


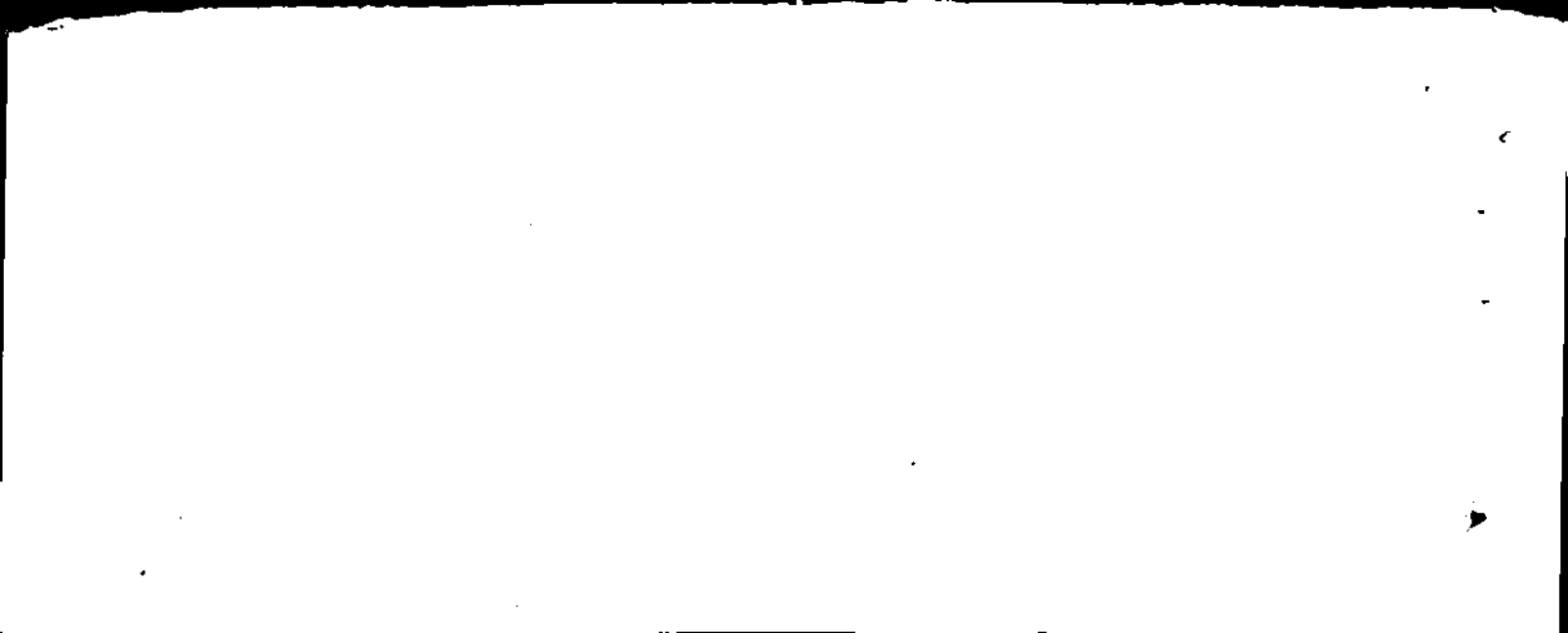
Cost of Rs. 2,000/- received in Service Appeal No. 583/2024

Titled Waheed Ullah Jan VS. E & SE Deptt

in the office of Registrar Vide Order 26-07-2024

Dated: 30/07/2024.

F 
REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal Peshawar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No: 583/2024

Mr. Waheed Ullah Jan, Senior Qari (BPS-16) GHS Sari Behlol, Mardan.

(Appellant)

Versus

The Secretary of (E & SE) Education, Kyber Pakhtunkhwa, & Others.

(Respondents)

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Zahid  Muhammad

District Education Officer
(Male) Mardan

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Para Wise Comments On Respondents 2 to 3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action as well as locus standi to file the instant appeal, hence the appeal is liable to be dismissed.
2. That the instant appeal is badly time barred, hence the appeal is liable to be dismissed.
3. That the appellant has not come to this Honorable Tribunal with clean hands.
4. That the appellant has concealed the material facts from this Honorable Tribunal, hence the appeal is liable to be dismissed.
5. That the appellant has involved in satanic activities, un-natural offences and is habitual bad character person where is not only Mr. Habib (student), but so many other students had disclosed the name of the appellant for subjecting and disgracefully attacked by appellant.
6. That the compulsory retirement of the appellant date 16/11/2017 was in the betterment of institution and welfare of society as a whole, where the parent send their lovely kids and future of nation to learn good ethics, civic, and character for constituting good, civilized and good moral society, but teacher like appellant. teach them bad character and compel the kid and teen age student for sodomy and unnatural offences.

(Copy of Retirement Order is as Annexure A)

7. That the appellant is a stigma and black dot on the institution where educationist may be developed to produce the brilliant future of the nation instead of gays, lesbians and catamites.
8. That the back benefits plea of the appellant once before decided by The Khyber Pakhtunkhwa Service Tribunal in its judgment dated 02-02-2022, and the back benefits plea of the appellant has not accepted by The K P Service Tribunal.

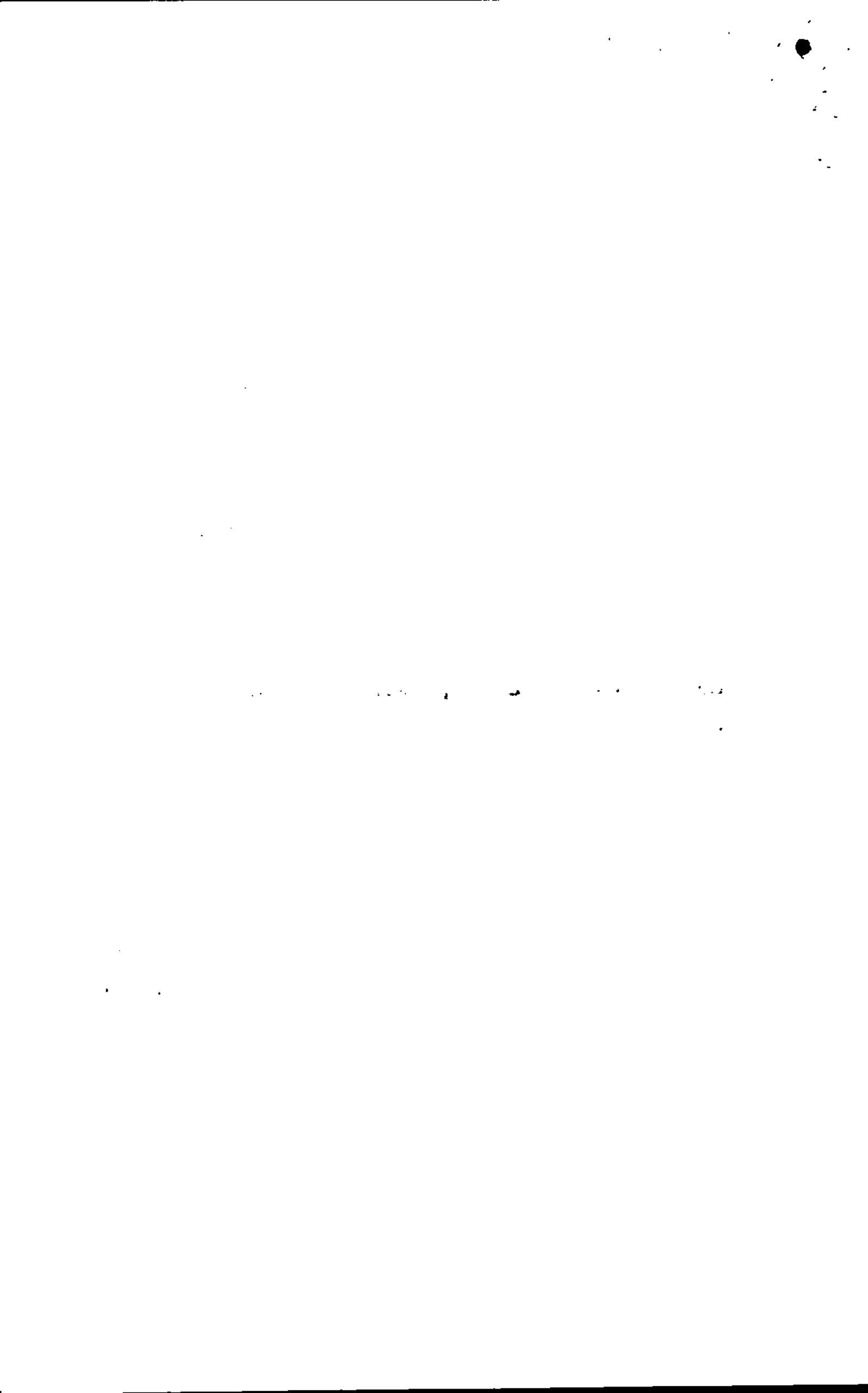
(Copy of Judgment is as Annexure B)

FACTS:

1. Para No 1 is **Incorrect & not admitted**. As the appellant was involved in satanic activities, un-natural offences and is habitual bad character person where is not only Mr. Habib (student), but so many other students had been disclosed the name of the appellant for subjecting and disgracefully attacked by appellant, however the appellant is an employee of the respondent department, hence denied.
2. Para No 2 pertains to his punishment, need no comments.
3. Para No 3 pertains to his previous service appeal, no comments.
4. Para No 4 pertains to his previous departmental appeal, need no comments.
5. Para No 5 pertains to his withdrawal of reinstatement order, need no comments.
6. Para No 6 is **Incorrect & not admitted**. As the back benefits plea of the appellant has not accepted by The K P Service Tribunal. The intervening period from 15/11/2017 to 18/10/2018 has already been decided date 02-02-2022 by this service Tribunal, hence denied.

(Copy of Judgment is as Annexure B)

7. Para No 7 pertains to his previous service appeal, no comments.
8. Para No 8 is **Incorrect & not admitted**. As the compulsory retirement of the appellant date 16/11/2017 was in the betterment of institution and welfare of society as a whole, where the parent send their lovely kids and future of nation to learn good ethics,



civic, and character for constituting good, civilized and good moral society, but teacher like appellant. teach them bad character and compel the kid and teen age student for sodomy and unnatural offences. The intervening period from 15/11/2017 to 18/10/2018 has already been decided date 02-02-2022 by this service Tribunal, hence denied.

9. No Comments, the detail reply of the grounds as under:

GROUND:

- A. Para A is **Incorrect & not admitted.** As, the appellate order date 19/10/2018 was in the betterment of institution and welfare of society as a whole, where the parent send their lovely kids and future of nation to learn good ethics, civic, and character for constituting good, civilized and good moral society, but teacher like appellant. teach them bad character and compel the kid and teen age student for sodomy and unnatural offences, hence denied.
- B. Para B is **Incorrect & not admitted.** As the appellant has been treated by the respondent department in accordance with law and the respondents has not been violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan, hence denied.
- C. Para C is **Incorrect & not admitted.** As the act of the respondent is not malafide manner and the issue of the intervening period is decided by this Service Tribunal in its judgment date 02-02-2022, hence denied.
- D. Para D is **Incorrect & not admitted.** As the appellant is a stigma and black dot on the institution where educationist may be developed to produce the brilliant future of the nation instead of gays, lesbians and catamites, therefore he has not entitled for pay of he said period, hence denied.
- E. Para E is **Incorrect & not admitted.** As the treatment meted out to the appellant clearly based on his own misconduct, satanic activities, un-natural offences and is habitual bad character and the respondent has not violated the Principal of Natural Justice, hence denied.


F. Para F is Incorrect & not admitted. As the action and inaction is taken against the appellant according to law, hence denied

G. That the respondents seek permission to raise additional grounds at the time of arguments.

Therefore, in view of the above made submissions, it is most humbly prayed that on the acceptance of this reply/ comments, the appeal in hand may kindly be dismissed in favor of the Respondents Department in the interest of justice.


SAMINA ILTAF
DIRECTOR

E&SE Department Khyber
Pakhtunkhwa, Peshawar.

 (Respondent No: 2)


ZAHID MHAMMAD

District Education officer
(Male) Mardan
(Respondent No: 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No: 583/2024

Mr. Waheed Ullah Jan, Senior Qari (BPS-16) GHS Sari Behlol, Mardan.

(Appellant)

Versus

The Secretary of (E & SE) Education, Kyber Pakhtunkhwa, & Others.

(Respondents)

AFFIDAVIT

I, Mr. Zahid Muhammad DEO (Male) Mardan do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted on behalf of respondents are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Court. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.

Deponent




Zahid Muhammad
DEO (Male) Mardan



**DISTRICT EDUCATION OFFICER
(Male) MARDAN**

AUTHORITY LETTER

I, ZAHID NUHAMMAD District Education Officer (Female) Mardan do hereby authorized Mr.Sajid Khan, Legal Representative on behalf of District Education Office (Female) Mardan, to deal with the issues regarding litigation, represent, submit comments/ Reply of the Service Appeals and attend the KPK Honorable Service Tribunal, Peshawar.


ZAHID MUHAMMAD
District Education Officer
(Male) Mardan

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN

NOTIFICATION

I, Ijaz Ali Khan District Education officer (Male) Mardan as Competent Authority under the Khyber Pakhtunkhwa Government servants (Efficiency & Discipline) Rules, 2011, do hereby serve Mr. Waheed Ullah Jan S.Qari GHS Pati.Kalan follows:

- Where As Mr. Waheed Ullah Jan Qari GHS Pati Kalan involved in immoral activities.
- And Where As a show-cause notice regarding involvement in immoral activities penalty was tentatively proposed under rules 4(b) of Khyberpakhtunkhwa Govt servant E&D rules 2011.
- And where As your response to the show cause notice was not satisfactory.
- And where As a formal inquiry has been conducted and the charges leveled upon you were proved.
- And Where As you were directed to attend the office of the undersigned for personal hearing.
- And where As you attend the office of the undersigned on 27-10-2017 for personal hearing.
- And where As the Competent Authority is not satisfied from your written statement at the time of personal hearing, after having considered the charges evidence on record.
- And Where As you found guilty of gross misconduct under KPK Govt servant E&D rules 2011.

Now in exercise of the power conferred to me under rules 4(b) sub rules (II) of the KPK Govt servant E&D rules 2011, the undersigned being competent authority is pleased to impose the major penalty of Compulsory Retirement from the service upon Mr. Waheed Ullah Jan Qari GHS Pati Kalan w.e.f 15-11-2017.

Ijaz Ali Khan

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

Endst: No. 10100/R P.F

Dated 16/11 /2017.

Copy forwarded to the:-

1. Head Master GHS Pati Kalan
2. District Accounts Officer Mardan
3. Mr. Waheed Ullah Jan Qari GHS Pati Kalan
4. DMO(I MU) Mardan
5. General File.

Ijaz Ali Khan
16/11/17

District Education Officer
(Male) Mardan

Attested
Ijaz Ali Khan
DEO(m) mardan



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 317/2019

Date of Institution ... 01.03.2019
Date of Decision ... 02.02.2022

Qari Waheed Ullah son of Abdur Raziq, (Ex-Senior Qari) resident of Takkar Road Sadder Colony, Tehsil Takht Ehai, District Mardan.

(Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Secretary Education and two others.

(Respondents)

Muhammad Irshad Mohmand,
Advocate

For appellant.

Naseer ud Din Shah,
Assistant Advocate General

For respondents.

Salah-Ud-Din
Rozina Rehman

Member (J)
Member (J)

JUDGMENT

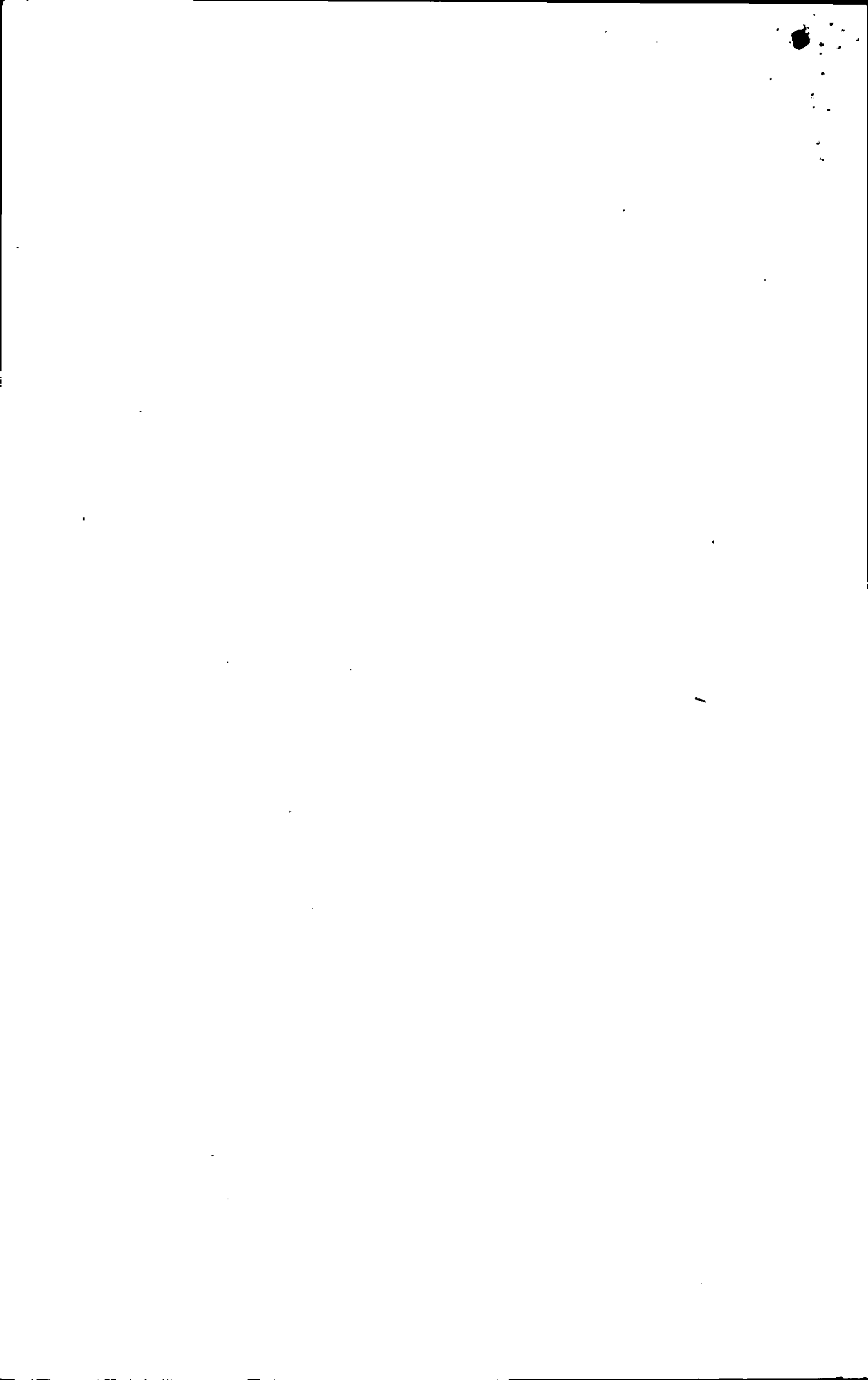
ROZINA REHMAN, MEMBER (J): The appellant has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

"On acceptance of instant service appeal, the impugned order of the Director (E&SE) Khyber Pakhtunkhwa Peshawar/Respondent No.2 contained in office order dated 12.11.2018, whereby, the appellant reinstatement into service order is withdrawn, may please be set aside and the appellant may be reinstated into his service with all back benefits."

Attested
Qari DEO (M)
Mardan

ATTESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal



2. Brief facts of the case are that appellant was performing his duty as Senior Qari and was posted at Government High School Patti Kalan. Major penalty of compulsory retirement from service was imposed upon appellant vide office order dated 16.11.2017. Feeling aggrieved, he preferred departmental appeal to the Director E&SE Khyber Pakhtunkhwa on 27.11.2017. The appellate order was not communicated to the appellant even after the lapse of 90 days, he, therefore, filed service appeal in this Tribunal on 15.03.2018. During the pendency of service appeal, his departmental appeal was accepted and he was reinstated into service on 19.10.2018 but the respondent No.2 withdrew the reinstatement order of the appellant on the plea of pendency of service appeal. The appellant preferred departmental appeal against the withdrawal of his reinstatement order but to no avail, hence, the present service appeal.

3. We have heard Muhammad Irshad Mohmand Advocate learned counsel for appellant and Naseer ud Din Shah learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Muhammad Irshad Mohmand Advocate learned counsel appearing on behalf of appellant, inter-alia, argued that the appellant was clearly exonerated from all charges by the respondent No.2 and he was reinstated into service which order clearly shows that the allegations leveled against appellant were false and frivolous. He submitted that once reinstatement order is issued by a competent authority, then it cannot be withdrawn without genuine reasons. He contended that the impugned withdrawal order is therefore, illegal

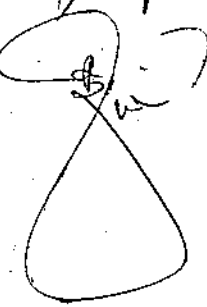
Attested
(Qari)
DEO (M)
Muhammad

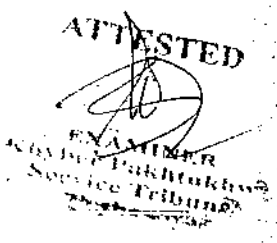
ATTESTED
KHYBER PAKHTUNKHWA
GOVERNMENT HIGH SCHOOL
PATTI KALAN

and without lawful authority. Another limb of arguments was that appellant was not afforded a fair opportunity of hearing which is a sine qua non for any action under service law and that the impugned order is not supported by reasons as envisaged in the General Clauses Act.

5. Conversely, learned AAG submitted that the notification regarding reinstatement in respect of the appellant was withdrawn in the light of report of the respondent No.3 as the case of the appellant was subjudice in Service Tribunal. He contended that the appellant was a habitual bad character person who was involved in satanic activities time and again and that the impugned order was passed due to his bad character and immoral activities.

6. From the record, it is evident that appellant Qari Waheed Ullah was proceeded against departmentally under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and vide order dated 16.11.2017 major penalty of compulsory retirement from service was imposed upon appellant. Feeling aggrieved, appellant filed departmental appeal on 27.11.2017 which was rejected vide order dated 23.01.2018; however another notification was issued on 19.10.2018, whereby, the appellate authority accepted his appeal and appellant was reinstated into service with immediate effect while the intervening period i.e. from the date of compulsory retirement till taking over charge was treated as leave without pay. This order was passed during the pendency of Service Appeal No.377/2018, wherein, the order dated 16.11.2017 had been challenged by the appellant. In view of the pendency of the


Attested
Asst
D.E.O (m)
Mardan


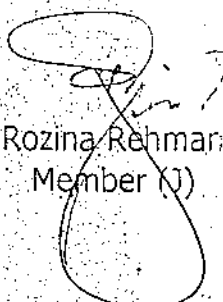
ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

service appeal filed by the appellant, another notification was issued on 12.11.2018 vide which notification regarding reinstatement in respect of appellant issued vide order dated 19.10.2018 was withdrawn. The impugned order dated 12.11.2018 is not supported by cogent reasons as envisaged in the General Clauses Act. Mere pendency of an appeal in the Service Tribunal is no ground for withdrawal of an order which was otherwise issued by the competent authority in view of the entire record. The order of reinstatement into service in respect of the appellant by the competent authority bearing endorsement No.7070-73 dated 19.10.2018 is not denied. The same has been admitted to have been rightly issued by the competent authority.

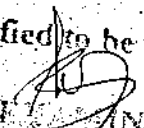
7. For what has been discussed above, this appeal is accepted. The impugned order dated 12.11.2018 in respect of withdrawal of the reinstatement order is set aside and the appellant is accordingly reinstated into service in the light of order dated 19.10.2018. The intervening period i.e. from the date of compulsory retirement till taking over charge by the appellant has already been treated by the authority as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
02.02.2022


(Salah-ud-Din)
Member (J)


(Rozina Rehman)
Member (J)

Certified to be true copy


OFFICER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Attested
(Signature)

DEO(M)
mandan