

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

307
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6-6-18

Service Appeal No: 448/2018

Asad Ali (Ex- PST) Rustam MardanAppellant.

VERSUS

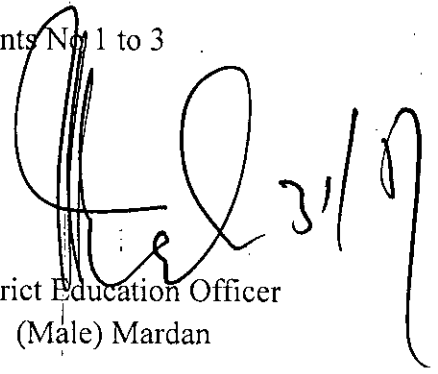
Govt of KPK through Secretary Elementary & Secondary Education KPK &
OthersRespondents.

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Respondents No 1 to 3

Through


District Education Officer
(Male) Mardan

Dated:

31/8/18

lit - 11

362
8-6-2018

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PESHAWAR

Service Appeal No: 448/2018

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VERSUS

Govt of KPK through Secretary Elementary & Secondary Education KPK &
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Para Wise Comments on Behalf of Respondents No 1 to 3.

Respectfully, Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action as well as locus standi, to file the instant appeal.
2. That the instant appeal is incompetent in its present form, hence the appeal is liable to be dismissed.
3. That the instant appeal is badly time barred.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to this Honorable Tribunal with clean hands.
6. That the appellant is estopped by his own conduct.
7. That the appellant has concealed the material facts from this Honorable tribunal hence the appeal is liable to be dismissed.
8. That the instant appeal is against the prevailing law and rules.

FACTS:

1. Para No 1 pertains to record, hence need no comments.
2. Para No 2 pertains to record, hence need no comments.
3. Para No 3 is incorrect, baseless, against law and facts as after passing decisions by the Honorable Service Tribunal in Appeal No 1386/2014 dated 13-12-2016, the respondent No 3 fully obeyed the directions of Hon'ble Service Tribunal in true letter and spirit, and conducted another enquiry about the subject matter, after conducting the De-novo enquiry, the allegations of immoral acts were proved against the appellant by the statement which is recorded in the De-novo enquiry. The appellant was again declared to be compulsory retired after adopting proper procedure of being heard and defence to the appellant, hence


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denied. (Copy of enquiry, compulsory retirement & personal hearing is as Annex "A", "B" & "C").

4. Para No 4 pertains to record, hence need no comments.
5. Para No 5 pertains to record, hence need no comments.
6. Para No 6 pertains to record, hence need no comments.
7. Para No 7 need no comments, However detail reply of the grounds is as under:

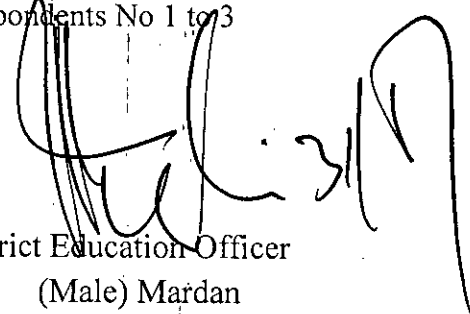
GROUND:


- A. Para A is incorrect, baseless, against fact & law, as the order dated 27-02-2018 and 13-12-2017 issued on the basis of proofs of charges leveled against the appellant which proved during the De-novo enquiry, hence denied.
- B. Para B is incorrect, baseless, against facts as proper enquiry was conducted against the appellant and proper opportunity has been given to the appellant for his defence, hence denied.
- C. Para C is incorrect, baseless, against law and facts as the major penalty compulsory retirement is sustainable in the eye of law, according to the charges leveled and proved against the appellant, hence denied.
- D. Para D is incorrect, baseless, against the fact & law, as the respondent being responsible government officers acted in accordance with law, hence denied.
- E. Para No E is incorrect, baseless, against fact as the penalty of the compulsory retirement is not harsher than the immoral act done by the appellant which is proved against him, hence denied.
- F. Para F is incorrect, baseless, against fact as the appellant has not been condemned unheard and the appellant has given full and proper opportunity of his defence, hence denied.
- G. That the respondent seeks permission to raise additional grounds at the time of arguments.

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


Director E & S E,
Peshawar. 2

Through Respondents No 1 to 3


District Education Officer
(Male) Mardan


Secretary E & S E,
Peshawar KPK.

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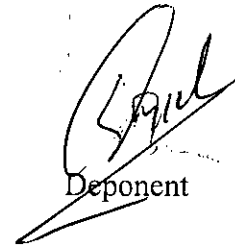
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AFFIDAVIT

I, Mr Sajid Khan Litigation Officer Education Department Mardan do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted by on behalf of Respondents No 1, 2 and 4 are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


Deponent

Sajid Khan
16101-6005318-5

Inquiry report

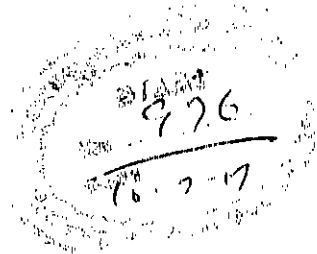
In compliance with DEO(M) Mardan No.237-38 dated 11-01-2017, the undersigned visited GPS Bazar and conducted Denove inquiry on 30-01-2017.

Proceeding:

The PSHT of GPS/^{Bazar} was informed vide letter no.24 dated 27-01-2017 to inform all the relevant personnel to be present on the due date i.e 30-01-2017.

The undersigned visited on 30-01-2017, all the relevant persons were present as detail below.

1. Syed Muhammad Ayub Ex-PSHT GPS Bazar.
2. Rehman Zada Ex-PST GPS Bazar
3. Amjad Ali Ex-PST GPS Bazar
4. Nigar Ali chowkidar GPS Bazar
5. Muhammad Kashif, Student.
6. Muhammad Shoaib, Uncle of the student.
7. Mr. Farhad F/O the student was not present, according to Muhammad Shoaib uncle of Student; He is Wapda employee, performing his duties in Kohat.

**a. Statement of Syed Muhammad Ayub Ex-PSHT GPS Bazar.**

Syed Muhammad Ayub stated that this incident was occurred about 08 years ago on 18-03-2009. What he has written 8 years ago is still intact. He was on duty in GMS Bazar in connection with 5th class exam. In the previous statement, he has stated that in the light of Character of Asad Ali, this incident is true as he involved in such cases.

b. Statement of Rehman Zada Ex-PST GPS Bazar.

This incident was occurred on 18-03-2009. According to him, when he reached the school, Asad Ali was present in school and related the story. Kashif (student) and his uncle Shoaib also came to school. According to him, he has not seen Mr. Asad Ali in objectionable position.

c. Statement of Amjad Ali Ex-PST GPS Bazar.

According to Amjad Ali PST, when he came to school, Asad Ali was present in the school and he said that he has punished the student due to his late coming to school and the student has gone to home. Meanwhile M. Shoaib uncle of Kashif along with Kashif came to school.

We, Rehman Zada and Amjad ali tried to make reconciliation between them but invain and they reported the case to ADO circle Shamshad Ali.

d. Statement of Muhammad Kashif

According to the statement of Kashif, when we came to school, no teacher was present except Asad ali who called me to fill the water cooler and the cooler was in office. Asad Ali asked me to see out side the school Gate whether any student or teacher is there or otherwise and then come back. When he came back the teacher Asad Ali has opened his trouser, seeing that he ran

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home and related the story to his mother and uncle Muhammad Shoaib. He and his Shoaib came to school, where Mr. Asad Ali was standing near the gate.

e. Statement of Muhammad Shoaib Uncle of Student Kashif

According to Him he was taking tea in his home while his Bhabhe came and related about the incident. He along with Kashif came to school where Asad Ali was standing near the gate, at that time Kashif was about 12-13 years old. When he came to school he tried to beat him but he ran away to his home and sent Jarga of elders of village but he refused for reconciliation. Mr. Shoaib(uncle) also said that if he is innocent, why he sent Jarga of elders, why he begged for exoneration and if there is no safety to a child in the school, who will provide him the safety. He also stated that he has committed such like Sin in GPS Shaheedan also.

f. Statement of Chowkidar Mr. Nigar Ali

Chowkidar was terminated from service at that time and the school was running without chowkidar.

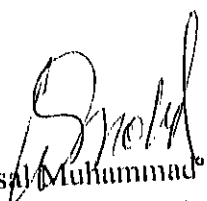
g. Statement of Asad Ali, the accused

He stated that he had not asked the student Kashif for filling the cooler. Actually according to Asad Ali, he has beaten the student Kashif on coming late to school and he warned him for taking revenge. According to him being rural population and illiteracy the people tries to have opportunity for taking revenge and this incident also based on such basis. This is only blame according to him. He also stated that on one side(north) the school boundary wall was not available and the residents of the village used to go through the school and on other side in the presence of so many students how it was possible to do so.

On cross examination, he denied of bringing water on Kashif and stated that a few days ago he has punished the student on late coming, on which he has warned him for taking revenge. On the question of opening the trouser, he said that he cannot imagine about this.

Findings:

In the light of all the statements and despite lapse of about 8 years, the student Kashif, his uncle and the Ex-Head teacher of the school are still stand on their statements which proves the occurrence of incident.


Wisal Muhammad
SDEO(M) Katlang/Inquiry Officer

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDANNOTIFICATION

I Ijaz Ali Khan District Education officer (Male) Mardan as Competent Authority under the Khyber Pakhtunkhwa Government servants (Efficiency & Discipline) Rules, 2011, do hereby serve Mr. Asad Ali PST GPS Bazar Rustam, follows:

- **Where As** Mr. Asad Ali PST GPS Bazar Rustam involved in immoral activities.
- **And Where As** a Denve inquiry was conducted in the light of Honorable Service Tribunal Khyberpakhtunkhwa Peshawar decision issued on 13-12-2016.
- **And Where As** In the light of inquiry report, a show cause notice regarding involvement in immoral activities penalty was tentatively proposed under rules 4(b) of Khyberpakhtunkhwa Govt servant E&D rules 2011.
- **And where As** your response to the show cause notice was not satisfactory.
- **And Where As** you were directed to attend the office of the undersigned for personal hearing.
- **And where As** you attend the office of the undersigned for personal hearing.
- **And where As** the Competent Authority is not satisfied from your written statement at the time of personal hearing, after having considered the charges and evidence on record.
- **And Where As** you found guilty of gross misconduct under KPK Govt servant E&D rules 2011.

Now in exercise of the power conferred to me under rules 4(b) sub rules (ii) of the KPK Govt servant E&D rules 2011, being competent authority is pleased to impose the major penalty of Compulsory Retirement from the service upon Mr. Asad Ali PST GPS Bazar Rustam w.e.f 05-01-2010.

(Ijaz Ali Khan)
District Education Officer
(Male) Mardan

Endst: No. 11061/R P.F

Dated 13/12 /2017.

Copy forwarded to the:-

1. Registrar, Service Tribunal Khyberpakhtunkhwa Peshawar for information in Service appeal No.1386/2014.
2. SDEO(M) Mardan
3. District Accounts Officer Mardan.
4. Mr. Asad Ali PST GPS Bazar Rustam.

District Education Officer
(Male) Mardan