


FORM OF ORDER SHEET

Court of _____

Appeal No. 1690/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01 /10/2024	<p>The appeal of Mr. Abdul Wakeel presented today by Mr. Muhammad Asif Yousafzai Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 04.10.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1690 /2024

Abdul Wakeel

V/S

Education Deptt: etc.


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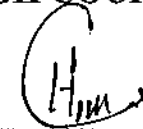

APPELLANT

Abdul Wakeel

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT
OF PAKISTAN.


(SYED NOMAN ALI BUKAHRI)
ADVOCATE HIGH COURT.

& 
HILAL ZUBAIR
ADVOCATE PESHAWAR
Room No.FR-08, 4th Floor,
Bilour Plaza Peshawar Cantt:
Cell # 0312-9103240

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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1690 /2024

Mr. Abdul Wakeel, PSHT (BPS-15),
GPS Hukam Khan Killi Bara District Khyber.

(APPELLANT)

VERSUS

1. The Director Education (E&SE) Khyber Pakhtunkhwa near Firdous Chowk Peshawar.
2. The District Education Officer (Male) Distt: Khyber.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 06.05.2024 WHEREBY THE INTERVENING PERIOD W.E.F 02.05.2019 TO 10.05.2020 IS TREATED INTO HALF PAY AND THE REMAINING INTERVENING PERIOD W.E.F 11.05.2020 TO 06.07.2023 IS TREATED AS EXTRA ORDINARY LEAVE WITHOUT PAY AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD 90 DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATD 06.05.2024 MAY KINDLY BE MODIFIED TO THE EXTENT OF INTERVENING PERIOD W.E.F 02.05.2019 TO 10.05.2020 & 11.05.2020 TO 06.07.2023) AS LEAVE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. BEING LEGALLY ENTITLED UNDER THE LAW. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT

AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant joined the Education Department as PTC in the year 2003 and has been performing his duties with entire satisfaction of his superior and never given chance of complaint to his high-ups throughout his service record. Copy of Appointment order is attached as Annex-A

2. That on 06.09.2019 the District Education Officer Male Khyber issued a notification without following the codal formalities of E&D Rules, 2011 and imposed major penalty of removal from service for the reason of absence from duty. Copy of removal order dated 06.09.2019 is attached as Annex-B.

3. That the appellant felt aggrieved from the order dated 06.09.2019 and filed departmental appeal on 13.09.2019 to the competent authority which was rejected on 07.08.2020. Copies of departmental appeal and rejection are attached as Annex-C & C1.

4. That then appellant filed Service appeal No. 2224/2020 against the order dated 16.09.2019 and rejection order dated 07.08.2020 and the august Service Tribunal observed that the appellant was not treated in accordance with law, therefore, The Honorable Tribunal was kind enough to set aside original and appellate order, and the appellant was reinstated in to service and the respondents were directed to conduct de-novo inquiry in accordance with law and rules. Copies of the judgment is attached as Annexure-D.

5. That after the judgment of the august Tribunal, the appellant was reinstated into service vide order dated 05.07.2023 and the de-novo inquiry was also initiated against the appellant. In the de-novo inquiry, the inquiry officer gave recommendations that "(i) the Notification/Order of Removal may be withdrawn (ii) the absence period may be dealt as per leave rules. Copy of order dated 05.07.2023 & denovo inquiry report is attached as Annexure-E & E1.

6. That after the completion of de-novo inquiry the respondent department issued an order dated 06.05.2024 in which the appellant was reinstated into service w.e.f 06.07.2023 however the intervening period w.e.f 02.05.2019 to 06.07.2023 was treated as under:-

- i. 02/05/2019 to 10/05/2020 (187 days) absence period is converted into half pay (374 days) deducted from leave account.
- ii. 11/05/2020 to 06.07/2023 (1152) absence period is converted into Extra Ordinary Lave without pay.

Copy of Impugned order dated 06.05.2024 is attached as Annex-F

7. That against order dated 06.05.2024 the appellant filed representation on 06.06.2024 and waited for statutory period of 90 day but no action was taken on the representation of the appellant within statutory period. **Copy of Department appeal is attached as Annexure-G.**

8. That now the appellant comes to this august Tribunal on the following grounds amongst the others.

GROUNDS:-

- A) That the order dated 06.05.2024 is against the law, facts and norms of justice and amounts to deprive the appellant from his due back benefits of service in an arbitrary manner, therefore, liable to be modified as prayed for.
- B) That the appellant has not been treated in accordance with law and rules, therefore, the impugned order is liable to be modified to the extent of back benefits.
- C) That the impugned order is also against the spirit of FR-54 which clearly provides that if a government servant is honorably exonerated then the government servant will be entitle full pay to which he would have been entitled if he had not been dismissed or removed and the period of absence from out of service will be treated as period has been spent on duty. Thus on the basis of FR-54 the appellant is entitled to all back benefits.

D) That as the appellant was not remained gainfully employed during intervening period therefore keeping in view the judgment of Honorable Supreme Court reported as 2007 PLC (C.S) Page#346 the appellant is entitled to all salaries and emoluments for the intervening period.

E) That the appellant could not be deprived from the back benefits for the period which he remained out of service without any fault on his side. The same spirit is followed in the judgment of superior courts reported as 2007 PLC Supreme Court -184 as mentioned below:

“the salary of civil servants would not be withheld for the intervening period when they remained out of service due to whimsical and arbitrary action of the functionaries . Civil servants had every right to recovery their arrears”

So, in the light of Supreme Court judgment the appellant is also legally entitled for his salaries .

F) That another case reported as 2007 SCMR Page # 855 the Honorable Supreme Court of Pakistan has held that the grant of service back benefits to an employee who has been illegally kept away from employment is the rule and the denial of such benefits to such a reinstated employee is an exception on the proof of such person having remained gainfully employed during such period. As the appellant has already furnished affidavit to the competent authority regarding not remained gainfully employed therefore the appellant is also entitle to back benefits.

G) That the appellant was not remained gainfully employed during the period of out of service and the appellant is legally entitled to pay benefits w.e.from 02/05/2019 to 10/05/2020 and 02.05.2019 to 06.07.2023 , according to judgment of Supreme Court Reported as 07 SCMR-885(B) , in respect of matters of gainful employment during period remained out of service ,the appellant submitted affidavit that he was not remained gainfully employed during such period so the appellant is legally entitled for salaries of disputed period.

H) That as per Judgment of the Supreme Court of Pakistan cited as 2021-SCMR-962 wherein Supreme Court of Pakistan clearly declared that if there is no fault on the part of the employee and he is forcefully kept away from service due to dismissal/removal order then on his reinstatement into service he is entitled for all back and consequential benefits for the period he remained out of service due to dismissal/removal order so the appellant has exonerated by the inquiry officer and in the light of inquiry report the competent authority reinstated the appellant into service. So the appellant is entitled for all back benefit in the light of Judgment mentioned above.

I) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

Abdul Wakeel
APPELLANT

Abdul Wakeel

THROUGH:

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT
OF PAKISTAN.

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.

& *Hilal Zubair*
HILAL ZUBAIR
ADVOCATE PESHAWAR

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2024

Abdul Wakeel

V/S

Education Deptt:

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.


DEPONENT


LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.


APPELLANT

Abdul Wakeel Khan

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT
OF PAKISTAN.


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.

& 
HILAL ZUBAIR
ADVOCATE PESHAWAR

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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2024

Abdul Wakeel

V/S

Education Deptt: etc.

AFFIDAVIT

I, Mr. Abdul Wakeel, PSHT (BPS-15), GPS Hukam Khan Killi Bara District Khyber (Appellant), do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.


DEPONENT

**OFFICE OF THE AGENCY EDUCATION OFFICER KHYBER
AGENCY AT JAMRUD**

APPOINTMENT ORDER

Consequent upon the approval of the Departmental Selection Committee the following PTC (Male) Local candidates Trained of Tehsil Landi Kotal & Bara are hereby Temporary appointed on contract basis for three (03) years against PTC post in BPS No 07 fixed plus usual allowances as admissible to them under the rules with effect from the date of their taking over charge in the schools noted against their names:-

S. No.	Name of Candidate/Father's Name	Domicile	Appointed at	Remarks
01.	Abdul Wakeel S/o Jamal Khan	Khyber Bara	GPS Meri Khel Aka Khel Bara	Vise Muh: Karim promoted to C.T Post
2.	Aurang Zeb S/o Shah Jehan	do	GPS Dena Jan Killi Bara	Vice Asif Nawaz refused the post
3	Wazir Muhammad S/o Kaptan Khan (DISABLE)	Khyber Landi Kotal	GPS Hanif Killi LKL	Vice Khan Zada Transferred to Mardan Distt

1. Charge reports should be submitted to all concerned.
2. The appointment of the candidates has been made purely on temporary/contract basis for three years and is liable to termination at any time without assigning any reason. In case they which to resign their service they will have to give one month prior notice or forfeit one Month pay in lieu thereof.
3. They should produce their original certificates/domiciles before taking over charge and attested copies thereof to be kept on the record of the school/office after the verification from the Board/University concerned.
4. They should produce their Health and Age certificate from one Agency Surgeon concerned.
5. Age should not exceed 33 years and below 18-years.
6. If they fail to report their arrival within 15 days the order will be treated as cancelled.
7. The order of the candidates is purely on contract basis for three years vide SO FATA/Education/6-1/2001 dated 9.2.2002 and Director of Education FATA Peshawar Endst No. 3738 dated 14.2.2002
8. A copy of order sheet dated 26.01.2023 alongwith other documents is hereby attached.

**SYED RAZI SHAH KAZMI
AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD**

Endst No. 5617-22/Apptt;/PTC/Male dated 20.09.2003

Copy forwarded for information and necessary action to the:-

1. Director of Education FATA (NWFP) Peshawar.
2. Agency Accounts Officer Khyber at Peshawar.
3. Head Master/Head Teacher's concerned.
4. Supdt: Local Office.
5. Pay clerk local office.
6. Candidates concerned.

ATTESTED

**AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD**

OFFICE OF THE AGENCY EDUCATION OFFICER KHYBER AGENCY AT JAMRUD
APPOINTMENT ORDER

Consequent upon the approval of the Departmental Selection Committee the following PTC (Male) local candidates, Trained of Tehsil Landi Kotal & Bara are here by Temporarily appointed on contract basis for three (03) years against PTC post in BPS No. 07/PM fixed plus usual allowances as admissible to them under the rules with effect from the date of the taking over charge in the schools noted against their names:

S.No	Name of Candidate/ Father's Name	Domicil	Appointed at	Remarks
1.	Abdul wakeel S/O Jamal Khan	Khyber Bara	GPS Meri Khel Aka Khel Bara.	Vise Muhd Karim promoted to C.T. Post
2.	Aurang Zeb S/o Shah Jehan	do	GPS Dena Jan killi Bara.	Vise Asif Nawaz refused the Post.
3	Wazir Muhammad S/O Kaptan khan (JDI SAHLE)	Khyber Landi Kotal	GPS Hanif Killi LKL	Vise Khan Zada Transferred to Mardan Distt

1. Charge reports should be submitted to all concerned.
2. The appointment of the candidates has been made purely on temporary/ contract basis for three years and is liable to termination at any time without assigning any reason. In case they wish to resign their service they will have to give one month prior notice or forfeit one Month pay in lieu thereof.
3. They should produce their original certificates/ Domicile before taking over charge and attested copies thereof to be kept on the record of the school/ office after the verification from the Board/ University concerned.
4. They should produce their Health and Age certificate from the Agency screen concerned.
5. Age should not exceed 33 years and below 18 years.
6. If they fail to report their arrival within 15 days the order will be treated cancelled.
7. The order of the candidates is purely on contract basis for three years vide SO FATA/ Education/ 6-1/2001 Dated 9.2.2002 and Director of Education FATA Peshawar Endst No. 3758 dated 14.2.2002.

(SYED RAZI SHAH KAZMI)
 AGENCY EDUCATION OFFICER
 KHYBER AGENCY AT JAMRUD

Endst No 5617-22/Apptt./PTC/Male dated 20/9 /2003
 Copy forwarded for information and necessary action to the:-

1. Director of Education FATA (NWFP) Peshawar.
2. Agency Accounts Officer Khyber at Peshawar.
3. Head Master/Head Teacher's concerned.
4. Supdt: Local Office.
5. Pay Clerk local Office.
6. Candidates concerned.

Syed Razi Shah Kazmi
 20/9/03
 AGENCY EDUCATION OFFICER
 KHYBER AGENCY AT JAMRUD

Prepared By N.Haq

Composed by N.Hayat

[Handwritten signature]
 MUO

THIS DIVISION OFFICE

DISTRICT EDUCATION OFFICE
 KHYBER TRIBAL DISTRICT
 Phone: 091-5820584 FAX: 091-5820584
 No. _____ DATED _____/____/2-10

**DISTRICT EDUCATION OFFICE KHYBER TRIBAL DISTRICT
 AT JAMRUD**

NOTIFICATION

1. WHEREAS the District Education Officer had come to know that you the following teachers of Tehsil Bara Khyber Tribal District had been absent without any leave sanction and non compliance of the order of the competent authority of this office.

Sr. No.	Name / Designation	School	Personal Number
1	Haji Badshah PST	GPS Tarko Kass Bara	50355762
2	Hilmand Khan PST	GPS Tarkho Kass Bara	50161605
3	Abdul Wakeel PSHT	GPS Almas Stori Khel	00414701

2. NOW THEREFORE In exercise of the powers conferred under Rules-4 (b) (iv) of Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) 2011, the competent Authority district Education Officer Khyber is pleased to impose a major penalty of "removal from Service" upon the above mentioned teachers of Bara Khyber Tribal District with immediate effect.

(MUHAMMAD JADOON KHAN)
 DISTRICT EDUCATION OFFICER,
 KHYBER TRIBAL DISTRICT AT JAMRUD

Endst No. 9390-96

Dated 6/9/2019

Copy of the above is forwarded to the:

1. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Commissioner Khyber Tribal District at Peshawar.
3. District Accounts Officer Khyber Tribal District at Peshawar.
4. All ADEOs Local office
5. Superintendent/Accountant for entry in his service book.
6. Official concerned.
7. Office Copy.

-sd-

DISTRICT EDUCATION OFFICER
 KHYBER TRIBAL DISTRICT AT JAMRUD

[Handwritten Signature]
 ATTESTED

(4)

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(9)

DISTRICT EDUCATION OFFICE
KHYBER TRIBAL DISTRICT AT JAMRUD
PHONE: 091-5820584 FAX: 091-5820584
No: _____ DATED: _____ / _____ / 2019

DISTRICT EDUCATION OFFICE, KHYBER TRIBAL DISTRICT AT JAMRUD.
NOTIFICATION

1. WHEREAS the District Education Officer had come to know that you the following teacher of Tehsil Bara Khyber Tribal District had been absent without any leave sanction and non compliance of the order of the competent authority of this office.

Sr. NO.	Name / Designation	School	Personal Number
1.	Haji Badshah PST	GPS Tarkho Kuss Bara	50355762
2.	Abdullah Khan PST	GPS Tarkho Kuss Bara	50161605
3.	Abdul Wakeel PSHT	GPS Ahuss Stori Khet	00414701

2. NOW THEREFORE In exercise of the powers conferred under Rules-1 (a) (i) of Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary), 2011, the competent authority, District Education Officer, Khyber, is pleased to impose a major penalty of "removed from Service" upon the above mentioned teachers of Bara Khyber Tribal District with immediate effect.

(MUHAMMAD JADOON KIANI)
DISTRICT EDUCATION OFFICER
KHYBER TRIBAL DISTRICT AT JAMRUD
Dated: 6/9/ 2019

Order No. 9390-96

- Copy of the above is forwarded to the:
1. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar
 2. Deputy Commissioner Khyber Tribal District at Peshawar.
 3. District Accounts Officer Khyber Tribal District at Jamrud.
 4. All ADEOs Local Office.
 5. Superintendent / Accountant for entry in his service book.
 6. Official concerned.
 7. Office Copy.

DISTRICT EDUCATION OFFICER
KHYBER TRIBAL DISTRICT AT JAMRUD

ATTESTED

NOTIFIED

Handwritten text in Urdu, starting with "PSHT" and including various symbols and characters. The text appears to be a series of notes or a list, possibly related to a technical or administrative document. The handwriting is somewhat stylized and includes several symbols that resemble mathematical or scientific notations.

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**DIRECTORATE OF ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA**

NOTIFICATION.

1. WHEREAS Mr. Abdul Wakeel Ex-PSHT GPS Almas Stori, Khel District Khyber was proceeded under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of wilful absence from official duty in May 2019.
2. AND WHEREAS, the DEO concerned being competent authority issued absent notice under registered cover vide No. 11973 dated 09.11.2019 and No. 6206 dated 13.05.2019.
3. AND WHEREAS, the DEO Khyber being competent authority fulfilling codal formalities imposed major penalty "Removal" from service" vide Endst: No. 9390-96 dated 06-09-2019.
4. AND WHEREAS, the above named teacher submitted an appeal to this office vide dated 13.09-2019, which was sent to DEO concerned for comments vide this office letter 5340 dated 18-09-2019 who submitted his comments to this office vide No. 11973 dated 09-11-2019.
5. Whereas the inquiry was ordered in light of his appeal but he failed to physically appear before the inquiry officer and subsequently the inquiry officer rendered his appeal for regression.
6. AND WHEREAS, the competent authority, after having considered the facts and evidence on record, is of the view that charges against accused teacher have been proved.
7. NOW THEREFORE, in exercise of powers conferred under Khyber Pakhtunkhwa Servants (Efficiency & Discipline) Rules-2011 the Appellate Authority (Director E&SE) Khyber Pakhtunkhwa is pleased to uphold the penalty and ~~reject~~ the appeal in respect of Mr. Abdul Wakeel Ex-PSHT GPS Almas Stori Khel District Khyber under Rule(17) sub-rule(2)(a) of Khyber Pakhtunkhwa E&D Rules-2011.

DIRECTOR.

Endst: No. 2394-96 F No: E-6/Vol II Khyber. Dated Peshawar the 17/8 2020.

Copy forwarded for information and necessary action to the:-

1. District Education Officer, Khyber.
2. Teacher concerned.
3. P/A to Director E&SE, Khyber Pakhtunkhwa, Peshawar.
4. Master File.

Deputy Director (Estb :)
Merged Area

17-8-2020

ATTACHED

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 2224/2020

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Abdul Wakeel, Ex-PSHT, GPS Almas Stori Khel, District Khyber.
..... (Appellant)

Versus

1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer, Khyber Tribal District at Jamrud.
..... (Respondents)

Mr. Shafiullah,
Advocate

For appellant

Mr. Asad Ali Khan,
Assistant Advocate General

For respondents

Date of Institution..... 15.09.2020
Date of Hearing..... 06.06.2023
Date of Decision..... 06.06.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 06.09.2019 whereby major penalty of removal from service was imposed upon the appellant and against the order dated 17.08.2020, whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant might be reinstated in service with all back & consequential benefits and any other remedy, which the Tribunal deemed fit and appropriate.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was working as PSIT in the respondent department. He became ill and rushed to the hospital and his treatment took some time due to which he was compelled to remain absent from his duty. Without issuance of charge sheet and show cause notice and without conducting inquiry, he was removed from service vide impugned order dated 06.09.2019. Feeling aggrieved, he filed departmental appeal which was rejected on 17.08.2020; hence the present appeal on 15.09.2020.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, contended that no inquiry was conducted against the appellant, no show cause notice was served upon him and he was removed from service in a slipshod manner. He further contended that no opportunity of hearing was afforded to him and he was condemned unheard. According to him, the punishment of removal from service was harsh and not commensurate with the guilt of the appellant. He requested that the appeal might be accepted as prayed for.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant himself admitted that he remained absent from duty without any prior permission of his superiors. The respondent department followed proper procedure by serving

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two absence notices upon the appellant vide letters dated 13.05.2019 and 24.05.2019. Proper departmental inquiry was conducted and then he was removed from service being habitual absentee. Learned Assistant Advocate General requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant, while serving as PSIII, was removed from service on the charge of being absent without any leave sanctioned by his competent authority. There is no mention of the number of days for which he remained absent. A copy of departmental appeal of the appellant after his removal is available with the record presented before us which says that his mother was not well and admitted to hospital and he was looking after her and therefore remained absent whereas the facts given by him in his service appeal mention that he became ill and was rushed to the hospital and his treatment took some time due to which he remained absent from his duty. Although the respondents state in their reply that proper departmental inquiry was conducted but no such document has been attached with the reply nor produced during the hearing. Had a proper inquiry been conducted, all the facts could have been unearthed. Two absence notices are also available in the record, which, according to the respondents, were served upon the appellant on two different dates but there is no evidence whether they were actually served and received by him or not.

7. From the facts narrated above, it is evident that major punishment was awarded to the appellant without fulfilling the procedure as mentioned in the Khyber Pakhtunkhwa (Efficiency and Discipline) Rules, 2011. The appeal is, therefore, allowed with the directions to the respondents to conduct denovo




ATTACHED

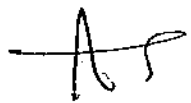
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inquiry by fully associating the appellant in the entire proceedings and giving him fair opportunity to present and defend his case. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 06th day of June, 2023.*


(FARDEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)


ATTESTED

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**DISTRICT EDUCATION OFFICE
DISTRICT KHYBER AT JAMRUD**

PHONE. 091-5820584 FAX 091-5820584

RE-INSTATEMENT ORDER(CONDITIONALLY)

In compliance with the Judgements of the Khyber Pakhtunkhawa Service Tribunal Peshawar, Service Appeal vide No.2224/2020 Mr. Abdul Wakeel PSHT BPS -15 is hereby re-instated in service at GPS Hukam Khan Killi Bara with all back benefits on the condition that a denovo inquiry will be conducted to determine the final status of his services as per direction of Service Tribunal.

**(MUHAMMAD UZAIR ALI)
DISTRICT EDUCATION OFFICER
DISTRICT KHYBER AT JAMRUD**

ENDST:NO. 6144-52

DATED 05/07/2023

COPY OF THE ABOVE IS FORWARDED TO THE;

1. Director Elementary & S E D Khyber Pakhtunkhawa.
2. Registrar Khyber Pakhtunkhawa Service Tribunal Peshawar
3. Deputy Commissioner Khyber at Peshawar House.
4. District Accounts Officer Khyber at Jamrud.
5. DMO(EMA) Khyber
6. SDEO Concerned.
7. ADEO Primary Local Office.
8. Teacher Concerned.
9. Office Copy.

Asst. District Education Officer
Khyber Tribunal Peshawar

**DISTRICT EDUCATION OFFICER
DISTRICT KHYBER AT JAMRUD**

INQUIRY REPORT

To
The District Education Officer,
Khyber at Jamrud.

SUBJECT: INQUIRY REPORT IN RESPECT OF Mr. ABDUL WAKEEL PSHT GPS HUKAM KHAN KALLI BARA.

*Reference: This inquiry is being conducted in pursuance of DEO Khyber Notification No.6564-72
Date: 17/7/2023.*

LIST OF ANNEXURES (in photocopies)

1. Absence Notice #1	2. Absence Notice #2
3. Notification/Order of Removal	4. Appeal to Director Education.
5. Notification of Director Education	6. Statement of allegations
7. Questionnaire of inquiry committee	8. Response (statement of allegations)
9. Response (questionnaire)	10. 1 st appointment order/CNIC
11. Service Book	12. Teacher attendance Register
13. Judgment of Service tribunal	14. Pay slip
14. Statement of the employee	

BACKGROUND HISTORY

Mr. Abdul Wakeel was a Primary School Head Teacher at GPS Hukam Khan Kalli Bara. The District Education Officer found him absent and served two absent notices on dated 19/5/2019 & 24/5/2019, against him to report. But the mentioned teacher failed to report. Consequently, the DEO Khyber; being the competent authority removed Mr. Abdul Wakeel PSHT from service on dated 6/9/2019. After sometime the mentioned teacher appealed to the appellate authority- the Director Education E&SE Khyber Pakhtunkhwa for his reinstatement. But the appeal was turned down by the worthy Director Education and withheld the decision (removal from service) of the DEO Khyber vide Notification Endst. No. 2394-96 date 17/8/2020. The teacher submitted his appeal before the Khyber Pakhtunkhwa service tribunal on 15/9/2020. The said appeal was allowed by the honorable service tribunal with the direction to conduct a de novo inquiry into the case by fully associating the appellant in the entire proceedings and giving him fair opportunity to present and defend his case.

PROCEDURE ADOPTED FOR COLLECTING EVIDENCE

In order to dig out the factual position of the case the committee called Mr. Abdul Wakil to GHS Hashim Abad on dated 24/7/2023, 14/8/2023 and 15/8/2023, for personal hearing. It is pertinent to mention that statement of allegations and a questionnaire were already communicated to the teacher on his son's WhatsApp No.03339120922. Mr. Abdul Wakil was given the opportunity to freely express his standpoint. He was listened carefully by the committee. After verbal discussion and question answer, statement of allegations and questionnaire were handed over to Mr. Abdul Wakil to record his answers and prove himself innocent. The teacher was given enough time to submit his answers. The committee contacted Mr. Sher Zaman SDEO Bara for the retrieval of the service book of Mr. Abdul Wakil PSHT and teacher attendance register of GPS Almas Khan Stori Khel Bara. Teacher attendance register for the period w.e.f January 2019 to June 2019 was

Checked service book was also checked and duly attested photo copies (attested by SDEO Bara) of the mentioned record were received and are hereby attached with this report for ready reference.

FACT FINDING

After going through the record of the case, collection of the data from different sources, and study of the statement of allegations and questionnaire, the following facts were revealed upon the inquiry committee.

1. Mr. Abdul Wakil I PSHT was removed from service on 6/9/2019 but he received his salary till April 2020. His salary was stopped on 1/5/2020. This goes against the spirit of the imposition of the major penalty. The salary of the removed civil servant must be stopped w.e.f the imposition of the major penalty.
2. Proper procedure in case of wilful absence, as mentioned in Rule 9 of the Khyber Pakhtunkhwa E&D Rules was not followed at the time of removal of the teacher. Two absence notices were served upon the employee but no record of the response of the teacher is available in the DEO Office Khyber. No notice has been published in two newspapers to warn the employee to resume his duty. A notice should have been published in two newspapers directing him to resume his duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against him. So the removal of the teacher stands on a weak and shaky ground.
3. The above mentioned two paras, nevertheless, do not whiten Mr. Abdul Wakil. There might be something which compelled the then competent authority to take such a heavy step by imposing major penalty upon the teacher.
4. The appeal of Mr. Abdul Wakil has been turned down by the appellate authority by withholding the decision of the competent authority i.e the imposition of major penalty of Removal from service. This squarely means that Mr. Abdul Wakil failed to satisfy the appellate authority of his innocence.
5. No proper departmental inquiry has been conducted to level the ground for the imposition of major penalty.
6. Mr. Abdul Wakil remained absent from duty. He has admitted his absence in his appeal to the appellate authority.
7. Mr. Abdul Wakil has received his salary for eight months even after his removal and departmental appeal. This is a serious departmental lapse on one hand, while effrontery of the teacher on the other hand.
8. TR No 648 has been issued to him on dated 17/6/2019 (vide S/Book page No 15) by District Accounts Officer while on 31/5/2019 he has drawn arrears of Rs:85352/- for the period 1/4/2019 to 31/5/2019 (as per Service Book page No 15)
9. There is an entry of removal from service in the service book of the teacher on page No 17. But the mentioned entry has not been signed by the competent authority.
10. Teacher attendance register of GPS Almas Stori Khel Bara shows no absentee of Mr. Abdul Wakil PSHT. This is astonishing and a backlash against the official reports and imposition of major penalty.

ANALYSIS OF THE CASE

Mr. Abul Wakil PSHT was reported absent for an unknown period by the then ADEO/ASDEO. The mentioned report brought about absence notice from the DEO Khyber and consequently

removal of the mentioned teacher by the competent authority. The absentee was further bolstered by the appeal of the teacher where he admits his absence by mentioning ailment of his mother as the cause of his absence. But the teacher attendance shows no absentee of the teacher. The teacher had been regular till the summer vacation of 2019 as per teacher attendance register. While the date of first absence notice is 19/5/2019. The mentioned date falls on Sunday. This whole situation creates the following premises;

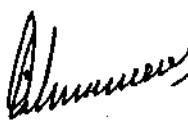
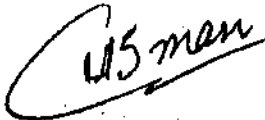
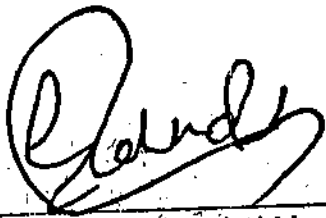
1. The teacher is telling lies. He is reported absent. He admits his absence while filing his appeal. Now he turns around his previous stance by not revealing the exact period & time of his absence. The teacher attendance register also shows the regularity of the teacher. This goes against the absence reports, notices and the penalty that has been imposed upon him. As he was the head teacher of the school, therefore, the mentioned teacher attendance register was maintained by him, by default. It can be logically concluded that how and why he could mark himself absent or on leave etc. This creates doubts and hence, challenges the authenticity of the evidence.
2. The concerned authorities of DEO Office Khyber also seems at sixes and sevens. Firstly they reported the teacher as absent and removed him from service by imposing major penalty upon him. Ironically the entry of removal from service has not been signed by the competent authority. The notification issued for the removal of service has not been pursued in toto. Furthermore, the employee has drawn his salary till April 2020 while he has been removed on dated 6/9/2019. This is also not in line with good administration. Attestation of the photo copies of the service book and teacher attendance further tilts the case in favor of the teacher.


RECOMMENDATIONS

The committee recommends that;

1. The Notification/Order of Removal may be withdrawn.
2. The absence period may be dealt as per leave rules.

INQUIRY COMMITTEE

 9/09/2023		
Mr. Abdur Rahman, Principal, GHS Hashim Abad Jamrud. (Committee Chairman)	Mr. Mohammad Usman, V/P GHSS Painsi Lalma (Member Committee)	Mr. Mohammad Abid, Principal, GHS Jafar Khan Bara (Member Committee)


 District Education Officer
 Jamrud

OFFICE ORDER

1. Whereas, Abdul Wahed PSMT DPS 19 GPS Hubam Khan Kili Barr, District Khyber was removed from government service vide this office notification No. 930-96 dated, 06/09/2019 due to his long absenteeism from official duty without prior approval of leave from the competent authority (w.c. 02/05/2019 to 06/09/2019 i.e 128 days)

2. And whereas, he had appealed to Directorate of Elementary & Secondary Education Peshawar which was rejected by Directorate of Elementary & Secondary Education vide notification No. 2394-96 dated, 17/08/2020.

3. And whereas, he had filed an appeal vide 2224/2020 dated, 13/06/2021 in Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar to the respondents to

4. And whereas, the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar allowed the appeal with the direction to the respondents to conduct denovo inquiry in the instant case.

5. And whereas, he was conditionally re-instated into Govt. Service vide this office Encl. No. 6144-52 dated, 05/07/2023 in pursuance of the judgment of the Honorable Khyber Pakhtunkhwa Service Tribunal for purpose of Denovo inquiry.

6. And whereas, as per the direction for denovo inquiry given in the above mentioned judgment, an inquiry committee comprising of Mr. Abdul Rehman Principal GHS Hasham Abad Jamrud, Muhammad Usman V. Principal GHS Palandi Lalma Jamrud & Muhammad Aftab Principal GHS Jaffer Khan Kili Barr of District Khyber was constituted vide this office Encl. No. 6179-88 dated, 06/07/2023 which

7. And whereas, after going through the material on record, charge sheet, statement of allegations and the report of the inquiry committee, submitted its report on 09/09/2023.

8. And whereas, he was called for personal hearing vide this office letter No. 9187 dated, 23/10/2023.

9. And whereas, he provided photocopies of teacher attendance, service book and other relevant documents in his defense along with other

10. And whereas, this office submitted denovo inquiry report was conducted in compliance of Honorable Court decision along with other proceeding like show cause personal hearing reply for decision being respondents 02 in service appeal NO. 2224/2020 to the Director E & SE Peshawar vide letter No. 13387 dated, 01/03/2024.

11. And whereas, the reply of the above mentioned letter received vide directorate letter No. 4397 dated, 26/03/2024 with direction that the case being district cadre post and come under your office jurisdiction hence decide at your own level whether to implement the

12. And whereas, to decide the case this office further constituted a committee vide this office Encl. No. 19931-39 dated, 26/04/2024.

13. And whereas, the competent authority, the District Education Officer (Male) Khyber after having considered the denovo inquiry recommendations teacher attendance and other evidence on record and facts of the case.

14. Now therefore, in exercise of the powers conferred by the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, under rule 14, the Competent Authority (District Education Officer (Male) Khyber) is pleased to re-instate Mr. Abdul Wahed PSMT DPS 19 GPS Hubam Khan Kili Barr, District Khyber into Govt. service w.e.t. 06/07/2023 however, the intervening period w.e.t. 02/05/2019 to 06/07/2023 (1526 days) is treated as under:-

• 02/05/2019 to 10/05/2020 (187 days) absence period is converted into half pay (374 days) (deducted from leave account)

• 11/05/2020 to 06/07/2023 (1152 days) absence period is converted into Extra ordinary leave without pay.

In the interests of public:

Note: 1. Necessary entry should be made in concerned original service book.

2. If entry has drawn of the absence period of the above may be recovered.

COPY OF THE ABOVE IS FORWARDED TO THE:

1. Director Elementary & S E D Khyber Pakhtunkhwa
2. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
3. Deputy Commissioner Khyber at Peshawar House.
4. District Accounts Officer Khyber at Jamrud.
5. DM(O&MA) Khyber
6. SDO Barr to do the needful as per order.
7. ADEO Primary Local Office.
8. official Concerned.
9. Office Copy.

DNST-NO. 2024/432 DATED 06/15/2024

(MUHAMMAD UZAIR ALI)
DISTRICT EDUCATION OFFICER
DISTRICT KHYBER AT JAMRUD

DISTRICT EDUCATION OFFICER
DISTRICT KHYBER AT JAMRUD

DISTRICT EDUCATION OFFICE
DISTRICT KHYBER AT JAMRUD
PHONE. 091-5820584 FAX 091-5820584

Better Copy-F 20

DISTRICT EDUCATION OFFICE
DISTRICT KHYBER AT JAMRUD

OFFICE ORDER

1. Whereas, Abdul Wakeel PSHT BPS 15 GPS Hukam Khan Killi Bara, District Khyber was removed from government service vide this office Notification No. 9390-96 dated 06.09.2019 due to his long absenteeism from official duty without prior approval of leave from the competent authority (w.e.f 02.05.2019 to 06.09.2019 128 days).
2. And where, he had appealed to Directorate of Elementary & Secondary Education Peshawar which was rejected by Directorate of Elementary & Secondary Education vide Notification No. 2394-96 dated 17.08.2020.
3. And whereas, the Honorable Khyber Pakhtunkhwa Tribunal Peshawar allowed the appeal with the direction to the respondents to conduct denovo inquiry in the instant case.
4. And whereas, the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar allowed the appeal with the direction to the respondents to conduct denovo inquiry in the instant case.
5. And whereas, he was conditionally reinstated into Govt. Service vide this office Endst No. 6144-52 dated 05.07.2023 in pursuance of the Judgment of the Honorable Khyber Pakhtunkhwa Service Tribunal for purpose of Denovo Inquiry.
6. And Whereas, as per the direction for denovo inquiry given in the above mentioned Judgment, an inquiry committee comprising of Mr. Abdur Rehman Principal GHS Hasham Abad Jamrud, Muhammad Usman V. Principal GHSS Paindi Lalma Jamrud and Muhammad Abid Principal GHS Jaffar Khan Killi Bara of District Khyber was constituted vide this office Endst No. 6179-88 dated 06.07.2023 which submitted its report on 09.09.2023.
7. And whereas, after going through the material on record, charge sheet, statement of allegations and the report of the inquiry committee above show cause notice was served upon him vide Endst No. 9385-92 dated 12.10.2023 under Rules 3 (a) & (b) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.
8. And whereas, he was called for personal hearing vide this office letter No. 9187 dated 23.10.2023
9. And whereas, he was called photocopies of teacher attendance, service book and other relevant documents in his defense.
10. And whereas, this office submitted denovo inquiry report was conducted to compliance of Honorable Court decision along with other proceeding/like show cause personal hearing reply for decision being respondents No. 2 in service appeal No. 2224/2020 to the Director E&SE Peshawar vide letter No. 13387 dated 01.03.2024.
11. And whereas, the reply of the above mentioned letter received vide directorate letter No. 4397 dated 26.03.2024 with direction that the case being cadre post and come under your office jurisdiction hence decide at your own level whether want to implement the inquiry report recommendations or want to re-inquiry the instant case under Rules 14 sub 6 (E&D)
12. And whereas, to decide the case this office further constituted a committee vide this office Endst No. 19931-39 dated 26.4.2024.
13. And whereas, the competent authority, the District Education Officer (Male) Khyber after having considered the denovo inquiry recommendation teacher attendance and other evidence on record and facts of the case.
14. Now therefore, in exercise of the powers conferred by the Khyber Pakhtunkhwa Servants (Efficiency & Discipline) Rules, 2011, under Rule 14, the competent authority (DEO (M) Khyber is pleased to reinstate Mr. Abdul Wakeel PSHT BPS-15 GPS Hukam Khan Killi Bara, District Khyber into Govt. Service w.e.f 06.07.2023 however, the intervening period w.e.f 02.05.2019 to 06.07.2023 (1526 days) is treated as under 02.05.2019 TO 10.05.2020 (187 DAYS) absence period is converted into half pay (374 days) (deducted from leave account).
11.05.2020 to 06.07.2023 (1152 days) absence period is converted into Extra Ordinary Leave without pay. In the interest of public.

- Note: 1. Necessary entry should be made in concerned original service book.
2. if salary has drawn of the absence period of the above may be recovered.

(MUHAMMAD UZAIR ALI)
DISTRICT EDUCATION OFFICER
DISTRICT KHYBER AT JAMRUD

Endst No. 20424.32

DATED 06.05.2024

COPY OF THE ABOVE IS FORWARDED TO THE:-

1. Director E&SE Khyber Pakhtunkhwa.
2. Registrar Service Tribunal KP, Peshawar.
3. Deputy Commissioner Khyber at Peshawar House.
4. DAO Khyber at Jamrud.
5. DMO (EMA) Khyber.
6. SDEO Bare to do the needful as per order.
7. ADEO Primary local office.
8. Official Concerned.
9. Office copy.

DISTRICT EDUCATION OFFICER
DISTRICT KHYBER AT JAMRUD.

To,

THE DIRECTOR ELEMENTARY & SECONDARY EDUCATION

KHYBER PAKHTUNKHWA PESHAWAR.

SUBJECT; **DEPARTMENTAL APPEAL/REPRESENTATION AGAINST THE ORDER DATED 06/05/2024.**

Respectfully Submitted,

Most respectfully, the appellant puts forth the following points for your kind consideration.

1. That the appellant had filed Service Appeal No, 2224/2020 for his re-instatement in service before the honourable Service Tribunal Khyber Pakhtunkhwa Peshawar which was allowed with the direction to respondents to conduct de-novo enquiry vide judgment dated 06-06-2023.(Copy of judgment is attached).
2. That the appellant in the wake of de-novo enquiry was re instate into service vide office order No 20424.32 dated 06-05-2024, however the intervening period w-e-f from 02-05-2019 to 06-07-2023 (1526 days) is treated as under:-
 - . 02-05-2019 to 10-05-2020 (187 days) absence period is converted into half pay, (374 days) deducted from leave account.
 - . 11-05-2020 to 06-07-2023 (1152 days) absence period is converted into extra ordinary leave without pay.(Copy of order dated 06-05-2024 is Attached).
3. That due to the impugned order, the appellant's intervening period was not counted which shall incur great loss to the appellant in terms of service.
4. That the appellant in this respect has, time and again visited to respondent department but to no avail.
5. That the appellant's re-instatement in service accrue to him every right of back benefits.
6. That the appellant belongs to poor family and is the sole source of livelihood of his children and parents too and the impugned order shall incur greater loss to him and his family .
7. That the appellant may also be allowed to heard in person .

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PRAYER:-

Its therefore requested that the appellant's intervening period may kindly be treated with full pay and other back benefits also be granted in favour of the appellant.

Handwritten signature

Mr Abdul Wakeel PSHT

BPS 16 GPS Hukum Khan Killi Bhara,

District Khyber.

Mob:-0332-9398803

Dated:-06-06-2024

(23)

VAKALAT NAMA

NO. _____ /2021

IN THE COURT OF Kp Service Tribunal, Peshawar

Abdul Wakeel

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Education Deptt

(Respondent)
(Defendant)

I/we, Abdul Wakeel

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court of Pakistan & Syed Noman Ali Bukhari, Advocate High Court & Hilal Zubair Advocate** 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.


PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us.

Dated _____ /2021

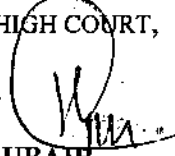


(CLIENT)

ACCEPTED


(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
OF PAKISTAN.
(BC No. 10-7327)


(S. NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT,


&
HILAL ZUBAIR
Advocate

OFFICE:

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