FROM SERVICE HAS BEEN IMPOSED UPON THE APPELLANT AND AGAINST THE APPELLATE ORDER DATED 05-09-2022 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED WITH NO GOOD REASONS.

PRAYER:

That on acceptance of this appeal the impugned order dated 09.09.2021 and appellate order dated 05.09.2022 may very kindly be set aside and the appellant may kindly be re-instated into service with all consequential back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

1. That the appellant was appointed as chowkidar in the respondent department vide order dated 19.12.2008 after fulfilling all the legal & codal formalities required for the post. Copy of the Appointment Order dated 19.12.2008 is attached as annexure

A.

2. That after posting in GGPS Saglo Seo, Kohistan the appellant took over the charge of his post and started performing duty with full devotion.
3. That the appellant started performing his duty quite efficiently, whole heartedly and to the entire satisfaction of his high ups.
4. That astonishingly the appellant was compulsory retired from his service vide impugned order dated 09.09.2021 without any lawful justification and without fulfilling the codal formalities. Copy of the Impugned order is attached as annexureB.
5. That the appellant filed departmental appeal against impugned order dated 09.09.2021 to the respondent but was rejected by the respondents vide appellate order dated 05.09.2022 without any good reason. Copy of Departmental Appeal and Rejection Letter are attached as AnnexureC & D.
6. That appellant feeling highly aggrieved and having no other remedy but to file the instant appeal on the following grounds amongst the others.

GROUND:

- A- That Impugned orders dated 09-09-2021 and 05.09.2022 issued by the respondents are void in nature, against the law, facts and norms of natural justice hence not tenable and are liable to be set aside.
- B- That appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the codal formalities required for the major penalty has not been fulfilled by the respondents while issuing the impugned orders dated 09-09-2021 and 05.09.2022.
- D- That, the respondents acted in an arbitrary and malafide manner while issuing impugned orders dated 09-09-2021 and 05.09.2022.
- E- That, no show cause notice has been issued before the issuance of the impugned orders.
- F- That no right of personal hearing and personal defense has been provided before the issuance of the impugned orders.

- 11 - (10)

G- That, no regular or fact-finding inquiry is conducted in the matter which is pre-requisite as per the judgments of the Apex Supreme Court of Pakistan in punitive matters.

H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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


Dated:


APPELLANT
MUHAMMAD NABI

THROUGH:


NOOR MUHAMMAD KHATTAK


WALEED ADNAN


UMAR FAROOQ MOMAND


MUHAMMAD AYUB

ADVOCATES

CERTIFICATE:

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


ADVOCATE

AFFIDAVIT

I, Muhammad Nabi s/o Jamdad r/o Siglo Seo, Tehsil Daso, District Kohistan do hereby solemnly affirm on oath that the contents of the above appeal are true and correct to the best of my knowledge and believe and nothing has been concealed from this Honorable Tribunal.


DEPONENT

11
A-B

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN
SALAH-UD-DIN ... MEMBER (JUDGE)

Service Appeal No.1372/2022

Date of presentation of Appeal.....20.09.2021
Date of Hearing.....30.10.2023
Date of Decision.....30.10.2023



Muhammad Nabi, Chowkidar (BPS-01), GGPS, Sigloo Sgo,
Kohistan(Appellant)

Versus

1. **The Secretary Elementary & Secondary Education Department,**
Khyber Pakhtunkhwa, Peshawar.
2. **The Director, Elementary & Secondary Education Department,**
Khyber Pakhtunkhwa, Peshawar.
3. **The District Education Officer (F), District Kohistan, Khyber**
Pakhtunkhwa.....(Respondents)

Service Appeal No.1373/2022

Date of presentation of Appeal.....20.09.2021
Date of Hearing.....30.10.2023
Date of Decision.....30.10.2023

Imran Khan Chowkidar (BPS-03), GGPS Tayeb Abad, District
Kohistan(Appellant)

Versus

1. **The Secretary Elementary & Secondary Education Department,**
Khyber Pakhtunkhwa, Peshawar.
2. **The Director, Elementary & Secondary Education Department,**
Khyber Pakhtunkhwa, Peshawar.
3. **The District Education Officer (F), District Kohistan, Khyber**
Pakhtunkhwa.....(Respondents)

ATTESTED

Service Appeal No.1374/2022

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of presentation of Appeal.....20.09.2021
Date of Hearing.....30.10.2023
Date of Decision.....30.10.2023

Hijab Khan, Ex-Chowkidar, GGPS, Thoti, Kohistan.....(Appellant)

12

Appeal No. 1375/2022 titled "Muhammad Kabir & others - The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others" received on 30.10.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Sabhat Ullah, Member, Judicial Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Versus

1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (F), District Kohistan, Khyber Pakhtunkhwa.....(Respondents)

Service Appeal No.1375/2022

Date of presentation of Appeal.....20.09.2021
 Date of Hearing.....30.10.2023
 Date of Decision.....30.10.2023

Muhammad Kabir, Ex-Chowkidar, GGPS, Karang, District Kohistan(Appellant).

Versus


1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (F), District Kohistan, Khyber Pakhtunkhwa.....(Respondents)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For appellants
 Mr. Asif Masood Ali Shah Deputy District AttorneyFor respondents

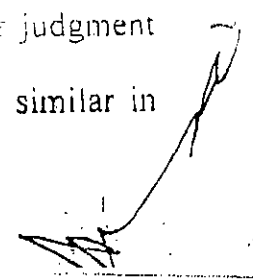
APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 09.09.2021 WHEREBY MAJOR PENALTY OF COMPULSORY RETIREMENT FROM SERVICE HAS BEEN IMPOSED UPON THE APPELLANTS AND AGAINST THE APPELLATE ORDER DATED 05.09.2022 WHEREBY THE DEPARTMENTAL APPEALS OF THE APPELLANTS HAVE BEEN REJECTED.

ATTESTED


 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment all the above four appeals are going to be decided as all are similar in



13

Service Appeal No.1372/2022 filed "Muhammad Nahi & others -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others", declared on 30.10.2023 by Division Bench comprising of Mr. Iqbal Ahmad Khan, Chairman and Mr. Saif-Ul-Umri Member Judicial Khyber Pakhtunkhwa Service Tribunal, Peshawar

nature and almost with the same contentions, therefore, all can conveniently be decided together.

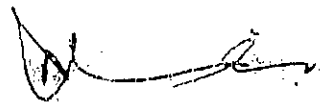
2. The appellants' cases in brief are that appellants were appointed and were serving in the Education Department as Chowkidars. In the meanwhile, they were compulsorily retired from service vide order dated 09.09.2021. Feeling aggrieved of the said impugned order, they filed departmental appeals, but the same were rejected, hence, the present service appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order.

6. It appears from the impugned order dated 09.09.2021 that the appellants were compulsorily retired from service on the basis of alleged absence from duty, reported by the Education Monitoring Authority (EMA). The same
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
appears that there are some flaws in it. There is nothing available on the files which could show that any inquiry was conducted, whereas, the proceedings appear to be for absence of the appellants but rules have not been followed.



14

Service appeal No.1372/2022 titled "Muhammad Nahi & others vs. The Secretary (Elementary) & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others" declared on 30.10.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Mr. Salah-Ud-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

It is otherwise a well settled legal proposition that regular inquiry is must before imposition of major penalty which includes provision of full opportunity of defense to be provided to the civil servant, which however was not done in the case of appellant. Reliance is placed on 2009 PLC (CS) 650.

7. Therefore, instant service appeals are accepted. The matters are remitted to the Department for conduct of proper inquiry, which is to be done within 60 days of the receipt of this judgment. Needless to mention that the appellants shall be provided proper opportunity of defense during the inquiry proceedings. Appellants are reinstated in service for the purpose of proper inquiry. The issue of back benefits shall be subject to the outcome of inquiry. (Copy of this judgment be placed on files of above mentioned connected service appeals). Consign.

8. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 30th day of October, 2023.

KALIM ARSHAD KHAN
Chairman

SALAH-UD-DIN
Member (Judicial)

Certified to be true copy
*Muazzam Shah
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 01-11-23
Number of Words 42
Copying Fee 20/-
Urgent _____
Total 20/-
Name of Copyist _____
Date of Completion 08-11-23
Date of Delivery of Copy 08-11-23

-8-

190 (15)



OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE)
KOHISTAN UPPER



RE-INSTATMENT/OFFICE ORDER.

WHEREAS, the following Chowkidars posted in the schools mentioned against each, they were reported absent from school duty during the visit of DCMA repeatedly and ASDEO (F) Circle also reported about their absenteeism several time.

WHEREAS, the then DEO (F) issued showcase notice to the mentioned Chowkidars vide No.4152-57/4164-69/4182-87/4217-22 dated, 2/08/2021 but they failed to reply in stipulated period.

WHEREAS, the then District Education Officer (F) Kohistan Upper issued compulsory retirement order in respect of the following Chowkidars vide No.4597-4600 dated 09/09/2021.

S.No.	Name of Chowkidars	School names
1	Muhammad Nabi	GGPS Siglo
2	Muhammad Kabir	GGPS Karang
3	Imran Khan	GGPS Taib Abad
4	Hijab Khan	GGPS Tohti

WHEREAS, the above named chowkidars submitted departmental appeal before next Higher Authority i.e., Director, the worthy Director rejected their appeal, vide letter No.65-66-N/291/A-2020/Class-IV/Kohistan/Vol-5-6 dated 5.9.2022.

WHEREAS, The above Ex-chowkidar submitted their service appeal before Hon'ble Service Tribunal Peshawar vide, SA No.1372/22, 1373/22, 1374/22 and 1375/22 dated 20.09.2021

WHEREAS, the Hon'ble Service Tribunal accepted their appeal and the matter of are remitted to the department for conducting of proper inquiry within 60 days and the appellants are re-instated in service for the purpose of proper inquiry, order passed by Honourable service tribunal on 30/10/2023.

WHEREAS, this office constituted inquiry committee for conducting of proper inquiry vide this office order No.5051-54 dated 24.11.2023.

WHEREAS, The Inquiry Committee inquired the matter and report to the undersigned with the recommendation that the above chowkidars may be re-instated in service and intervening period w.e.f, 9.9.2021 to 23.11.2023 may be converted into extra ordinary leave (without pay) report submitted on 25.12.2023 bearing dairy No.1169 dated 28.12.2023.

In view of the above, and in the light of inquiry report, being competent authority as District Education Officer (F) Kohistan Upper, the above mentioned chowkidars are hereby re-instated in service w.e.f 24.11.2023 and intervening period w.e.f 9.9.2021 to 23.11.2023 (805 days) is converted into extra ordinary leave without pay (EOL)

(Parveen Begum Khattak)
District Education Officer (F)
Kohistan upper

Ends: No. 6061-69 / DEO Female Kohistan upper dated 28/12/2023

1. Additional Registrar Peshawar high court bench Abbottabad.
2. Additional advocate general Abbottabad.
3. Deputy Commissioner Kohistan upper.
4. PS to secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
5. P.A to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
6. District Account Officer Kohistan Upper.
7. Sub-Divisional Education Officer Female Seo Kohistan.
8. Sub-Divisional Education Officer Female Kandia Kohistan
9. Official Concerned

District Education Officer (F)
Kohistan upper

"H" (16)

To,

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

Through Proper Channel

Subject: DEPARTMENTAL APPEAL

Respected Sir,

That the appellant was appointed as Chowkidar of the department vide order dated 19/12/2008 after fulfilling all the legal & codal formalities required for the post.

That after posting in GGPS Saglo Seo, Kohistan the appellant took over the charge of his post and started performing duty with full devotion.

That the appellant started performing his duty quite efficiently, whole heartedly and to the entire satisfaction of his high ups.

That astonishingly the appellant was compulsory retired from his service vide order dated 09/09/2021.

That the appellant filed departmental appeal against impugned order dated 09/09/2021 to the concerned department but was rejected by the department without giving any reason.

That appellant feeling highly aggrieved from the said order as well as from the appellate order, filed Service Appeal No 1372/2022, which was decided appeal of the appellant in his favour vide judgment dated 30/10/2023.

That the department in compliance with the Judgment of this Hon'ble tribunal has reinstated the appellant vide order dated 28/12/2023 besides treating the intervening period w.e.f 09/09/2021 to 23/11/2023 (805 days) as Extra Ordinary Leave without Pay.

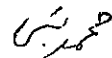
That although the appellant was reinstated in service however remained aggrieved from the said order to the extent of treating the intervening period i.e. w.e.f 09/09/2021 to 23/11/2023 (805 days) as Extra Ordinary Leave without Pay.

That now the appellant feeling aggrieved from the impugned order dated 28/12/2023 and having no other remedy but to file the instant departmental appeal.

It is therefore, most humbly prayed that on acceptance of this appeal, the impugned order dated 28/12/2023 may very kindly be modified/rectified to the extent of back benefits of intervening period and the respondent may kindly be directed to treat the intervening period w.e.f 09/09/2021 to 23/11/2023 (805 days) period spent on duty with all consequential back benefits.

Dated: 12.01.2024

Yours Obediently



Muhammad Nabi, Chowkidar (BPS-01),

GGPS, Sigloo Seo, Kohistan.

"I" سے کلثوم بی بی ایڈیٹنگ گگپس سکول

(17) حافظہ اقرار کے مکہ دہنی ہوں

کہ محمد نبی ولد محمد اد فوکلندار گگپس سکول
برخاستی کہ دوران باقاعدگی سے

اپنی ڈیوٹی سے انجام دے رہا ہے
اس نے اپنی ڈیوٹی سے کسی قسم کی
کوئی جگہ کوتاہی نہیں کی ہے۔

وہ ایجابداری سے اپنی ڈیوٹی
سے انجام دیتا ہے

ایڈیٹنگ گگپس سکول

(K)

Head Teacher:
GGPS

ANNEXURE

18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 318 /2016

K.W.F. PROVINCE
Service Tribunal

Entry No. 248

Dated 30-3-2016



Mr. Mohammad Salim, Head Constable No.12,
Police Line, Dir Upper

APPELLANT

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Deputy Inspector General of Police, Malakand Region at Saidu Sharif Swat.
- 3- The District Police officer, District Dir Upper.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 7.9.2015 WHEREBY THE APPELLANT WAS RE-INSTATED INTO SERVICE BUT WITHOUT BACK BENEFITS AND AGAINST THE APPELLATE ORDER DATED 3.3.2016 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PARYER: That on acceptance of this appeal the impugned order dated 7.9.2015 may kindly be modified to the extent of back benefits of the intervening period i.e. from the date of dismissal till reinstatement. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Handwritten notes and signatures on the left margin.

R/SHEWETH:
ON FACTS:

TESTED
Signature and stamp of the Tribunal member.

- 1- That the appellant was initially inducted in the Police Department as Constable vide order dated 02-02-2002. That after appointment as constable the appellant started performing his duty quite efficiently and up to the entire satisfaction of his superiors.
- 2- That during service the appellant was promoted to the post of Head constable. That appellant while serving as Head Constable in the police station Wari District Dir Upper the appellant served with Show Cause Notice vide dated 22-10-2013 on the allegation that the appellant is guilty of gross



19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.318/2016

Date of Institution ... 30.03.2016
Date of Decision ... 07.07.2021



Mr. Mohammad Saleem, Head Constable No.12, Police Line, Dir Upper
... (Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and
two others. ... (Respondents)

Present:

Noor Muhammad Khattak,
Advocate ... For appellant.

Riaz Khan Paindakheil,
Assistant Advocate General ... For respondents

SALAH-UD-DIN, ... MEMBER (J)
ROZINA REHMAN ... MEMBER (J)
ATIQ-UR-REHMAN WAZIR ... MEMBER (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): Briefly stating the facts necessary for the disposal of the lis in hand are that appellant was initially inducted in the Police Department as Constable. He was promoted to the post of Head Constable and he while serving as Head Constable in the Police Department, in Police Station Wari District Dir Upper, was served with show cause notice on the allegation of gross misconduct. Major punishment of compulsory retirement was imposed upon the appellant by the District Police Officer, Dir Upper. He filed departmental appeal which was rejected. He then filed service appeal and vide judgment dated 10.06.2015, appellant was reinstated in service and the Department was directed for fresh departmental inquiry against the appellant strictly in accordance with law. Back benefits were subject to

ATTESTED

The undersigned
Secretary
Khyber Pakhtunkhwa Service Tribunal
Peshawar



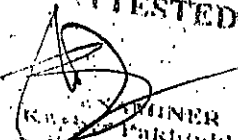
20

the outcome of fresh proceedings. Appellant was reinstated into service on 27.07.2015 for the purpose of de-novo inquiry. The inquiry committee recorded the statements of all concerned officers/officials, where-after, the inquiry committee submitted findings/report, whereby, the appellant was exonerated from the charges leveled against him. On the recommendation of the inquiry committee, impugned order dated 07.09.2015 was passed by the D.P.C Dir Upper whereby the appellant was reinstated into service and the period he spent out from 23.12.2013 to 03.08.2015 was treated as leave of the kind due. Feeling aggrieved, the appellant filed departmental appeal which was rejected, where-after, present service appeal was filed. Case was heard by a Division Bench of this Tribunal on 03.12.2019 and was disposed of, however, the learned members differed in their respective opinions, a Larger Bench was, therefore, constituted which heard the case on 07.07.2021:

2. Learned counsel for the appellant opened the case by reading both the judgments handed down by the Honourable Members, respectively.

3. In the judgment Honourable Member (Mr. Ahmad Hassan) held entitled the appellant to the back benefits and the impugned order dated 07.09.2015 was modified to the extent that the back benefits may be granted to the appellant from 23.12.2013 to 03.08.2015.

4. On the other hand, Honourable Member (Mr. Muhammad Hamid Mughal) was pleased to dismiss the appeal. It was held that despite the fact that the appellant was exonerated due to insufficiency of evidence

ATTESTED

K. S. WAINER
Principal Officer
Service Tribunal




21

and there is no finding that the action against the appellant was arbitrary or actuated with malice, the appellant was awarded back benefits in the shape of treating out of service period as leave of the kind due. It was further held by the Hon'ble Member, that practice of bringing outside political pressure by civil servant over the authorities, in the matter of posting transfer has become common practice. Consequently, service appeal was dismissed.

5. We are of the considered view that allegation leveled against the appellant was that he while posted in P.S Wari was guilty of misconduct for attempting to bring political and outside influence directly to bear on District Police and unwarranted interference in financial matters of District Police. On acceptance of his service appeal, the matter was sent back to the Department for de-novo inquiry and accordingly, he was issued charge sheet alongwith statement of allegations. An inquiry committee was constituted and Mr. Khan Akbar Khan S.P Investigation and Mohy ud Din Reserve Inspector Police Lines, were appointed as inquiry officers. Inquiry committee conducted fresh departmental inquiry and recorded the statements of all concerned, where-after, submitted report wherein they recommended filing of the inquiry and accordingly vide order dated 07.09.2015 of the District Police Officer, Dir Upper, appellant was exonerated from the charges leveled against him and inquiry was accordingly filed. However, the period he spent out from 23.12.2013 to 03.08.2015 was treated as leave of the kind due. As per record, the present appellant was initially awarded punishment of compulsory retirement but on acceptance of his service appeal, he was reinstated into service for the purpose of de-novo inquiry and now

ATTESTED



EXAMINER
Khush Bahadur
Service Tribunal
Peshawar



22

he has been exonerated from the charges. An employee i.e. civil servant whose wrongful dismissal, removal or compulsory retirement has been set aside, goes back to his service as if he was never dismissed, removed or retired from service. The restitution of employee means that there has been no discontinuance in his service and for all purposes, he had never left his post. He is, therefore, entitled to arrears of pay for the period he was kept out of service for no fault of his own.

6. We, therefore, hold that civil servant on unconditional reinstatement/exoneration from all charges is to be given all back benefits and the only exception justifying part of withholding of back benefits could be that he accepted gainful employment/engaged in profitable business during the intervening period which is not the case here, therefore, this case is disposed of in terms that intervening period from 23.12.2013 to 03.08.2015 be considered as if the appellant was on duty and accordingly he is entitled to all back benefits. Reliance is placed on 1999 SCMR 1873; 2010 PLC (C.S) 151 AND 2006 SCMR 421.

7. With the observations herein-above, the appeal in hand is accepted and the appellant is held entitled to the benefits of period from 23.12.2013 to 03.08.2015. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
07.07.2021

(Salah-ud-Din)
Member (J)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(Atiq-ur-Rehman Wazir)
Member (E)

(Rozina Rehman)
Member (J)

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal No 12024

M. Nabi

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt of KPs

(RESPONDENT)
(DEFENDANT)

I/We M. Nabi

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** 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. ___/___/202

CLIENT

ACCEPTED

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

WALEED ADNAN

UMAR FAROOQ MOHMAND

MUHAMMAD AYUB

**MAHMOOD JAN
ADVOCATES**

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre Peshawar Cantt