

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR CAMP COURT**

**ABBOTTABAD.**

**Appeal No. 359/2024**

**AURANGZEB**

.....Appellant

**VERSUS**

Govt: of Khyber-Pakhtunkhwa & Others.....Respondents

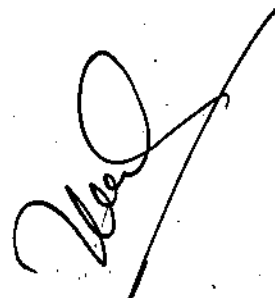
**JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 2**

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Dated: \_\_\_/10/2024

28-10-24



**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR CAMP COURT**  
**ABBOTTABAD.**

**Appeal No. 359/2024**

AURANGZEB.....Appellant

VERSUS

Govt: of Khyber Pakhtunkhwa &  
 Others.....Respondents

**JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENTS**

**RESPECTFULLY SHEWETH:-**

Comments on behalf of Respondents are submitted as under: -

Khyber Pakhtunkhwa  
 Service Tribunal

Diary No. 16821

Dated 16-10-24

**PRELIMINARY OBJECTION:**

1. That the appellant has no cause of action to file the instant appeal against the answering respondents as his case already resolved by the respondents in light of enquiry committee vide No.417 dated 07-01-2019, as well as in compliance of Honorable High Court judgment in WP#1397/2023 on dated 21-11-2023.
2. **That the instant appeal of the appellant is time barred. Hence, liable to be dismissed without any further proceeding.**
3. That the instant appeal is not maintainable in its present form as the grievances of the appellant resolved by the respondents and issued notification No.2000-2005 dated 15-02-2024.
4. That the appellant has filed the present appeal just to pressurize the respondents.
5. That the instant service appeal is based on malafide intentions.
6. That the appellant has not come to this Honorable Tribunal with clean hands. Hence, not entitled for any relief.

7. That the appellant is estopped to sue through his own conduct.
8. That the instant appeal is not maintainable due to non-joinder and mis-joinder of necessary parties.
9. That the appellant has concealed material facts from this Honorable Tribunal in the instant service appeal. Hence not entitled for any relief and appeal is liable to be dismissed without any further proceeding.
10. That the impugned notification dated 15-02-2024 is legally competent.

**FACTUAL OBJECTIONS:**

1. That the Para No. 1, of the service appeal pertains to personal record of the appellant hence, need no further comment.
2. That the Para No. 2, of the service appeal pertains to the service record of the appellant hence, need no further comment.
3. That the Para No.3, of the service appeal pertains to record hence need no comments.
4. Reply of Para No. 4, of the service appeal is subject to proof hence need no comments.
5. That Para No. 5, of the service appeal pertains to record, hence need no further comment.
6. That the Para No. 6, of the service appeal pertains to record.
7. That the Para No.7, is correct and admitted as the department constituted enquiry committee vide#8990-94 dated 12-12-2018, and enquiry committee recommended in his report vide No.417 dated 07-01-2019, that the absent period may be treated as leave with out pay because he did not perform duty for a single day during this period. Further more department implemented recommendations of the committee and appellant was reinstated into service. Despite the implementation of the recommendation of inquiry committee the appellant had again filed writ petition No. 1397/2023 which was disposed of on 21-11-2023 with the direction to decide departmental appeal within a fortnight, therefore respondents No.1 again reviewed the case and passed final order, vide No.2000-2005 on dated 15-02-2024 in which appeal was regretted and kept intact the reinstatement order. On the directions of Respondent No.1 ,DEO(M) Kolai Palas forwarded the appellant

case to finance department for sanctioning of absence period as leave without pay. Willful absentee is not entitled for relief claimed as he did not perform duty for single day during this intervening period, in this regard two judgments of Honorable courts reproduced as 2018 PLC (CS) Note 88 & 93 and also according to the rule of No work, No pay, the august supreme court judgment reproduced as 2003 SCMR 228. (Sanctioning letter, Inquiry Committee, Inquiry committee report, High court judgment, department notification as well as judgments of Honorable Courts and august supreme court are annexed as A, B, C, D, E, F, G & H respectively).

8. That the reply of Para No.8 is already given in Para No.7
9. That the Para No.9 is pertain to record.
10. That the Para No.9 is pertain to record.
11. That the Para No 11, is incorrect hence denied as the appellant re-adjusted and resolved his grievances as per recommendations of enquiry committee and he is not entitled for back benefits as per rule and law referred in above Para No.7.
12. That the Para No.12, pertains to record.
13. That the Para No.13, pertains to record.
14. That the Para No.14, pertains to record.
15. That the Para No.15, is incorrect hence denied as no such order regarding release of salaries found in record.
16. That the Para No.16 pertains to record.
17. That the Para No.17, is correct upto the extent of official correspondence but there was no concern of the appellant as the grievances of the appellant already resolved for which he was entitled.
18. That the reply of Para No.18, is given in above Para No.7 and 17.
19. That the reply of Para No.19, is given in above Para No.7 and 17.
20. That the reply of Para No.20, is given in above Para No.7 and 17.
21. That the reply is given in above Para No.7&17.
22. That the reply is given in above Para No.7&17.

23. That the Para No.23 is correct to the extent in compliance with the judgment of Honorable Court respondent No.1 issued final order vide No.2000-2005 dated 15-02-2024,after reviewing the case. .
24. That the Para No.24 is incorrect hence denied as there is no grievances remained of the appellant because the department has already resolved the issue in the light of enquiry committee recommendations as well as Honorable High Court judgment passed in WP No.1397/2024 dated 21-11-2023.

**GROUND:**

- A. That ground "A", of the instant service appeal as composed is incorrect hence, denied. The impugned notification dated 15-02-2024, is legally competent as the respondents has observed all codal formalities prior to issuance of said Notification hence the plea of the appellant is liable to be dismissed.
- B. That ground "B", of the instant service appeal as composed is incorrect hence, denied. Detailed and comprehensive reply has already been given in the Para No. 7&17 of the factual objection.
- C. That ground "C", of the instant service appeal as composed is incorrect. Detailed and comprehensive reply has already been given in the Para No. 7&17 of the factual objection.
- D. That ground "D", of the instant service appeal as composed is incorrect hence, denied. The appellant was treated as per rule and law.
- E. That ground "E", of the instant service appeal as composed is incorrect hence, denied. Detailed and comprehensive reply has already been given in the Para No. 7&17 of the factual objection.
- F. That ground "F", as composed is incorrect hence, denied and not admitted. The appellant was treated in accordance with law and rule as he was called

for personal hear vide letter No.2119 dated 06-06-2022. **(Personal hear letter annexed as I)**

- G. That ground "G", of the instant service appeal as composed is incorrect hence, denied.
- H. That ground "H", of the instant service appeal as composed is incorrect hence, denied. The plea of the appellant is mainly based on mala-fide intention as the act of the respondent with regard to impugned notification dated 15-02-2024 is within legal sphere and is liable to be maintained. The appellant leveling baseless allegation just to save his skin.
- I. That ground "I", of the instant service appeal as composed is incorrect. The respondents have not violated any Article of the constitution 1973 and the appellant has been dealt in accordance with law.
- J. That ground "J", as composed is incorrect hence, denied and not admitted. All the proceeding has been done by the answering respondents as per rules and law.
- K. That ground "K", as composed is incorrect hence, denied and not admitted. The act of the answering respondents is as per rules and law.
- L. That ground "L", as composed is incorrect hence, denied and not admitted. All the codal formalities have been observed by answering respondents prior to issuance of impugned notification dated 15-02-2024. The appellant was treated in accordance with law and rule. Hence the plea of the appellant is liable to be dismissed, furthermore in this regard the judgments reproduced for ready reference. **(2003 SCMR 228)**
- M. That ground "M", of the instant appeal as composed is incorrect hence, denied the appeal in hand is badly time barred hence liable to be dismissed without any further proceedings. The respondents seek leave of this Honorable Tribunal to raise additional grounds/ points at the time of arguments.

SA<sup>6</sup> 359/2024

Under the circumstances, it is humbly prayed that the instant service appeal may kindly be dismissed with cost.



(Samina Altaf)

Director

(E&SED) Khyber Pakhtunkhwa

Peshawar.

(Respondent No. 1)



(Umar Zaman)

District Education Officer (Male)

Kolai Palas Kohistan

(Respondent No. 2)

**Before the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar Camp  
court Abbottabad**

**Appeal No. 359/2024**

AURANGZEB .....Appellant

VERSUS

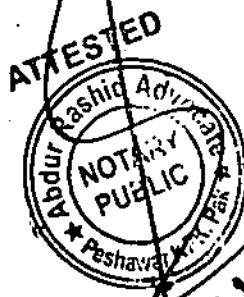
Govt: of Khyber Pakhtunkhwa & Others.....Respondents

**JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENTS**

**AFFIDAVIT**

I, Mr. **Umar Zaman** , District Education Officer (M) Kolai Palas Kohistan, do hereby affirm and declare that contents of forgoing comments are correct and true according to the best of my knowledge and belief and nothing has been suppressed from this Honorable Tribunal and the answering respondents have neither been placed ex-parte nor their defense have been struck off./cost.

(Umar Zaman)  
District Education Officer (Male)  
Kolai Palas Kohistan  
(Respondent No. 2)



16/10/2024



**OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KOLAI PALLAS KOHISTAN**

**AUTHORITY CERTIFICATE**

It is certified that Mr. Muhammad Idrees Litigation officer is hereby authorized to submit the comments in respect of Mr. Aurangzeb TT service appeal No. 359/24 before Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar on behalf of District Education Officer (M) Kolai Pallas Kohistan.

  
District Education Officer  
(M) Kolai Pallas Kohistan

8 - A



**OFFICE OF THE DISTRICT EDUCATION OFFICER  
(MALE) KOLAI PALLAS KOHISTAN**

To, Endstt No. 17090 F.No.29/DEO (M) KP KH Dated 29/08/2024

Director  
E&SE Khyber Pakhtunkhwa  
Peshawar.

Subject: **SANCTION OF INTERVEINING PERIOD OF ABSENCE W.E.F  
01.03.2010 to 10.06.2020 AS LEAVE WITHOUT PAY TO FILL  
UP THE GAP BETWEEN THE PREVIOUS SREVICE AND  
CURRENT SERVICE IN LIGHT OF RULE 12 OF THE KHYBER  
PAKHTUNKHWA CIVIL SERVENT REVISED LEAVE RULES,  
1981.**

Memo: -

In pursuance to Notification No: 2000-2005 dated 15-02 2024 issued from Directorate E&SE KPK Peshawar, the case is hereby submitted for further course of action and the brief history of case is as under:-

**BRIEF HISTORY:-**

That Mr. Aurangzeb (the appellant) was appointed as TT (BPS-07) on dated, 27-05-1993.

I. That the appellant was implicated in FIR No.505 dated 18-12-2007, FIR No.66 dated 21-08-2009, under section 7 ATA other connected sections of PPC and section 5 of the KPK explosive substance act by the police station Matta, District Sawat.

II. That the appellant was arrested and detained by the law enforcement agencies on 01-03-2010 and was released on 12-05-2017 by the administrative judge Anti- Terrorism courts, Malakand

III. That the appellant was proceeded by the Anti-Terrorism Court-1 & Court-4 malakand who discharge and released the appellant in FIR No. 505,66 & FIR No. 34 vide judgment orders Dated 02-03-2018 & 07-03-2018 respectively.

IV. That in compliance of the judgment of the anti terrorism court and on the recommendation of inquiry report No.417 SDEO (Female) Pallas Dated 07-01-2019 the appellant was re-instated in service with immediate effect vide Endstt No.1160-66 Dated 10-06-2020.

V. That the appellant filed a writ petition No.1397-A/2023. before the honorable Court which was disposed of by the honorable Court on Dated 21-11-2023 with the direction to respondent No.2 i.e. Director E&SE Khyber Pakhtoonkhwa Peshawar to decide the departmental appeal/ representation of the appellant.

VI. That the appellant submitted an appeal before the Director E&SE on the dated 14-12-2023 for release of his salaries and back benefits.

VII. That the committee constituted for the purpose by the respondent department in compliance of the judgment of

Honorable Peshawar High Court Abbottabad bench in writ petition No.1397/2023 called meeting on dated 18-01-2024.

VIII. That in compliance <sup>with</sup> judgment Dated 21-11-2023 of the Honorable Peshawar High Court Abbottabad Bench consulting with relevant Law, rules and committee recommendations, the committee and in the light of committee recommendations, the under signed is directed to submit the case of appellant before Finance department Khyber PakhtoonKhwa Peshawar for sanctioning the intervening period of absence w.e.f. 01.03.2010 to 10.06.2020 as leave without pay to fill up the gap between the previous service and current service.

The Case is submitted for further course of action please i.e. to forward it to Finance Department Khyber Pakhtunkhwa, Peshawar.

Enclosures:

1. Notification from the Directorate of E&SED.
2. Judgment of Honorable Peshawar High Court Abbottabad bench.
3. Judgment by the Anti-Terrorism Court-1 & Court-4 malakand who discharged and released the appellant in FIR No. 505,66 & FIR No. 34 vide judgment orders Dated 02-03-2018 & 07-03-2018 respectively.
4. Re-instatement into service order with immediate effect vide Endstt No.1160-66 Dated 10-06-2020.

District Education officer (M)  
Kolai Pallas Kohistan

Endstt No 17041-43 F.No.LIT/DEO (M) KP KH Dated 21/08/2024

Copy is forwarded to above:

1. DLO to Hazara division Office of DEO (M) Abbottabad
2. PA Director E&SE Khyber Pakhtunkhawa Peshawar
3. Office copy

*Alshar*  
*[Signature]*

*[Signature]*  
21/8/2024  
District Education officer (M)  
Kolai Pallas Kohistan



46 10 B  
OFFICE OF THE DISTRICT EDUCATION OFFICER (M) KOHISTAN

OFFICE ORDER:-

An inquiry committee comprising the following officers is constituted to sort out facts against Mr. Aurung Zeb TT GMS Kunsher Pallas who remained away from school from 2010 to 2016.

Therefore, the committee is directed to probe into the matter and submit inquiry report alongwith clear cut recommendations to this office within a week time positively.

1. Shamsul Hadi SDEO(F) Pallas ✓
2. Mufli Mehmood ASDEO (M) Circle Pallas
3. Fateh Muhammad ASDEO (M) Circle Dubair Pattan

*District Education Officer  
(Male) Kohistan.*

Endst: No. 8990-99/DEO (M) KH dt: 12/12/2018

Copy of the above is forwarded to the:-

1. PA to Director E&SE Khyber Pakhtunkhwa Peshawar
2. Shamsul Hadi SDEO(F) Pallas
3. Mufli Mehmood ASDEO(M) Circle Pallas
4. Fateh Muhammad ASDEO(M) Circle Dubair Pattan
5. PA to DEO(M) Kohistan

*District Education Officer  
(Male) Kohistan.*

*Attest*

47 (11) - C

**OFFICE OF THE SUB-DIVISIONAL EDUCATION OFFICER**

**FEMALE PALLAS KOHISTAN**  
E-mail: [sdeo female pallas@gmail.com](mailto:sdeo female pallas@gmail.com)

To No 417 sdeo female pallas Dated 07/01/2019

District Education Officer Male  
Kohistan

Subject: Inquiry Report of Mr. Aurang Zeb T.T GMS Kunsher

Memo.

It is stated that your office order No 8990-94 DEO Male Kohistan Dated 12/12/2018 the subject cited above an inquiry committee comprising, the following officers.

1. Shamsul Hadi SDEO Female Pallas.
2. Mufti Mehmood ASDEO Male Circle Pallas.
3. Fateh Muhammad ASDEO Male Circle Dubair/Pattan

*3 DEO (M)  
put up in file along with  
details of clearance  
position to proceed  
T.M.H.*

*08/01/2019*

Assistant Sub Divisional  
EDUCATION OFFICER  
District Kohistan Pallas

it is hereby submitted report that,

*[Signature]*

Mulana Aurang Zeb T T GMS Kunsher having CNIC No 15601-9123528-7 had appointed 29/05/1993 GMS Kolai after that he transferd GMS Mada khial and during 2010 he was attending his duty in GMS Kunsher. he said that in Army operation at bar paro pallas an FIR has been lodged against him and his salary was stopped after 01/03/2010.

Further he said that after 2010 he was in custody of Army and trailed his case in ATC court swat. at last the court decided in favour of me, the copy is attached with my application in DEO office.

we come to know that he is willing to continue his duty further for the sake of his kids and family. Some how from 01/03/2010 up to date he had not been attending his duty. after the releasing from the custody by the court order he should be on duty but he did not do as, So the very period may be treated as leave with out pay Or treated the direction of high ups/service rule may be fallow regard his salary. we are committee members agreed and recommended in favor of him to continue service further for the cause of his kids and family please



*P.A. Mada khial  
put up her family  
mazzad 15  
07/11/19*

*[Signature]*  
07/19  
SUB-DIVISIONAL EDUCATION OFFICER  
FEMALE PALLAS KOHISTAN

*Attached  
[Signature]*

12 - D

PESHAWAR HIGH COURT,  
ABBOTTABAD BENCH  
FORM 'A'  
FORM OF ORDER SHEET

Date of Order or Proceedings	ORDER OR PROCEEDINGS WITH SIGNATURE OF JUDGE/JUDGES
1	2
21.11.2023	<p><b>WP No. 1397-A/2023</b></p> <p><b>Present:-</b> Mr. Jehanzaib Khan, Advocate for the petitioner.</p> <p style="text-align: center;">***</p> <p><b><u>KAMRAN HAYAT MIANKHEL, J.</u></b>-Learned counsel for the petitioner, at the very outset stated that he will be satisfied if direction be given to respondent No. 2 to decide his departmental appeal within a fortnight from the receipt of this order. So this petition is disposed of with direction to respondent No. 2 to decide departmental appeal/representation of the petitioner within a fortnight from the receipt of this order.</p> <div style="text-align: right; margin-top: 20px;">   <b>JUDGE</b> </div> <div style="text-align: right; margin-top: 20px;">   <b>JUDGE</b> </div>

Attested  
mal

**NOTIFICATION**

1. WHEREAS, Mr. Aurangzeb (the appellant) was appointed as TF (BPS-07) on dated 27-05-1993 by the District Education Officer, at District Kohistan.
  2. AND WHEREAS, the appellant was implicated in FIR No.505 dated 18-12-2007, FIR No. 66 dated 21-08-2009, and FIR No. 34 dated: 11-03-2009, under section 7 ATA, other connected sections of Pakistan Penal Code and section 5 of the Khyber Pakhtunkhwa Explosive Substances Act by the police station Matta, District Swat.
  3. AND WHEREAS, the appellant was arrested and detained by the Law enforcement agencies on 01-03-2010 and was released on 12-5-2017 by the Administrative Judge Anti-Terrorism Courts, Malakand.
  4. AND WHEREAS, the appellant was proceeded by the Anti-Terrorism Court-1 and IV Malakand who discharged and released the appellant, in FIR No.505, 66 and FIR No 34, vide judgments orders dated: 02-03-2018, and 04-10-2012 respectively.
  5. AND WHEREAS, in compliance of the judgment of the Anti-Terrorism Court and the recommendation of the inquiry committee report No. 417 SDEO (Female) Pallas dated: 07-01-2019, the appellant was re-instated in service with immediate effect, vide office Endst No. 1160-66 dated:10-6-2020.
  6. AND WHEREAS, the appellant filed a Writ Petition No. 1397-A/2023, before the Honourable Peshawar High Court, Abbottabad Bench which was disposed of by the Honourable Court on dated: 21-11-2023 with the direction to respondent No.2, i.e., Director E&SE, Khyber Pakhtunkhwa, to decide the departmental appeal/representation of the appellant.
  7. AND WHEREAS, the appellant submitted an appeal before the Director E&SE, Khyber Pakhtunkhwa on dated: 14-12-2023 for the release of his salaries and back benefits.
  8. AND WHEREAS, the respondent department in compliance of the judgment of the Honorable Peshawar High Court, Abbottabad Bench in Writ Petition No. 1397-A/2023, called meeting on dated: 18-01-2024 of the committee constituted for the purpose.
- NOW THEREFORE**, in pursuance of the judgment dated: 21-11-2023, of the Honorable Peshawar High Court, Abbottabad Bench, consulting with relevant law, rules, policy and recommendations of the appellate committee meeting, discussed hereinabove, the undersigned, in the capacity of the appellate authority is of the considered view that the appeal of the appellant is hereby stands regretted and keep intact the reinstatement order of the appellant issued on dated: 10-06-2020 by the District Education Office (Male) Kolai Pallas, Kohistan. Moreover, the District Education Office (Male) Kolai Pallas, Kohistan, is directed to submit the appellant's case to Finance Department of Khyber Pakhtunkhwa, for sanctioning of the intervening period of absence as leave without pay to fill up the gap between the previous service and the current service in light of Rule 12 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981, of the appellant.

*Attached*

Director  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

Endst: No: 2000-7005 Dated Peshawar the: 15/02/2024

**Copy forwarded for information & n/action to the:-**

1. Additional Registrar (J) Honorable Peshawar High Court, Abbottabad bench.
2. Additional Advocate General Peshawar High Court Abbottabad Bench.
3. Director Elementary & Secondary Education, Khyber Pakhtunkhwa.
4. District Education Officer Kolai Pallas.
5. Section Officer (Lit.III) E&SE Department Khyber Pakhtunkhwa.
6. Official concerned.

*15/02/24*  
Assistant Director (Estab-M1)

14-

(F)

up-gradation of their posts—Powers of Ombudsman to upgrade the post—Equal treatment—Scope—Contention of petitioners employees was that post of Assistant Director had been decided to be upgraded from BPS-16 to BPS-17 and only formal notification was required to be issued—Validity—Ombudsman had powers to upgrade or downgrade any post—Matter of up-gradation of different posts were taken up by the Wafaqi Mohtasib and upgraded different posts—Post of Assistant Director had also been recommended for up-gradation from BPS-16 to BPS-17—Wafaqi Mohtasib Secretariat had implemented said recommendations with regard to all other posts except the Assistant Directors—Finance Division had advised the Mohtasib Office to take up the matter with regard to up-gradation of Assistant Directors with the Establishment Division—Concurrence of Establishment Division was not required as Wafaqi Mohtasib had powers to upgrade the posts of Assistant Directors—Petitioners employees had been treated discriminately and denied equal protection of law—Higher post of Deputy Director was upgraded in anticipation on the ground that posts of Assistant Directors was going to be upgraded—Authorities were bound to upgrade the posts of petitioners/employees with immediate effect—Department was directed to issue formal notification of up-gradation of the post of Assistant Directors from BPS-16 to BPS-17 and allow the higher scale to the incumbents within a period of thirty days—Constitutional petition was allowed in circumstances. [paras. 6, 7, 8, 10, 11 & 12 of the judgment]

PLD 1975 SC 506; PLD 1993 SC 375 and 1991 SCMR 1041 rel.

(b) Constitution of Pakistan---

—Art. 25—Equal protection—Meaning and scope.

Equal protection of law means that no person of or class of person shall be denied the same protection of law which is enjoyed by other person or other class of persons in like circumstances. Similarly, reasonable classification amongst different groups of persons is admissible; however, to justify the validity of a classification must be shown that it is based on reasonable distinction or that it is on reasonable basis or rest on real or substantial difference of distinction: [para 9 of the judgment]

Muhammad Arif Khan for Petitioner.

Kifayatullah Khan, DAG for Federation for Respondent.

Date of hearing: 23rd May, 2017.

ZC/280/P

Petition allowed

2018 P L C (C.S.) Note 87 ✓

[Sindh High Court]

Before Irjan Saadat Khan and Adnan-ul-Karim Memon, JJ

BASHIR AHMED and 18 others

versus

PROVINCE OF SINDH through Chief Secretary and 2 others.

C.P. No. U-4577 of 2015, decided on 9th February, 2017.

PLC

Full text of the judgment can be viewed at www.nakiatonline.com

Attor  
meel

Per Adnan-ul-Karim Memon, J

(a) Sindh Judicial Academy Act (IX of 1994)---

16—Sindh Civil Servants Act (XIV of 1973), S. 2 (1) (b) (ii)—Sindh Judicial Academy Establishment (Appointment and Condition of Service) Regulations, 2015, Preamble—Constitution of Pakistan, Art. 199—Constitutional petition—Maintainability—Contract employees of Sindh Judicial Academy—Seeking regularization of services and service benefits at par with staff members of Federal and other Provincial Judicial Academies—Scope—Sindh Judicial Academy Establishment (Appointment and Condition of Service) Regulations, 2015 were not statutory as same were framed by the Board of Governors of the Judicial Academy—Employees of the Judicial Academy in question were not "civil servants" and were temporary employees being on contract—Judicial Academy in each Province was empowered to make its own decision regarding the subject which fell within their respective domain in accordance with their own circumstances and to decide the terms and conditions with regard to their employees—Similar treatment could not be asked for and provided in circumstances—Contract employees had no vested right for regularization of their services retrospectively—Department had right to decide the issue of regularization of petitioners-employees in accordance with law—Constitutional petition was not maintainable which was dismissed in circumstances. [paras. 17, 20, 22 & 23 of the judgment]

Pakistan Defence Housing Authority v. Lt. Col. Syed Javed Ahmed 2013 SCMR 1707 rel.

(b) Civil service---

Appointment could not be made retrospectively. [para. 21 of the judgment]

Abdul Salam Memon for Petitioners.

Mushtaq A. Memon and Asif Ahmed Memon for Respondent No.3.

Abdul Jalil Zubedi, A.A.G., Sindh.

Date of hearing: 26th January, 2017.

ZC/B-6/Sindh

Petition dismissed.

2018 P L C (C.S.) Note 88 ✓

[Peshawar High Court]

Before Qaiser Rashid Khan and Muhammad Nasir Mahfooz, JJ

KHAN GUL

versus

GOVERNMENT OF KHYBER PAKHTUNKHWA through Secretary Local Government Elections and Rural Development Department and 3 others

No.2684-P of 2016, decided on 21st June, 2017.

Full text of the judgment can be viewed at www.nakiatonline.com



**Per Muhammad Nasir Mahfooz, J****Civil service---**

—Reinstatement in service—Arrears, payments of—Contention of civil servant was that he was falsely charged for a criminal offence wherefrom he was acquitted after trial and was reinstated in service by the department but was denied the arrears of pay and benefits for the intervening period—Validity—Civil servant had failed to explain period of his absence by misinterpreting Fundamental Rules No. 54 and remained fugitive from law and absconder—Extraordinary jurisdiction under Art. 199 of the Constitution was to be exercised for rule of law and safe administration of justice and civil servant was not entitled to the relief asked for—Constitutional petition was dismissed in circumstances. [para. 6 of the judgment]

2006 SCMR 421 and 2007 SCMR 855 distinguished.

2017 SCMR 965 rel.

Zartaj Anwar for Petitioner.

Sabah-ud-Din Khattak for Respondents.

Date of hearing: 21st June, 2017.

ZC/191/P

Petition dismissed

2018 P L C (C.S.) Note 89 ✓

[Sindh High Court]

Before Muhammad Ali Mazhar and  
Arshad Hussain Khan, JJ

EHSANULLAH KHAN

versus

FEDERATION OF PAKISTAN through Chairman and 2 others

C.P. No.D-1945 of 2013, decided on 11th January, 2017.

**Per Arshad Hussain Khan, J****(a) Service Tribunals Act (LXX of 1973)---**

—Ss. 4(1)(b) & 3(2)—O.M. No.F. No.4(6)imp/FR-17/2013-277 dated 18-09-2015—Promotion—Objective assessment—Jurisdiction of Service Tribunal—Scope—Contention of employee was that he was deprived from promotion for no fault of him—Validity—Service Tribunal had no jurisdiction on the controversy of determination of fitness and suitability of a person for a job and for promotion—No remedy of filing appeal had been provided to the civil servant against determination of fitness and he could invoke jurisdiction of High Court under Art. 199 of the Constitution—Posts of senior management (BS-20 and 21) positions required selection on the basis of merit—Promotion to such posts could not be made in a mechanical manner and a variety of factors had to be taken into consideration—Questions of determination of fitness of an employee to be promoted was not capable of being scrutinized on the basis of judicially manageable

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standards—Nevertheless such subjective evaluation was to be premised on an objective criteria with the object of evolving such objective criterion—Government itself had issued promotion policy guidelines and developed methods of quantifying confidential reports which should be treated at par with statutory rules—Assessment of an officer's performance during a year might completely depend on the subjective opinion of his reporting officer—Weightage required to be accorded to such report for the purpose of determining fitness for promotion would entail an objective assessment—Court could not sit in judgment over subjective evaluation but would indeed be competent to examine whether the required objective criterion was followed—Employee/petitioner, in the present case, had been awarded eleven marks by Central Selection Board but same did not reflect in any of the panel proforma reports, which, if had been added he would have been crossed the eligibility threshold marks—Performance evaluation report and training marks in every panel proforma were different—Impugned recommendations/ decision of Central Selection Board required re-consideration of petitioner's case who had retired—Case of petitioner could not be sent to Central Selection Board for recommendation, however, he was entitled to get the benefit of Office Memorandum No.F.No.4 (6)imp/FR-17/2013-277 dated 18-09-2015—Authorities were directed to consider case of petitioner in the light of revised guidelines issued by the Finance Division vide its Office Memorandum No.F. No.4(6)imp/FR-17/2013-277 dated 18-09-2015 without being influenced by the decision by Central Selection Board—Constitutional petition was disposed of in circumstances. [paras. 9, 10, 11 & 13 of the judgment]

Khalid Mahmood Wattoo v. Government of Punjab and others 1998 SCMR 2280; Tariq Aziz-uddin in Human Rights, Cases Nos.8340, 9504-G, 13936-G, 13635-P and 14306-G to 143309-G of 2009; 2003 PLC (C.S.) 212; PLD 2008 SC 769 and 2008 SCMR 260 rel.

Khan M. Multiur Rahman and others v. Government through Secretary, Ministry of Finance (Revenue Division), Government of Pakistan, Islamabad and others 2006 PLC (C.S.) 564 rel.

**(b) Constitution of Pakistan---**

—Art. 199—Civil service—Constitutional jurisdiction of High Court—Scope.

Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the frame work of Constitution. This extraordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation. The jurisdiction conferred under Article-199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice. [para. 12 of the judgment]

Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others 2015 PLC 259 rel.

Ms. Naila Tabassum for Petitioner.

Shaikh Liaquat Hussain, Standing Counsel.

Date of hearing: 13th October, 2016.

ZC/E-2/Sindh

Petition disposed of.

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upto the Sr. No.52 of the Seniority List of Officer of Ex-PCS (BS-18) Cadre.

11. In the light of the above facts and circumstances of the present case, this is the matter of Policy to obtain the nominations of BS-18 or equivalent Officers for the MCMC to be taken place at National Institute of Management (NIM).

12. We have noted that there is cut of date given in the said Notification dated 20.12.2016 for such nominations. Admittedly on 21.12.2016 the Respondent No.2 forwarded the nominations of six (6) Officers of Ex-PCS (BS-18) Cadre and five (5) Officers of Provincial Secretariat Services Cadre (PSS), whereas, the Petitioner has not sought any relief against the Respondent No.4 in his Prayer rather he prayed that directions may be issued for his nomination in the said course. This assertion of the Petitioner, in our view, is not tenable in the eyes of law. We have also noted that the Petitioner being a Junior Officer of the Ex-PCS Cadre could not claim nomination for 23rd Mid Career Management Course (MCMC) as a matter of right, as this is not his vested and fundamental right. In our view, the Petitioner, at this juncture, being a junior officer in the Seniority List, does not fall within the ambit of promotion zone for higher rank (BS-19). The nominations were made upto Sr. No.52 of the seniority list, whereas Petitioner stands at Sr. No.54 and may be considered for nomination on his turn, if found eligible. Reverting to the plea raised by the Petitioner in respect of order dated 24.02.2015 passed in Civil Appeal No.28-K of 2013, the Hon'ble Apex Court has passed the final judgment in the Civil Appeal No.28-K of 2013 dated 27.04.2016, and the same is reported as Chief Secretary Sindh v. Riaz Ahmed Massan (2016) SCMR 1784 with the observation that the issue to examine the vires of West Pakistan Civil Service (Executive Branch) Rules, 1964 will be taken up separately, least it may not prejudice the case of those serving officers who may be the beneficiary of such exemption. However, the Hon'ble Apex Court has not restricted for sending the Ex-PCS/PSS Officers for Mid Career Management Course (MCMC).

13. In view of the above, we do not find any irregularity or illegality in the Notification dated 21.12.2016 and violation of Service Rules, regarding nominations of the Officers of Ex-PCS/PSS Cadre for attending 23rd Mid Career Management Course (MCMC). The Petition merits no consideration and is accordingly dismissed.

ZC/M-38/Sindh

Petition dismissed

2018 P L C (C.S.) 93

(Supreme Court of Pakistan)

Present: Sh. Azmat Saeed and Faisal Arab, JJ

FEDERATION OF PAKISTAN through Secretary Ministry of Defence and another

versus

BASHIR AHMED, SBA IN MES, MINISTRY OF DEFENCE, GE(ARMY), NOWSHERA

Civil Petition No. 935 of 2015, decided on 18th April, 2017.

(On appeal against the judgment dated 24.03.2015 passed by the Federal Service Tribunal, Islamabad in Appeal No.745(P)CS-2013)

Civil service--

Continuous absence from duty--Major penalty of compulsory retirement--Respondent was serving in the Military Engineering Services, Ministry of Defence--During service respondent was nominated as an accused in a murder case and an FIR was lodged against him--Respondent remained absent from duty without any authorization from the day the FIR was registered against him--Show-cause notice and opportunity of personal hearing was provided to respondent but he failed to appear before the Authorized Officer--Major penalty of compulsory retirement was imposed on the respondent on account of his continuous absence from duty--Service Tribunal had held that on account of murder charges and the enmity with the complainant party, his absence was justified; thus, the major penalty of compulsory retirement was converted into minor penalty of withholding of three increments with reinstatement back in service--Legality--Case record showed that during the period of absence, no attempt was made on behalf of the respondent to apply for leave--Criminal case came to an end and respondent was acquitted on account of compromise reached with the complainant party, nevertheless before reaching the compromise, he was not in custody but remained an absconder and only surrendered before the law after the compromise was reached with the victim's family members--To seek condonation of absence during his absconson would amount to putting premium on such act--In the present case, if reason provided by respondent was made a ground for condonation of absence, then in every case where the civil servant was involved in a criminal case and absconded, his absence from duty would have to be condoned--Act of

Attended  
[Signature]

*abscension or being a fugitive from law could not be regarded as a reasonable ground to explain absence—Impugned judgment of Service Tribunal was set aside and departmental action of imposition of major penalty of compulsory retirement was restored—Appeal was allowed accordingly. [pp. 95, 96] A, B & C*

Central Board of Revenue v. Shafiq Muhammad 2008 SCMR 1666 distinguished:

Syed Nayyab Hassan Gardezi, Assistant Attorney General and Qari Abdul Rasheed, Advocate-on-Record (Absent) for Petitioners.

Muhammad Shoaib Shaheen, Advocate Supreme Court and Ahmed Nawaz Ch., Advocate-on-Record for Respondent.

Date of hearing: 18th April, 2017.

#### JUDGMENT

FAISAL ARAB, J.—The respondent was appointed as SBA in MES, Ministry of Defence in the year 1990. On 20.06.2010 he was nominated as an accused in a murder case registered vide FIR No.335/2010 under sections 302/34, P.P.C. at Police Station Azakhel, District Nowshera. He remained absent without any authorization from the day the FIR was registered against him. Between 27.06.2010 to 01.09.2010; he was issued five letters calling upon him to resume duty but he failed to do so. On account of his absence, disciplinary proceedings were initiated against him on 26.10.2010. He was then served with show cause notice on 25.04.2011, to which he failed to respond. Ultimately major penalty of compulsory retirement was recommended on 15.09.2011. The respondent was then given an opportunity of personal hearing but he failed to appear, hence the Authorized Officer imposed major penalty vide order dated 31.01.2012 on account of his continuous absence from duty. The respondent belatedly filed departmental appeal on 03.07.2012 which was considered to be barred by time. The respondent then filed appeal before the Service Tribunal on the ground that he was not given the opportunity of hearing. The Tribunal while disposing of the appeal vide order dated 02.07.2013 directed the petitioner to hear the respondent's departmental appeal afresh and decide within 30 days. After hearing the respondent, the departmental appeal was rejected on 11.10.2013; whereafter he again preferred appeal before the Service Tribunal on 08.11.2013. Before the Tribunal, it was admitted by respondent's Advocate that after the registration, the respondent went underground as he could not live a normal life on account of his involvement in a criminal case and thus remained absent from duty. With regard to the disciplinary proceedings, the Service Tribunal held that on account of murder charges and the

proximity with the complainant party, his absence was justified. The Service Tribunal thus converted the major penalty of compulsory retirement into minor penalty of withholding of three increments and reinstated him back in service. Against such decision, present petition for leave to appeal has been preferred. Notice was issued to the respondent.

2. Learned counsel for the petitioners contended that it is an admitted position that the respondent absented himself from 20.06.2010 onwards without seeking leave of absence from the department. The letters calling upon him to resume duty as well as show cause notice delivered at his known address were also not responded to, hence, the department was left with no other option but to initiate disciplinary proceedings. Learned counsel further submitted that the Authorized Officer in fact showed leniency by not dismissing the respondent from service and only imposed a penalty of compulsory retirement, which would still entitle him to receive pensionary benefits for the term that he served from 1990 until he was compulsorily retired on 31.01.2012.

3. Learned counsel for the respondent, on the other hand, contended that the respondent was involved in a murder case on 20.06.2010 and was finally acquitted on 20.09.2012; hence, his absence was not willful, therefore, imposition of major penalty was too harsh. He submitted that at best a minor penalty could have been imposed and the Service Tribunal after taking into consideration all this rightly converted major penalty into minor penalty. In support of his contention he relied upon the case of *Central Board of Revenue v. Shafiq Muhammad*, (2008 SCMR 1666). He also submitted that even otherwise no case of public importance as envisaged under Article 212(3) of the Constitution is made out and this petition may be dismissed on this score alone.

4. It has come on the record that during the period of absence, no attempt was made on behalf of the respondent to apply for leave. The respondent's counsel himself, stated before the Tribunal that the reason for his absence was that he went underground being involved in a murder case and it was only on the basis of a compromise with the victim's relatives that he was acquitted in September, 2012. Though the criminal case came to an end in September, 2012 and he was acquitted on account of compromise reached with the complainant party, nevertheless before reaching the compromise, he was not in custody but remained an absconder and only surrendered before the law after the compromise was reached with the victim's family members. To seek condonation of absence during his abscension would amount to putting premium on such act. If this is made a ground for condonation of absence, then in every

*Alleged  
major*

18- (18) case where the civil servant is involved in a criminal case and absconds, his absence from duty would have to be condoned. The act of absconson or being a fugitive from law cannot be regarded as a reasonable ground to explain absence. Even where a person is innocent, absconson amounts to showing mistrust in the judicial system. Learned counsel for the respondent was asked to show as to whether in any case, this Court has condoned the absconson and the departmental action was set aside, he was unable to satisfy this Court on this point. In the circumstances, the case relied upon by the respondent's counsel is of no help to the case of the respondent as it has no relevance in the facts and circumstances of this case.

5. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned judgment and restore the departmental action of imposition of major penalty of compulsory retirement.

MWA/F-5/SC

Appeal allowed.

2018 P L C (C.S.) 96

[Lahore High Court (Rawalpindi Bench)]

Before Amin-ud-Din Khan, J

ARSHAD BASHIR SHAHEEN EST

versus

DEPARTMENTAL PROMOTION COMMITTEE  
(EDUCATION DEPARTMENT) through Chairman,  
District Coordination Officer, Chakwal and 3 others

W.P. No.3075 of 2014, heard on 17th March, 2016.

**Punjab Service Tribunals Act (IX of 1974)---**

---S. 4---Punjab Civil Servants Act (VIII of 1974), S. 21---Constitution of Pakistan, Arts.199 & 212--- Constitutional petition--- Maintainability---Civil service---Promotion---Terms and conditions of service---Bar on jurisdiction contained under Art.212 of the Constitution---Terms "fitness" and "eligibility"---Scope---Matter of fitness was different from "eligibility"---Eligibility would relate to the terms and conditions of service whereas fitness for promotion was a subjective evaluation on the basis of objective criteria where substitution for opinion of the authority was not possible by that of a tribunal or a court---When award of a grade to civil servant was

PLC (Service)

regular, it was denial of promotion on basis of eligibility of employee for the post for which he was claiming promotion---When eligibility of employee was in question for promotion then constitutional petition was barred under Art.212 of the Constitution---Constitutional petition being not maintainable was dismissed in circumstances.  
98] A & B

Fazali Rehmani v. Chief Minister, N.W.F.P., Peshawar and others PLD 2008 SC 769 and Tasleem Jan and others v.- Muhammad Aman and others 2005 SCMR 695 rel.

Imran Hassan Ali for Petitioner.

Khurshid Ahmad Satti, Assistant Advocate-General for Respondents.

Date of hearing: 17th March, 2016.

## JUDGMENT

AMIN-UD-DIN KHAN, J.---Through this writ petition following prayer has been made:---

"It is therefore, respectfully prayed that instant writ petition may kindly be allowed, denial of his right of promotion from EST (BS-15) to SST (BS-16) in DPC meeting held on 14.10.14 may kindly be declared as illegal, unconstitutional, violation of his legal, basic and fundamental rights guaranteed in law and Constitution, unjustified, discriminatory, void, coram-non-judice, without lawful authority, of no legal effect and may kindly be set aside with consequential mandamus direction to respondents to forthwith grant aforesaid rights to the petitioner, with all due benefits and other consequential relief.

Further prayed that operation of recommendations of the DPC held on 14.10.2014 to the extent of all those who are juniors to the petitioner as per seniority list may kindly be suspended and issuance of its implementation order may kindly be stayed, pending final decision of the main writ petition."

2. Comments were called from the respondents, same have been filed. According to the respondents, case of the petitioner was considered in the Departmental Promotion Committee meeting held on 14.10.2014 but the eligibility of the petitioner was in issue on the ground that he was irregularly awarded EST grade. The proceedings of the Departmental Promotion Committee were not appended with the comments filed by the respondents, therefore, learned Assistant Advocate-General was directed

PLC (Service)

parties and have also perused the record of the case. It may be pointed out that under the Rules, the said items are liable to duty tax/royalty and for such purpose publication was made under the Rules and in open auction petitioner being highest bidder was given contract and there is nothing on record to show that any Government department is exempted from tax/duty; thus the contention of Syed Ayyaz Zahoor, Advocate for the petitioners has substance. Admittedly the petitioners are extracting Bajri, sand, stone crush from Hub River and other parts of District Lasbela which is liable to payment of royalty, therefore, petition is allowed as prayed for. Respondent to pay tax in future and also to pay arrears i.e. w.e.f. 24-2-2001 on the material already extracted by them.

(6) Petition is allowed in the above terms with no order as to costs.

The impugned judgment is not open to exception, as it is well-reasoned and based on the law. There is no material irregularity or illegality.

8. For the facts and reasons stated hereinabove, were are of the considered view, that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

Q.M.H./M.A.K./C-64/S

Petition dismissed.

2003 S C M R 228

[Supreme Court of Pakistan]

Present: Syed Deedar Hussain Shah  
and Tanvir Ahmed Khan, JJ

Syed NIAZ HUSSAIN SHAH BUKHARI, TECHNICIAN  
(PROCESS)—Petitioner

versus

OIL AND GAS DEVELOPMENT CORPORATION LIMITED through  
Chairman, OGDC Head Office, Islamabad—Respondent

Civil Petition For Leave to Appeal No.51 of 2002, decided on 11th  
September, 2002.

(On appeal from judgment dated 2-11-2001 passed by the Federal  
Service Tribunal, Islamabad, in Appeal No:1076(R)CE of 2000)

(a) Civil service—

---Pay, entitlement to—When there is no work, there is no pay.  
[p. 231] C

(b) Civil service—

---Salary, refund of—Civil servant after obtaining stay order against his transfer was allowed to continue his duties at original place, where he was paid salary for about three years.—Authority deducted from salary of civil servant the amount paid to him as salary for the period when he remained absent from duty—Service Tribunal dismissed appeal of civil servant—Validity—Civil servant had not performed his duties either at original place or at transferred place, thus, was not entitled to salary—Period for which refund of salary was effected from civil servant was the period for which, he had not worked—When there was no work, there was no pay—Recovery had rightly been effected from civil servant—Impugned judgment was not open to exception as there was no jurisdictional error or misconstruction of facts and law—No substantial question of law of public importance envisaged under Art. 212(3) of the Constitution was made out—Supreme Court dismissed petition for leave to appeal in circumstances—Constitution of Pakistan (1973), Art. 212(3). [pp. 230, 231] A, B, C, D, E & F

Sadiq Muhammad Warraich, Advocate Supreme Court and Ejaz  
Muhammad Khan, Advocate-on-Record (absent) for Petitioner.

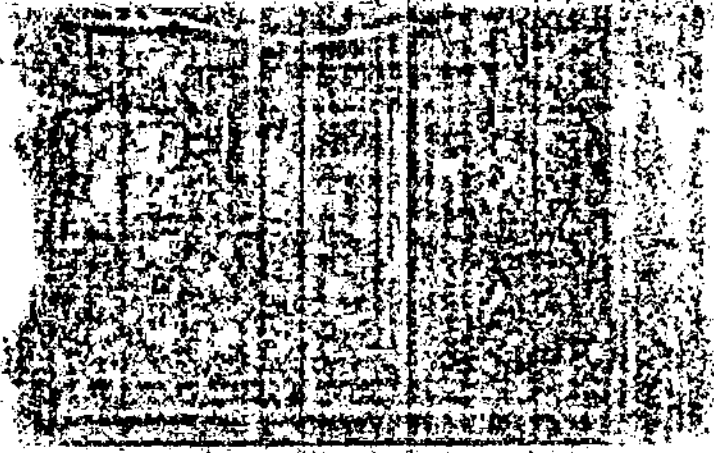
Sardar Muhammad Aslam, Dy. A.G. and M.S. Khattak, Advocate-  
on-Record for Respondent.

Date of hearing: 11th September, 2002.

#### JUDGMENT

SYED DEEDAR HUSSAIN SHAH, J.—Petitioner seeks leave to appeal against that judgment of the Federal Service Tribunal, Islamabad (hereinafter referred to as the Tribunal) passed in Appeal No.1076(R)CE of 2000 dated 2-11-2001, whereby appeal filed by the petitioner was dismissed.

2. Briefly stated that facts of the case are that on 4-7-1994, the petitioner was transferred from Missa Kiswal to Peer Koh. He felt that transfer order so issued was mala fide and he was punished being the Union Official of the respondent/Corporation, therefore, he approached the NIRC for restraining the order under Regulation 32 of NIRC Procedure and Functions and Regulations, 1974 and a stay order against his transfer to Peer Koh was granted and he was allowed to continue and perform his duties at Missa Kiswal and also paid his salary that after about 3 years the respondent started deductions from the salary of the petitioner i.e. the amount which had



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**OFFICE OF THE DISTRICT EDUCATION OFFICER  
(MALE) KOLAI PALLAS KOHISTAN**

No. 2118 /F.No.22/DEO (M) KP:KH Dated Pallas the 06/06/2022

To: **Mr. Aurangzeb, TT,  
GMS Kunshir**

*Aurangzeb*

Subject: **PERSONAL HEARING**  
Memo:

You are directed to attend this office for personal hearings regarding Re-instatement in service office order issued vide No.1160-66 dated 10-06-2020 by the undersigned on **07.06.2022 (Tuesday) at 10:00 AM** to defend yourself.

*o/c*  
  
DISTRICT EDUCATION OFFICER  
(M) KOLAI PALLAS KOHISTAN

Endstt: No. 2120-23 /F.No.22/DEO (M) KP KH. Dated: 06/06/2022

**Copy forwarded to the:-**

1. Director (E&SE) Khyber Pakhtunkhwa Peshawar
2. Deputy Commissioner Kolai Pallas Kohistan
3. District Monitoring Officer (IMU/EMA) Kolai Pallas Kohistan
4. Office copy

*o/c*  
  
DISTRICT EDUCATION OFFICER  
(M) KOLAI PALLAS KOHISTAN

*06/06/2022*