

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 603/2018

Date of Institution ... 03.05.2018

Date of Decision ... 18.01.2021

Abdul Qadir PET Teacher GHS Bam Khel Swabi Son of Abdul Nazeef, R/o Village Kalu Khan Tehsil & District Swabi.

... (Appellant)

VERSUS

Director of (E&SE) Khyber Pakhtunkhwa Peshawar and two other respondents.

... (Respondents)

Mr. YAQOOB KHAN,
Advocate

--- For appellant.

MR. KABIRULLA KHATTAK;
Additional Advocate General

--- For respondents.

MUHAMMAD JAMAL KHAN
ATIQU-UR-REHMAN WAZIR

--- **MEMBER (Judicial)**
--- **MEMBER (Executive)**

JUDGEMENT:

MUHAMMAD JAMAL KHAN, MEMBER:- The instant judgment is proposed to adjudicate service appeal submitted under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, whereby the order dated 16.01.2018 passed by District Education Officer (Male) Swabi, has been called in question whereby appellant has been reinstated in service but without back benefits.

2. Appellant was appointed as PET Teacher in the Education Department, he was charged in FIR No. 852 dated 02.09.2008 in which trial was conducted and appellant was acquitted from the charges vide the judgment of the Learned Additional Session Judge Swabi dated 15.06.2011. According to the appellant, he remained behind the bars

during the whole period encompassing the trial till his acquittal on the referred to date. According to law appellant was to be suspended through invocation of the relevant provision of the Government Servants (Efficiency & Discipline) Rules, 2011, however, respondents has terminated appellant from service vide order dated 07.09.2009. On acquittal appellant made recourse to respondents for taking the charge of his assignment but he was made conversant regarding the termination order from service and he instituted service appeal before this Tribunal which was accepted and appellant was reinstated in service vide order dated 11.06.2015 directing respondents to conduct de-novo proceedings. According to appellant he was reinstated in service with all back benefits with effect from termination dated 04.09.2008. The respondents filed CPLA against the judgment of this Tribunal dated 11.06.2015 in the Hon'ble Supreme Court of Pakistan which was dismissed vide order/judgment dated 16.10.2017. The corollary of fact finding inquiry was that appellant was held entitled to back benefits for the period for which he remained confined in jail as he was unable to attend the school. The first show-cause notice issued was responded vide his reply dated 21.12.2017. His services were restored sans back benefits vide order dated 30.12.2017 which was received by appellant on 16.01.2018 without charge sheet and personal hearing which is against the principles laid down in the law on the subject. The departmental appeal moved for the purpose proved abortive hence, the present service appeal.

3. Respondents were summoned, in compliance thereof they attended the Tribunal through their authorized representative demurring with the contentions of appellant by submitting reply/comments.

4. We have heard arguments of the learned counsel representing appellant as well as learned Additional Advocate General and were able to go through the record with their valuable assistance.

5. According to the appellant he remained behind the bars during the whole duration of trial when charges were leveled against him vide FIR No. 852 dated 02.09.2008 under sections 302/34 PPC Police Station Swabi till his acquittal which was made efficacious on 15.06.2011. What powers were invested on the authority to deal with the situation

whether he should have waited till the conclusion of trial by placing appellant under suspension or else he was empowered to carry on with the proceedings against appellant through initiation of departmental proceedings. Civil Service Regulation **CSR 194** unequivocally provide that criminal proceedings cannot debar the authority from commencement of departmental proceedings. The question arises as to whether there is confirmatory evidence of worth credence that appellant remained behind the bar during the whole period encompassing trial? When he was arrested or else when he voluntarily surrendered to the authorities? It is not clear. How in the absence of any confirmatory record the version of appellant can be admitted. Purportedly copy of a departmental appeal has been placed on record but it is not clear as to whether it was really communicated to the authorities concerned on the inception of departmental proceedings as according to his own version appellant was behind the bar during that period of time how he managed to file departmental appeal has not been verifiably explained it was the bounden duty of appellant to have proved this factum beyond doubt that he was acquaintant with the departmental proceedings initiated against him otherwise it is a big contradiction of the eminence. On the one hand he alleges to be unaware of the initiation of punitive proceedings while on the other he is moving departmental appeal which are pleas poles apart. He cannot swallow hot and cold in the ^{SR} same breath, it has been noted on record that soon after nomination in the FIR appellant remained absconder when he surrendered is not clear whether he has informed his department in consequence of leveling of criminal charges well in time which was mandatory for a civil servant as under **Rule-20 of the Khyber Pakhtunkhwa Government Servants Conduct Rules, 1987**, in case a government servant is involved in a criminal case as an accused, he shall bring the fact of such involvement or conviction as the case may be to the notice of head of the office or department immediately, or if arrested and released on bail soon after such release. Failure on the part of civil servant would tantamount to misconduct and he could not retain any right in that circumstances. The record on file do not reveal that appellant has conveyed information to the higher-ups when he was implicated in a criminal case. Appellant was terminated from service on 07.09.2009 whereas he was charged in the FIR on 03.09.2008 under Section 302/34 PPC vide FIR no. 852.

Disciplinary proceedings were already initiated when appellant was purportedly confined in jail and when he was divested of the purple of holding government assignment he stood removed from the prestigious post and ceased to hold investiture of a civil servant as he was deprived of his title during the course of remaining at large when he winked the authorities by remaining in concealment. The inquiry committee did not declare appellant to receive back benefits however, this fact was placed before the competent authority to decide whether the order passed was in accordance with the spirit of **FR 54** which provides that "if otherwise (reinstated but punished departmentally) such proportion of pay and allowances as the revising or appellate authority may prescribe. The suspension period in a case falling under clause (b) will not be treated as a period spent on duty unless the revising appellate authority so directs". Appellant was not placed under suspension rather removed from service and he did not hold the post with the department. It has been candidly provided by the dictum of the Hon'ble Supreme Court of Pakistan that when there is no work there is no pay, reliance in this regard is placed on **2003 SCMR 228**. It has further been provided that the act of absconsion or being fugitive from law would not be regarded as a reasonable ground to explain absence reliance in this regard is placed on **2017 SCMR 965**. Absconsion has to be reasonably explained which fact has not forth come on behalf of appellant. Appellant was rightly proceeded by issuance of show-cause notice. Inquiry was conducted, a chance for personal audience was provided. The tenets of rules in vogue were observed. Purportedly no departmental appeal was moved the credibility and authenticity of which has been denied vehemently by respondents. It is abundantly clear and is a settled principle that when there is no departmental appeal the service appeal is not maintainable vide **PLJ 1991 TRC (Service) 153, 1992 PLC (C.S) 666 and 1994 PLC (C.S) 1262**. Therefore, we hold that the order dated 30.12.2017 passed by the competent authority whereby back benefits were declined suffer from no illegality.

6. As regard the previous chain of litigation it is pertinent to take into account that this Service Tribunal by virtue of order dated 11.06.2015 made an order for reinstatement of appellant into service for the purpose of fresh disciplinary proceedings whereas the issue of back benefits was subjected to the outcome of fresh proceedings

however, the District Education Officer (Male) Swabi, not only made an order reinstating the appellant but also held him entitled to all back benefits from the date of his termination i.e 04.09.2008 which is obviously not in conformity with judgment of this Tribunal and was erroneous to this extent, therefore, in the light of fresh inquiry proceedings the District Education Officer (Male) Swabi, treated the willful absence from duty of appellant with effect from 03.09.2008 to 11.06.2015 as extra-ordinary leave without pay which is in accord with the dictates of the judgment passed by this Tribunal and the inquiry proceedings. As regard the plea taken in ground D of appeal, the excerpt of **Fundamental Rule 54** as mentioned herein above, a discretion has been invested in the authority by clause (b) which can allow or decline such portion of such pay and allowances as he may prescribe and which period has to be excluded to have been spent on duty. The august Supreme Court of Pakistan has vividly provided that when the civil servant has not rendered duties for a definite period of time he is not entitled to receive emoluments for that period.

07. For what has been discussed in the foregoing paras, we find no substance in the instant appeal which is dismissed. However the parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
18.01.2021

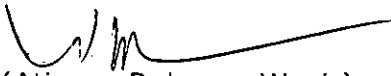
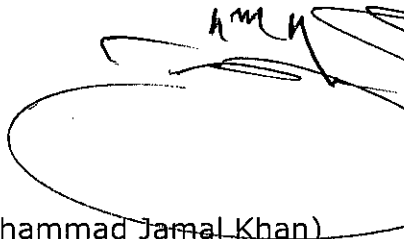


(MUHAMMAD JAMAL KHAN)
Member (Judicial)



(ATIQ-UR-REHMAN WAZIR)
MEMBER (Executive)

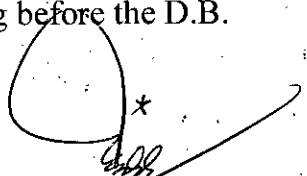
Service Appeal No. 603/2018

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	18.01.2021	<p><u>Present.</u></p> <p>Mr. Yaqoob Khan, Advocate ... For appellant.</p> <p>Mr. Kabirullah Khattak, Additional Advocate General ... For respondents.</p> <p>Vide our detailed judgement of today, we find no substance in the instant appeal which is dismissed. However the parties are left to bear their own costs. File be consigned to the record room.</p> <p><u>ANNOUNCED</u> 18.01.2021</p> <p> (Atiq-ur-Rehman Wazir) Member (Executive)</p> <p> (Muhammad Jamal Khan) Member (Judicial)</p>

09.11.2020

Appellant in person present. Mr. Kabirullah Khattak,
Additional Advocate General for respondents present.

The Bar is observing general strike, therefore, the
matter is adjourned to 18.01.2021 for hearing before the D.B.


(Mian Muhammad)
Member (E)

10-4.2020

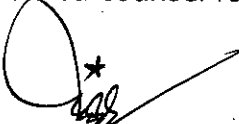
Due to COVID19, the case is adjourned to
8/7/2020 for the same as before.

Reader

09.07.2020

Nemo for appellant. Mr. Kabirullah Khattak, Addl. AG
alongwith Fazle Khaliq, ADEO for the respondents present.

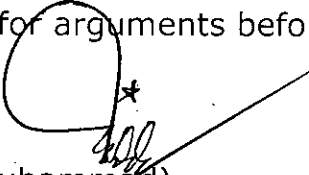
On the last date of hearing the matter was adjourned
through Reader note, therefore, notices be issued to
appellant/learned counsel for arguments on 03.09.2020.

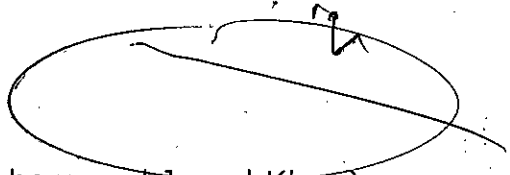

Member (E)


Chairman

03.09.2020


Appellant is present in person. Mr. Kabirullah Khattak,
Additional Advocate General for the respondents is also
present. According to the appellant his counsel is engaged in
Dar-ul-Qaza District Swat and is not available today.
Requested for adjournment. Adjourned to 09.11.2020. File to
come up for arguments before D.B.


(Mian Muhammad)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

08.01.2020

Lawyers are on strike as per the decision of Peshawar Bar Association. Adjourn. To come up for further proceedings/arguments on 12.03.2020 before D.B.


Member


Member

12.03.2020

Counsel for the appellant present. Asst: AG alongwith Mr. Fazal Khaliq, ADEO for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 09.04.2020 before D.B.


Member


Member

27.08.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment to furnish in the shape of detail judgment of trial court etc. and to render proper assistance. Adjourn. To come up for additional documents and arguments on 09.10.2019 before D.B.


Member

Member

09.10.2019

Appellant present. Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Appellant seeks adjournment as his counsel is not in attendance. Application allowed. Adjourn. To come up for arguments on 21.11.2019 before D.B.



Member


Member

21.11.2019

Appellant absent. Learned counsel for the appellant absent. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Notice be issued to the appellant and his counsel for attendance on the next date of hearing. Adjourned. To come up for arguments on 08.01.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

18.03.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Fazal Khaliq, ADO for respondents present. Written reply submitted which is placed on file. Case to come up for rejoinder and arguments on 07.05.2019 before D.B.


Member
(Ahmad Hassan)

07.05.2019

Mr. Mir Zaman Safi, Advocate for appellant and Addl. AG for the respondents present.

Rejoinder on behalf of the appellant has been submitted in response to the parawise comments by the respondents. The same is placed on record. To come up for arguments on 02.07.2019 before the D.B.


Member


Chairman

02.07.2019

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Fazal Khaliq, ADO for the respondents present. Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 27.08.2019 before D.B


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

26.12.2018

Learned counsel for the appellant present and seeks adjournment to render proper assistance that as for how long the appellant remained absconder in connection with the criminal case register against him. Adjourn. To come up for preliminary hearing on 31.01.2019 before S.B


Member

31.01.2019

Counsel for the appellant Abdul Qadir present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in in Education Department as Physical Education Teacher. It was further contended that during service he was involved in criminal case for committing murder and the competent authority imposed major penalty of dismissal from service on the allegation of his absence from duty. It was further contended that the appellant filed service appeal before this Tribunal and this Tribunal partially accepted the appeal of the appellant vide judgment dated 11.05.2015 with the direction to respondent-department to reinstate the appellant for the purpose of fresh disciplinary proceeding. It was further contended that the respondents also challenged the judgment of this Tribunal before the august Supreme Court of Pakistan but the appeal of the respondent-department was also dismissed vide judgment dated 16.10.2017. It was further contended that de-novo inquiry was conducted as per direction of the Service Tribunal and on the basis of which the appellant was reinstated in service however, the period from 03.09.2008 to 11.05.2015 was treated as extraordinary leave without pay vide order dated 30.12.2017. It was further contended that the order dated 30.12.2017 was received to the appellant on 16.01.2018 as reveled from the copy of impugned order. It was further contended that the appellant filed departmental appeal on 23.01.2018 but the same was not responded hence, the present service appeal on 03.05.2018. It was further contended that the aforesaid mentioned period with effect from 03.09.2008 to 11.03.2015 the appellant was in jail and it was beyond the control of the appellant to attend the duty therefore, the respondent-department was required to extend the back benefits to the appellant for the said period instead of treating the said period as extraordinary leave without pay.

The Contention raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 18.03.2019 before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Appellant Deposited
Security & Process Fee

03.10.2018

Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG for the respondents present. Arguments on restoration application heard. It was contended by the learned counsel for the petitioner that the main appeal was filed on 03.05.2018 and the petitioner was directed to appear before the Tribunal on 06.09.2018 but when the petitioner ~~was~~ personally appeared before the Reader of the court on 06.09.2018 he was told by the Reader that the appeal has already been dismissed in default on 02.08.2018 therefore, when the petitioner came to know about the dismissal order of the appeal on 06.09.2018, he immediately filed the present restoration application on the same day therefore, the application is well within time and prayed for restoration of application.

On the other hand, learned Additional AG for the respondents opposed the contention of learned counsel for the appellant and contended that the restoration application is time barred and prayed for dismissal of the same.

Perusal of the record reveals that the petitioner has claimed in the restoration application that he was given the date of preliminary hearing of 06.09.2018 and when he came to this Tribunal on that date he came to know that his appeal was dismissed in default on 02.08.2018 therefore, he submitted restoration application on that very day. There is nothing in rebuttal to the claim of the petitioner therefore, the application is accepted and the appeal is restored to its old number. To come up for preliminary hearing on 07.11.2018 before S.B.

MA
(Muhammad Amin Khan Kundi)
Member



7-11-2018
*Due to Retirement of Honorable
Chairman the Tribunal is non functional
therefore the case is adjourned to
come up for the same on 25-12-2018*

Reader

Form-A
FORM OF ORDER SHEET

Court of _____

Appeal's Restoration Application No. 273/2018

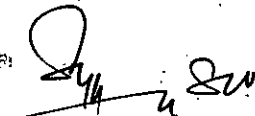
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.09.2018	<p>The application for restoration of appeal no. 603/2018 submitted by Mr. Abdul Qadir through yaqub Khan Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 6/9/18.</p>
2	7-9-2018	<p>This restoration application is entrusted to S. Bench to be put up there on <u>3-10-18</u></p> <p style="text-align: right;"> MEMBER</p>

02.08.2018

Neither the appellant nor his counsel present. On the previous two dates neither appellant nor his counsel was present and this conduct on his part is suggest that he is not interested to pursue his case, hence this Tribunal is left with no option but to dismiss the appeal in default. Parties are left to bear their own costs. File be consigned to the record room.

Announced:

02.08.2018


Chairman 28.8.2018

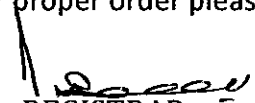



2018-2018

2018-2018

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 603/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
<p>1</p> <p>2-</p>	<p>03/05/2018</p> <p>15/05/18</p> <p>25.05.2018</p> <p>12.07.2018</p>	<p>The appeal of Mr. Abdul Qadir presented today by Mr. Yaqub Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>25/05/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>None present on behalf of the appellant. Adjourned. To come up for preliminary hearing on 12.07.2018 before S.B.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member</p> <p>Neither appellant nor his clerk of the counsel present. Preliminary arguments could not be heard due to killing of a lawyer Barrister Haroon Bilour in a suicide attack during the election campaign. To come up for preliminary hearing on <u>02.08.2018</u> before S.B.</p> <p style="text-align: right;"> Chairman</p>

**Before The Hon'able Service Tribunal of KPK at
Peshawar**

Appeal No. 603 /2018

Abdul Qadir PET Teacher GHS Bam Khel Swabi so of Abdul
Nazeef R/o Vilalge Kalu Khan Tehsil & District Swabi

.....Appellant

VERSUS

4. District Education Officer (Male) Swabi Respondent

APPEAL

INDEX

S.No	Descriptions	Annex:	Pages	
			From	to
1	Grounds of appeal		1	4
2	Copy of order, judgment of ASJ Swabi dated 15/06/2011	"A"	-	5
3	Copy of order dated 07/09/2009	"B"	-	6
4	Copy of order/ judgment dated 11/06/2015	"C"	7	8
5	Copy of order	"D"	-	9
6	Copy of order	"E"	10	11
7	Copy of finding inquiry	"F"	12	14
8	(Copy of show cause notice and reply	"G"	15	16
9	Copy of order dated 30/12/2017	"H"	-	17
10	Copy of appeal	"I"	18	22
11	Wakalat Nama		-	23

Appellant, *Abdul Qadir*
Abdul Qadir

Trough counsel *Yaqoob Khan*
Yaqoob Khan advocate High
Court at Distt: courts Mardan.

Dated 27/04/2018

1

①

**Before The Hon'able Service Tribunal of KPK at
Peshawar**

Appeal No. 603 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 644

Dated 03/5/2018

Abdul Qadir PET Teacher GHS Bam Khel Swabi so of Abdul
Nazeef R/o Vilalge Kalu Khan Tehsil & District Swabi

.....Appellant

VERSUS

1. Director of (E & SE) KPK Peshawar
2. District Education Officer (Male) Swabi
3. Secretary Education KPK Peshawar Respondent

*Appeal U/S-4 of KPK Service Tribunal Act 1974 against
the order of respondent No.2 dated 16/01/2018 whereby,
appellant is re-instated in service but without back benefit,
which is illegal, against law and facts.*

Respectfully Sheweth;

Filed to-day

Appellant humbly submits as under

1. That appellant was appointed as PET Teacher with respondent department.
2. That appellant was charged in a murder case vide FIR NO.852 dated 02/09/2008 , trial was conducted and appellant was declared innocent and acquitted vide order dated 15/06/2011 by the learned ASJ Swabi. (Copy of order, judgment of ASJ Swabi dated 15/06/2011 are attached as Annex: "A").
3. That that due to the charge and trial, appellant was kept under trial behind the bar in judicial lock up from the date of charge till the date of acquittal i-e 15/06/2011 for trial

Regd. Secy
3/5/18

of the case but due to the innocent person, appellant was acquitted.

4. That as per law, the appellant can be suspended for trial of the case but respondent has terminated the appellant from service vide order dated 07/09/2009 which is illegal, against law and facts. (Copy of order dated 07/09/2009 is attached as Annex: "B").
5. That after acquittal of appellant, appellant approached respondents for taking over charge but appellant got knowledge that appellant has already been terminated from service vide order dated 07/09/2009, hence appellant approached before the Service Tribunal through an appeal which was accepted and appellant was re-instated in service vide order dated 11/06/2015 with direction to conduct the fresh disciplinary proceeding. (Copy of order/ judgment dated 11/06/2015 attached as annex: "C").
6. That on the basis of said order/ judgment dated 11/06/2015, appellant was re-instated in service with all back benefit w-e-f termination 04/09/2008 vide order dated 28/09/2015 by respondents. (Copy of order are attached as "D")
7. That respondent has filed CPLA against the order/ judgment of service Tribunal dated 11/06/2015 before the Apex Supreme Court of Pakistan, which also dismissed vide order/ judgment dated 16/10/2017. (Copy of order is attached as Annex: "E").
8. That fact finding inquiry was conducted by respondent and appellant was declared entitled for back benefit for the period for which appellant was in jail for trial of the case because appellant was unable to attend the school. (Copy of finding inquiry is attached as Annex: "F").

9. That 1st show cause notice was issued to appellant which was properly reply by appellant vide his reply dated 21/12/2017. (Copy of show cause notice and reply is attached as Annex: "G").
10. That appellate is re-instated in service but without back benefit vide impugned order dated 30/12/2017 which is received by appellant on 16/01/2018 without charge sheet and personal hearing which is illegal, against law and facts. (Copy of order dated 30/12/2017 is attached as Annex: "H").
11. That appellant preferred an appeal before the respondent No.1 but in vain. (Copy of appeal is attached as Annex: "I").
12. That order of respondent is against law, facts, illegal and liable to be set aside on the following grounds inter alia..

GROUNDS

- A. That order of respondent NO.2 dated 30/12/2017 dated 30/12/2017 is illegal, against law and facts, liable to be modified to the extent that appellant may please be re-instated in service with all back benefits.
- B. That it is strange enough that appellant was re-instated in service with all back benefit vide order dated 28/09/2015, which is still intact then, issuing of impugned order of respondent aNo.2 dated 30/12/2017 without back benefit is baseless and no legal effect to the extent of without back benefit, which has to be modified to the extent of re-instated in service of appellant with all back benefit instead of without back benefits.
- C. That it is also strange enough that appellant being innocent, kept under lock behind the bars and on other side re-instated in service without back benefits, which is penalty imposed

upon the appellant by respondent without conducting disciplinary proceedings and without fault of the appellant, hence, impugned order dated 30/12/2017 is liable to be modified with the words of re-instated in service of appellant with all back benefits.

- D. That as per FR-54, when the appellant is re-instated in service w-e-f termination, then he is automatically entitled for back benefits.
- E. That innocent appellant has been kept in jail and thereafter, he is acquitted after conducting of complete trial, then he was acquitted and re-instated in service with back benefits while, again issued impugned order dated 30/12/2017 is a 2nd punishment upon the innocent person.

It is, therefore, humbly prayed that on acceptance of this appeal, order of respondent NO.2 dated 30/12/2017 may please be modified to the extent of appellant may please be re-instatement *in service* with all back benefit instead of without back benefit. Any other relief deemed fit may also be graciously awarded to the appellant.

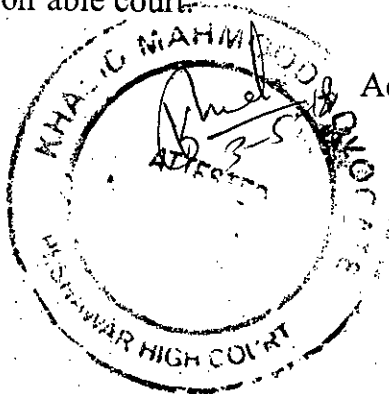
Appellant, عبد القادر
Abdul Qadir

Trough counsel
Yaqoob Khan Yaqoob Khan advocate High
Court at Distt: courts Mardan.

Dated 27/04/2018

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that all the contents of the appeal mentioned above are true and correct to the best of my knowledge and belief and noting has been concealed from this Hon'able court.



Advocate Yaqoob Khan

Handwritten numbers: 11111

Aux A

Handwritten Urdu text: صدر قتل علی آفر و زور استعمال کیس

(5)

383
2011

Handwritten Urdu text: رقم 16/52
15/6/11
2/11

ORDER
15/06/2011

Accused produced in custody. Arguments already heard and file perused. Vide my detail judgment of the date today, separately recorded and placed on file, by extending the benefit doubt to the accused facing trial, he is acquitted of the offence charged with. He is in custody, he be released forthwith if not required to be detained in jail in any other case. Case property shall remain intact till the expiry of mandatory period of appeal/revision and thereafter be dealt with in accordance with law. File be consigned to record room after completion and compilation.

Announced
15/06/2011

(Muhammad Zafar Khan),
Addl. Sessions Judge-III, Swabi

29-9-15

7494

29-9-15
28-9-15

400

29-9-15

ATTESTED
Handwritten signature

28-9-15

Ann B
6

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (ELEMENTARY & SEC. EDU) SWABI

TERMINATION/DISMISSAL FROM SERVICE..

Mr. Abdul Qadir PET Govt: High School Shera Ghund (Swabi) absconder in murder case FIR No. 852 dated 02.09.2008 302/34 PPC Police Station Swabi remained absent from duty since 03.09.2008 and was directed to resume duty by the Head Master GHS Shera Ghund (Swabi) vide his office No.126 dated 10.04.2009, No. 135 dated 27.04.2009 & No. 137 dated 14.05.2009 under registered cover on home address, but he failed to obey the orders.

And whereas an absent notice was issued to him through "DAILY NEWSPAPER." "PAKISTAN" Peshawar on 10.06.2009 but he failed to resume duty in the prescribed period as reported by the concerned Head Master vide No.144 dated 31.08.2009.

Where as I the undersigned EDO (E&SE) Swabi competent authority after scrutiny of the record and wide publicity of final show cause notice in the Daily "PAKISTAN" Peshawar on 10.06.2009 is of the opinion that the charges i.e absence from duty proved against him.

The competent authority is pleased to impose the major penalty of removal from service in respect of Mr. Abdul Qadir PET Govt: High School Shera Ghund (Swabi) from the date of his welful absence i.e. 03.09.2008 under the efficiency and disciplinary rules. 1973 and special powers ordinance, 2000-01.

(MUHAMMAD ZADA)
EXECUTIVE DISTRICT OFFICER
(ELEMENTARY & SEC. EDU) SWABI

Endst: No. 670/-e Abdul Qadir PET Govt: High School Shera Ghund (Swabi) DA-III/ dated Swabi forwarded for information NWFP, Peshawar.

7/9/2009
and n/action

1. Director Elementary & Secondary Education, District Swabi
2. District Nazim, Swabi
3. District Coordinator, Swabi
4. District Accountant, Swabi
5. Head Master Govt: High School Shera Ghund (Swabi) w/r to his N dated above.
6. Mr. Abdul Qadir PET S/O Abdul Nazim GHS Shera Ghund, VPO Kalu Khan, Tehsil & District Swabi. (under registered cover).

ATTESTED
Attested
Yous

Muhammad 5/9/09
EXECUTIVE DISTRICT OFFICER
(ELEMENTARY & SEC. EDU) SWABI

Annex

7



S.No. Date of order proceedings

Order or other proceedings with signature of judge or Magistrate

3

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1679/2011

(Abdul Qadar, Ex-PET Teacher -vs- Govt. of Khyber Pakhtunkhwa through Secretary (E&SE) Peshawar etc).

11.06.2015

JUDGMENT

PIR BAKHSH SHAH, MEMBER:

1. Appellant with counsel (Mr. Sajid Amin, Advocate), and Mr. Muhammad Jan. GP for the respondents present.

2. The instant appeal has been filed by Mr. Khaziq Rehman, Head Constable under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act-1974 against the orders dated 06.09.2011 and 11.01.2012.

3. Learned counsel for the appellant submitted that after rendering 10 years of service as PST, the appellant was involved in a murder case due to which he was unable to perform his duty. That the relevant time absence period of the appellant comes only ^{to} one year and the record also shows that the appellant has been proceeded under Khyber Pakhtunkhwa Civil Servant (E&D) Rules 1973 which ^{rules} were not in the field at the relevant time. That without charge sheet, show cause notice or enquiry, major penalty of removal from service was imposed on the appellant. He submitted that the procedure adopted against the appellant is not in accordance with the requirements of the Removal from Service (Special Powers) 2000. He submitted that the appellant being young ^{at} post master degree holder, his future was exposed to ruin because of the illegal impugned orders which may be set aside.

4. The learned Government Pleader resisted the appeal on the ground that in fact the appellant was proceeded under Removal from Service (Special Powers) 2000 according to which in case of willful absence, the enquiry can be dispensed with. He further submitted that Khyber Pakhtunkhwa (E&D) Rules 1973 mentioned in the impugned order is a clerical mistake. He ~~submitted that in~~ ^{impugned order E&D rule} is clerical mistake.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

[Signature]

8

7. This was convincingly argued by learned counsel for the appellant in the light of material on record that the procedure adopted was in accordance with E&D Rules, 1973-like adopting procedure of sending of notice at home address and publication of notice in the news paper therefore penalty under E&D rules can not be stated as a clerical mistake. Needles to mention that E&D Rules 1973 were not in the field at that time. The Tribunal is of the considered opinion in the light of material on record as well as above legal defects in the instant case that the case may be remitted to the respondent-department to proceed against the appellant strictly in accordance with law after giving him full opportunity of defense for which reason the impugned order ~~is~~ set aside. The appellant is reinstated into service for the purpose of fresh disciplinary proceedings against him. Back benefits will be subject to the out come of the fresh proceedings. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
11.06.2015

(ABDUL LATIF)
MEMBER

(PIR BAKHSH SHAH)
MEMBER

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 30-03-2016
 Number of Pages 1200
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 Total 10
 Number of Copies 10
 Date of Completion 30-03-2016
 Date of Delivery of Copies 30-03-2016

ATTESTED
Yours



Aux D
9

District Education officer (Male) District Swabi

RE-INSTATEMENT ORDER.

Consequent upon the decision of the Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar announced on dated 11.06.2015 in Service Appeal No.1679/2011, Mr. Abdul Qadir PET is hereby re-instated and adjusted against his original post i.e. PET at GHS S Bamkhel (Swabi) with all back benefits from the date of his termination i.e. ⁴⁻⁹⁻²⁰⁰⁸ ~~06.09.2011~~ subject to the decision of the Honourable Supreme Court of Pakistan as CPLA has already been filed against the judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar with immediate effect in the best interest of public service. ✓

NOTE:-

1. TA/DA is not allowed.
2. Charge report should be submitted to all concerned.

(NISR MUHAMMAD)
DISTRICT EDUCATION OFFICER
(MALE) SWABI

Endst No. 14152-60 /Dated Swabi the 28/07 /2015.

Copy of the above is forwarded for information and n/a to the:-

1. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. PS to Honourable Minister for Elem: & Secondary Edu: Govt: of KPK, Peshawar.
3. Secretary to Govt: of KPK Elementary & Secondary Education Department, Peshawar.
5. Director E&SE Khyber Pakhtunkhwa, Peshawar.
6. District Accounts Officer, Swabi.
7. ADO (B&A/Estab:) Local Office.
8. Superintendent local office.
9. Head Master concerned school.
10. Candidate concerned.

ATTESTED
Attested

DISTRICT EDUCATION OFFICER
(MALE) SWABI

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

Aux E

(10)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN.
MR. JUSTICE MAQBOOL BAQAR.
MR. JUSTICE IJAZ UL AHSAN.

CIVIL PETITION NO. 490-P OF 2015.

(Against the judgment dated 11.6.2015
of the KPK Service Tribunal, Peshawar
passed in Appeal No.1679 of 2011)

The Govt. of K. P. thr. Secy., (E&S) Education, Peshawar and others.
...Petitioner(s)

Versus

Abdul Qadar.
...Respondent(s)

For the petitioner(s): Mr. Mujahid Ali Khan, Addl. A.G. KPK

For the respondent(s): Mr. Waseem ud Din Khattak, ASC

Date of Hearing: 16.10.2017.

ORDER

Ejaz Afzal Khan, J.- This petition for leave to appeal has arisen ✓
out of the judgment dated 11.06.2015 of the KPK Service Tribunal, Peshawar
whereby it allowed the appeal filed by the respondent and set aside the
order of the Departmental Authority removing him from service.

2. The learned Addl. A. G. appearing on behalf of the petitioner
contended that if the respondent was involved as an accused in a criminal
case he was bound to bring this fact to the notice of the Head of the
Department immediately if arrested and released on bail and that failure of
the respondent to do the same would divest him of a right to ask for
reinstatement.

3. Learned ASC appearing on behalf of the respondent
contended that where respondent was not served in accordance with
requirements of the relevant rules then in force, the entire inquiry being
defective cannot be made basis of his removal from service.

4. We have carefully gone through the record and considered
the submissions of the learned Addl. A. G. KPK as well as the learned ASC
appearing on behalf of the respondent.

ATTESTED
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Jus

ATTESTED

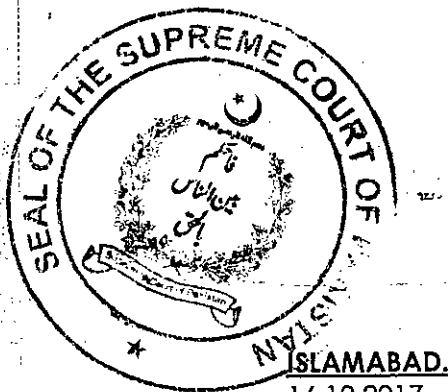
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5. The Service Tribunal having considered the facts and circumstances of the case allowed the appeal filed by the respondent by holding as under :-

"This was convincingly argued by learned counsel for the appellant in the light of material on record that the procedure adopted was in accordance with E&D Rules, 1973 like adopting procedure of sending of notice at home address and publication of notice in the news paper therefore penalty under E&D rules cannot be stated as a clerical mistake, needless to mention that E&D Rules, 1973 were not in the field at that time. The Tribunal is of the considered opinion in the light of material on record as well as above legal defects in the instant case that the case may be remitted to the respondent department to proceed against the appellant strictly in accordance with law after giving him full opportunity of defense for which reason the impugned order is set aside. The appellant is reinstated into service for the purpose of fresh disciplinary proceedings against him. Back benefits will be subject to the out come of the fresh proceedings. Parties are left to bear their own costs. File be consigned to the record."

6. The paragraph reproduced above and even the record available would show that the respondent was not served in accordance with the requirements of law. The proceedings against the respondent resulting in his removal from service thus cannot be said to have been initiated and concluded in accordance with law. A de novo inquiry in the circumstances of the case has rightly been directed by the Service Tribunal. ✓
The view taken by the Tribunal thus being free from any legal or factual error is not open to any interference.

7. For the reasons discussed above, this petition being without merit is dismissed and the leave asked for is refused.



16.10.2017.
M. Azhar Malik

21/10/17

ATTESTED
Attested
Yousuf

Sd/-Ejaz Afzal Khan, J
Sd/-Maqbool Baqar, J
Sd/-Ijaz ul Ahsan, J
Certified to be True Copy

23/10/17
Court Associate
Supreme Court of Pakistan
Islamabad

DETAIL OF THE NOTICES IS:-

Aux F

(12)

1. Letter No: 126, dated 10-04-2009
2. Letter No: 135, dated 27-04-2009
3. Letter No: 137, dated 14-05-2009
10. The Head Master concerned submitted absence report in respect of Mr. Abdul Qadar, PET, to Executive District Officer (Elementary & Secondary Education) Swabi on 29-05-2009.
11. A final absence notice was issued to him through Daily Urdu Newspaper "PAKISTAN" (Peshawar) on 10-06-2009 but he failed to resume his duty.
12. The Service of Mr. Abdul Qadar, PET, Government High School Shera Ghund (Swabi) were terminated by the the Executive District Officer (Elementary & Secondary Education) Swabi vide his letter No: 6701/07, dated 07-09-2008.
13. He surrendered himself before the law on 18-07-2011 in Police Station Swabi.
14. He was acquitted by the Court on 15-06-2011.
15. He remained willful absent with effect from 03-09-2008 to 23-06-2011, because as per Rule 20 of Civil Service conduct, Rules, 1987 he could not inform the departmental about his where about.
16. He adopted all the codal formalities for reinstatement however the department did not reinstate him.
17. He appealed to the Service Tribunal for reinstatement which was accepted on 11-06-2015.
18. Mr. Abdul Qadar, PET, was reinstated and adjusted against his original post at Government Higher Secondary School Bamkhal (Swabi) subject to the decision of Honorable S.C of Pakistan. As CPLA has already been filed against the judgment of Service Tribunal Khyber Pakhtunhawa Peshawar.
19. The department's negligence as it did not initiate the de novo inquiry at the time of reinstatement and it could not pursue the case accordingly.
20. The then Executive District Officer (Elementary & Secondary Education) Swabi and litigation Officer both are responsible for leaving loop-holes of escaping in the mentioned case.
21. It is very astonishing to note that the Services Tribunal reinstated him with the provision that the department should conduct de novo inquiry, while the then District Education Officer (Male) Swabi reinstated him with all back benefits from the date of his termination.

ATTESTED

[Handwritten signature]

(13)

PROCESS OF INQUIRY

Reference to the Letter of District Education Officer (Male) Swabi, Endost No, s 11143-45, dated 27-10-2017, the inquiry committee intimated the proceeding and checked and collected the photo copies of the record related to the matter from Government High School Shera Ghund. The committee also visited Government Higher Secondary School, Bamhail and served a questionnaire on Mr.: Abdul Qadar, PET, collected the reply and other necessary documents regarding the case.

FINDINGS

In light of the available record, response to the questionnaire and verbally collected information the following findings were observed.

1. Mr., Abdul Qadar was appointed as PET on 05-04-1999 and was posted at Government Middle School Zaida (Swabi).
2. He was transferred to Government Middle School Shera Ghund (Swabi) from Government High School Permoli (Swabi) on 01-01-2007.
3. He remained absent from duty on 02-09-2008 and his Absence Report was submitted to the District Education Officer (Elementary & Secondary Education) Swabi Office by the Head Master of Government High School Shera Ghund vide his letter No: 50, dated 04-09-2008.
4. He was accused of murder case.
5. According to TAR he remained absent with effect from 03-09-2008.
6. The SHO of Police Station Swabi, provided the copy of FIR, logged against Abdul Qadar under PPC 302/34, on 02-09-2008.
7. The Head Master through his letter No, 61, dated 20-09-2008, submitted the copy of the said FIR to the office of Executive District Officer (Elementary & Secondary Education) Swabi.
8. The Executive District Officer (Elementary & Secondary Education) Swabi through his letter No, 2578, Dated 07-10-2009 asked the Head Master to send notice to the teacher concerned on his home address through Registered Mail and then submitted the case for legal action.
9. According to the instructions of the Executive District Officer (Elementary & Secondary Education) Swabi the Head Master issued three notices to the teacher concerned on his Home Address, informing him to attend his duties.

ATTACHED
Attested
[Signature]

SUGGESTIONS AND RECOMMENDATIONS.

In the light of above mentioned findings the following suggestions are given for necessary action please.

- a) Mr. Abdul Qadar PET has no right of payment and back benefits with effect from 03-09-2008 to 23-06-2011, at any cost, because of his willful absence.
- b) The remaining period that is from 23-06-2011 up to 11-06-2015 is left on the discretion of competent authority to decide to give back benefits to the teacher or otherwise.
- c) Departmental proceedings may be initiated against the then District Education Officer (Male) Swabi, Mr. Nisar Muhammad and the then litigation officer Mr. Khalid Mateen who had pursued the case improperly.

[Handwritten Signature]

INQUIRY COMMITTEE

[Handwritten Signature]

1. SIKANDAR SHER
PRINCIPAL
GHSS MANSABDAR (SWABI)

2. MUHAMMAD NAEEM
HEAD MASTER
GHS GOHAR ABAD (SWABI)

ATTESTED
[Handwritten Signature]

~~Registered~~



DISTRICT EDUCATION OFFICE (MALE) SWABI
(Office phone & Fax No 0938289239, e-mail: swabi@yahoo.com)

Ans 9
15

Show Cause Notice

I, Jehangir Khan District Education Officer (Male) Swabi do hereby serve the Show Cause Notice upon Mr. Abdul Qadar PET in response to the de novo enquiry assigned to the department in the appeal of Mr. Abdul Qadar PET decided by the humble Service Tribunal Khyber Pakhtunkhwa on 11.06.2015.

Where as you Abdul Qadar PET has been appointed in the Education Department on 05.11.1999 and served till 02.09.2008.

Where you have been charged in murder case on 03.09.2008 and you have been found absent from your duty w.e.f. 03.09.2008.

Where as you have been informed by the Department on your home address but you failed to report for your duty.

Where as you did not inform the department of the matter and remained absent and silent.

Where as you have been informed through print media but you did not report for duty.

Where as you surrendered to the law and then did not inform the department.

Where as per the enquiry report, you remained willful absent till 23.6.2011. ✓


Thus you convicted of rule 20 of Civil Servant conduct rule 1987.

Where as you have been reinstated in service on the directions of the Honourable Service Tribunal Khyber Pakhtunkhwa for the purpose of de novo enquiry and proceedings under the existing E&D rules, 2011.

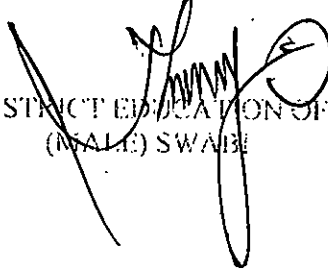
Now where as the charge of not informing the department well in time has proved and the Honourable Supreme Court of Pakistan has also accepted that the accused should inform the department in para-2 of its judgment dated 16.10.2017 "Under conduct rules No.20 of 1987".

So why a fresh disciplinary action is not initiated against you under the existing E&D rules, 2011 and why you not be removed from Government Service as on the basis of your willful absence for about 04 years, in the light of fresh judgment of the Supreme Court of Pakistan and where as the Supreme Court of Pakistan's decision states that "No work no wage" Under SCMR 2003-228.

You are hereby informed to show cause to the charges leveled against you in written, within 07 days of its issue or you opt to be heard in person. If you opt to be heard in person then attend the office of the DEO(M) Swabi on any working day after 05.12.2017.


(JEHANGIR KHAN)
DISTRICT EDUCATION OFFICER
(MALE) SWABI

Ends: No. 12774 / Dated Swabi the 12/12 /2017.
submitted to Mr. Abdul Qadar PET, GHSS Bamkhet (Swabi) for
information and n/action.


DISTRICT EDUCATION OFFICER
(MALE) SWABI

جناب عالی!

بحوالہ شوکار نوٹس نمبر 12774 مورخہ 12/12/2017 موصولہ 16/12/2017 معروض خدمت ہوں کہ شوکار نوٹس مذکورہ میں سائل کے خلاف جو الزامات

عائد کئے گئے ہیں۔ وہ سراسر غلط اور بے بنیاد ہے۔

مذکورہ شوکار نوٹس میں مقدمہ عدلت نمبر 852 مورخہ 03/09/2008 بہ جرم 302/34PPC کا جہاں تک سائل کے خلاف اندراج کا تعلق ہے تو مذکورہ مقدمہ سائل کے خلاف غلط اور بدعتی پر مبنی تھا۔ جس میں مدعی نے سائل کے خلاف بے بنیاد اور غلط دعویٰ دائر کی تھی۔ اور اس مقدمے میں سائل از خود گرفتار ہو کر چالان عدالت ہو اور بعد از اس مکمل سائل کے بعد عدالت جناب محمد ظفر خان ایڈیشنل سیشن جج نمبر 3 صوابی نے بحوالہ حکم مورخہ 15/06/2011 کو باعزت بری کرنے کا حکم صادر فرمایا۔

جناب عالی!

جیل سے رہائی کے بعد سائل نے وقت ضائع کئے بغیر مورخہ 23/06/2011 کو DEO آفس میں حاضری کی تو سائل کو معلوم ہوا کہ سائل کو بحوالہ حکم نمبر 670 مورخہ 07/09/2009 کو ملازمت سے Terminate / Dismiss کیا جا چکا ہے۔ جس کے خلاف سائل نے محکمانہ اپیل دائر کی جو منظور نہ ہوئی پھر سائل نے سروس اپیل نمبر 1679/11 سروسز ٹریبیونل پشاور میں داخل کی سائل کی اپیل بحوالہ حکم مورخہ 11/06/2015 کو منظور ہوئی اور محکمہ کے تمام احکامات غیر قانونی تصور ہو کر سائل کو ایلو۔ PET بحال کیا گیا۔ اور ہدایت کی گئی کہ سائل کے خلاف موجودہ رولز کے تحت کارروائی کی جائے جبکہ Back Benefits کو Denovo انکوائری کے ساتھ مشروط کیا گیا۔

جناب عالی!

محکمہ نے سروس ٹریبیونل کے حکم کی تعمیل صرف اور صرف سروس کی بحالی کی حد تک کی جبکہ سائل کے خلاف Denovo انکوائری کرنے کے بجائے سروس ٹریبیونل کے فیصلے کے خلاف سپریم کورٹ آف پاکستان میں CPLA/CP No 490-P-2015 دائر کی اور سائل کو غیر ضروری Litigation میں الجھانے رکھا جس کی وجہ سے سائل کو نہ صرف مالی طور پر بلکہ ذہنی طور پر کوجنت میں مبتلا کیا۔ اور مذکورہ CF مورخہ 16/10/2017 کو سپریم کورٹ آف پاکستان نے خارج فرمایا۔ اور اب سائل کے خلاف Denovo انکوائری کمیٹی کے ذریعے کرائی گئی جس میں سائل نے اپنی بے گناہی اور الزامات کے متعلق کمیٹی کو آگاہ کیا۔

جناب عالی!

سائل کے خلاف جو الزامات بابت غیر حاضری لگائے گئے ہیں۔ تو اس ضمن میں عرض ہے کہ سائل کو مندرجہ بالا مقدمے میں غیر قانونی طور پر ملوث کیا گیا تھا اور سائل کی زندگی کو شدید خطرہ تھا اور مقدمے میں گرفتار ہو کر جوڈیشل ریمانڈ پر تھا۔ جسکی وجہ سے سائل ڈیوٹی سرانجام نہ دے سکا۔ اور نہ ہی اس دوران سائل کو محکمہ نے تحریری طور پر آگاہ کیا تھا۔

جہاں تک سائل کا فوجداری مقدمے میں ملوث ہونے کا سوال ہے تو اس بابت میں مجاز عدالت نے سائل کو پہلے ہی باعزت بری کیا ہے۔ FIR میں ملوث ہونے سے لے کر دوبارہ بحالی کے عرصے کے دوران سائل نے کسی قسم کا روزگار نہیں کیا اور اس دوران بے روزگار تھا اور اپنے جائز حقوق کیلئے ہر فورم پر قانونی جنگ لڑتا رہا۔ اور برطابق FR 54 کے تحت سائل جملہ Back Benefits کا حقدار ہے۔

مدریں بالاتفاق کی روشنی میں سائل اہل حقدار ہے۔ کہ سائل کی انکوائری کو فائل کر کے عرصہ غیر حاضری اور Intervening Period کے جملہ مراعات دینے کا حکم صادر فرمائیں۔

سائل تا احیات دعا گو رہے گا

العارض

بم خیل صوابی

مورخہ 21/12/2017

Ref
عبدالقادر PET
ATTESTED
Attested
[Signature]



DISTRICT EDUCATION OFFICE (MALE) SWABI

(Office phone & Fax No 0938280239)

Annex H

(17)

OFFICE ORDER.

Consequent upon the findings and recommendations of the de novo enquiry conducted on the instructions of the Court, the competent authority is pleased to dispose off the willful long absence case of Mr. Abdul Qadir PET in the following manner.

As you have accepted that you did not inform the department well in time and thus found guilty under rule 20 of the Civil Servants conduct rules 1987, which divest you from right of re-instatement along-with back benefits under F&D rules 2011. You were removed from service i.e. departmentally punished. During this period you did not perform your duty at school and you come under the 2003 SCMR 228, which clearly states that when a Government servant does not perform his duty, he is not entitled for financial benefits which has been termed as "No work no wage".

So in the light of the above fact, findings and recommendations of the enquiry committee, the competent authority is pleased to:-

1. Re-instate you in Government Service due to your acquittal by the Court and taking leniency in this particular case.
2. Your willful absence period from 03.09.2008 to 11.06.20015 is converted into Extra Ordinary Leave without pay under F.R 54 (b).

(JEHANGIR KHAN)
DISTRICT EDUCATION OFFICER
(MALE) SWABI

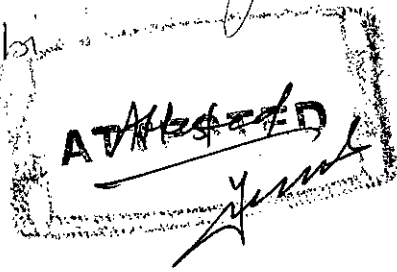
Endst: No. 14372-77, Dated: 30-12-2017

Copy of the above is forwarded for information and necessary action to the:

1. Secretary E&SE, Govt. of Khyber Pakhtunkhwa, Peshawar
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Accounts Officer,
4. District Monitoring Officer, Swabi.
5. Principal GHSS Bamkhel (Swabi)
6. Mr. Abdul Qadir PET

*Received on 16-01-2018
by hand in the
DEO (M) office Swabi*

(JEHANGIR KHAN)
DISTRICT EDUCATION OFFICER
(MALE) SWABI



Before the Director (E & SE) KPK Peshawar

Annex I

(18)

Abdul Qadar PET teacher GHS Bam Khel Swabi
s/o Abdul Nazeef R/o vill: Kalu Khan Teh:
& Distt: Swabi

Appellant.

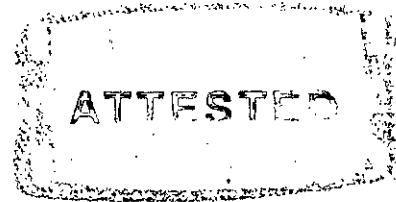
VS

D. E. O (M) Swabi

Respondent.

Appeal against order of respondent dated 30/12/2017 received on 16/1/2018, whereby, appellant is re-instated in service but without back benefit, which is illegal, against law and facts.

Respectfully sheweth:-



1. That appellant was appointed as PET teacher with respondent department.
2. That appellant was charged a murder case vide FIR No 852 dated 2/9/2008, Trial was conducted and appellant was declared innocent and acquitted vide order dated 11/6/2015. ^{by ASJ Swabi} (Copy of FIR and order is attached)

3. That due to the charge and trial, appellants was kept under trial behind the bars in Judicial Lock up from the date of charge till the date of acquittal i.e. 15/6/2011 for trial of the case.
4. That as per law the appellants can be suspended for trial of the case but respondent has terminated the appellants from service vide order dated 7/9/2009, which is illegal, ^{against law and facts.} (copy attached)
5. That after acquittal of appellants, appellants approached to respondent for taking over charge but appellants got knowledge that appellants has already terminated from service vide order dated 7/9/2009, hence appellants approached before the service tribunal through an appeal which was accepted and appellants was re-instated in service vide order dated 11/6/2015 with direction to conduct the fresh disciplinary proceeding. (copy of order/judgment is attached)
6. That on the basis of order/judgment dated 11/6/2015, appellants was re-instated in service with all back benefit w.e. of termination i.e. 4/9/2008 vide order dated 28/9/15 by respondents. (copy of order is attached)

ATTESTED

7. That respondent has filed CPLA against the order/ Judgment of Service Tribunal dated 11/6/2015 before the Apex S.C. of Pakistan, which was also dismissed vide order/ Judgment dated 16/10/2017.
(Copy of order is attached)
8. That fact finding inquiry was conducted by respondent and appellant ^{declared} was entitled for back benefit for the period for which appellant was in Jail for trial of the case because appellant was unable to attend the school.
(Copy of ^{fact finding} inquiry is attached)
9. That ^{1st} show cause notice was issued to appellant, which was properly reply by appellant vide his reply dated 21/12/2017.
(Copy of show cause notice and reply is attached)
10. That appellant is re-instated in service but without back benefit vide impugned order dated 30/12/2017, which is received by appellant on 16/1/2018 which is illegal, against law and facts.
(Copy of order is attached)

11. That order of respdt: dated 30/12/2017 received on 16/1/2018 is illegal, against law and facts on the following grounds:-

Grounds:-

- A. That order of respdt dated 30/12/2017 is illegal, against law and facts.
- B. That it is strange enough that appellatant was re-instated in service with all back benefit vide order dated 28/9/2015, which is still intact, then ^{impugned} order of respdt dated 30/12/2017 without back benefit is baseless and no legal effect to the extent of without back benefit.
- C. That as per FR-54, when the appellatant is re-instated in service w.e.f termination, then he is automatically entitled for back benefits.

D. That innocent person i.e. appellatant has kept in Jail and thereafter he is acquitted, then ~~no~~ re-instatment in service without back benefit is 2nd punishment of innocent person.

It is therefore humbly prayed that on acceptance of this appeal, order of respdt dated 30/12/2017 may please be modified to the extent of appellatant re-instated in service with all back benefit.

Dated 23/1/2018

Through counsel:- Appellant:- Abdul Qadar

ATTESTED
Appellate
Judge

Before the Hon' able service Tribunal kpk
Peshawar

Restoration Application no. 273/2018
Appeal No. 603/2018

Abdul Qadir Appellant

Vs

Sectary Education etc..... Respondents

Service appeal

Subject: Application for restoration of Appeal of appellant

Sir,

Appellant humbly submits as under:-

1. That above captioned case was fixed for preliminary hearing on 02/08/2018 , which was dismissed in default (copy of appeal and order sheet is attached).
2. That counsel for appellant was personally appeared before the reader of the court of preliminary hearing, how given the date for preliminary hearing on 06/09/2018 , which has entered by counsel appellant diary for 06/09/2018 in infirm appellant for said date.
3. That today when counsel for appellant along with appellant appeared before this hon'able tribunal and got knowledge that case has already been dismissed in default on 02/08/2018, which is illegal , against law and facts.
4. That no any notice has been issued to the appellant as well as counsel for appellant , due to which appellant as well as counsel for appellant has got no information/ knowledge regarding the date fixed.
5. That absence of appellant is not willful but due to no knowledge of the date fixed.
6. That superior courts are given preference to the decision on merit.
7. That appellant has valuable rights attached with instant case .

It is therefore, humbly requested that order dated 02/08/2018 may please be set aside and the case of appellant may please be re-fixed .

Appellant. *Abdul Qadir*
Abdul Qadir

Trough counsel *Yaqoob Khan*
Yaqoob Khan Advocate High
court at Distt: courts Mardan

Dated: 06/09/2018

Affidavit

I undersigned declared on oath that the contents are true and correct .

Advocate. *Yaqoob Khan*

ATTESTED
IRFAN ULLAH
NOTARY PUBLIC

6/9/18

Khyber Pakhtunkhwa
Service Tribunal

Diary No. *467*

Dated *6-9-18*

Before The Hon'able Service Tribunal of KPK at
Peshawar

Appeal No. 603 /2018

Khyber Pakhtunkhwa
Service Tribunal

Case No. 644

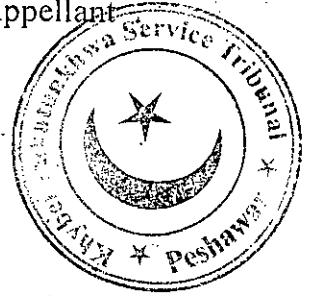
Dated 03/5/2018

Abdul Qadir PET Teacher GHS Bam Khel Swabi so of Abdul
Nazeef R/o Vilalge Kalu Khan Tehsil & District Swabi

.....Appellant

VERSUS

1. Director of (E & SE) KPK Peshawar
2. District Education Officer (Male) Swabi
3. Secretary Education KPK Peshawar Respondent



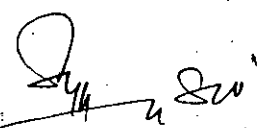
*Appeal U/S-4 of KPK Service Tribunal Act 1974 against
the order of respondent No.2 dated 16/01/2018 whereby,
appellant is re-instated in service but without back benefit,
which is illegal, against law and facts.*

02.08.2018

Neither the appellant nor his counsel present. On the
previous two dates neither appellant nor his counsel was
present and this conduct on his part is suggest that he is not
interested to pursue his case, hence this Tribunal is left with
no option but to dismiss the appeal in default. Parties are left
to bear their own costs. File be consigned to the record room.

Announced:

02.08.2018


Chairman 2.8.20

Certified to be true copy


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 06-09-18
Number of Words 4000
Copying Fee 2/-
Urgent 6/-
Total 6/-
Name of Copyist [Signature]
Date of Completion of Copy 06-09-18
Date of Delivery of Copy 06-09-18

Before the Hon' able service Tribunal kpk
Peshawar

Restoration Appli. no. 273/18
Appeal No. 603/2018

Abdul Qadir Appellant

Vs

Sectary Education etc..... Respondents

Service appeal

Subject: Application for restoration of Appeal of appellant

Sir,

Appellant humbly submits as under:-

1. That above captioned case was fixed for preliminary hearing on 02/08/2018 , which was dismissed in default (copy of appeal and order sheet is attached).
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4. That no any notice has been issued to the appellant as well as counsel for appellant , due to which appellant as well as counsel for appellant has got no information/ knowledge regarding the date fixed.
5. That absence of appellant is not willful but due to no knowledge of the date fixed.
6. That superior courts are given preference to the decision on merit.
7. That appellant has valuable rights attached with instant case .

It is therefore, humbly requested that order dated 02/08/2018 may please be set aside and the case of appellant may please be re-fixed .

Appellant. Abdul Qadir
Abdul Qadir

Trough counsel Yaqoob Khan
Yaqoob Khan/Advocate High
court at Distt: courts Mardan

Dated: 06/09/2018

Affidavit

I undersigned declared on oath that the contents are true and correct .

Advocate. Yaqoob Khan

ATTESTED
IRFAN ULLAH ADVOCATE
NOTARY PUBLIC

6/9/18

Before The Hon'able Service Tribunal of KPK at Peshawar

1

Appeal No. 603 /2018

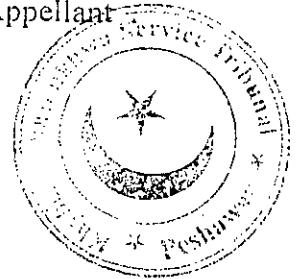
Khyber Pakhtunkhwa
No. 644
Date 03/5/2018

Abdul Qadir PET Teacher GHS Bam Khel Swabi so of Abdul Nazeef R/o Vilalge Kalu Khan Tehsil & District Swabi

.....Appellant

VERSUS

1. Director of (E & SE) KPK Peshawar
 2. District Education Officer (Male) Swabi
 3. Secretary Education KPK Peshawar
- Respondent



Appeal U/S-4 of KPK Service Tribunal Act 1974 against the order of respondent No.2 dated 16/01/2018 whereby, appellant is re-instated in service but without back benefit, which is illegal, against law and facts.

02.08.2018

Neither the appellant nor his counsel present. On the previous two dates neither appellant nor his counsel was present and this conduct on his part is suggest that he is not interested to pursue his case. hence this Tribunal is left with no option but to dismiss the appeal in default. Parties are left to bear their own costs. File be consigned to the record room.

Announced:
02.08.2018

[Signature]
Chairman 2.8.20

Certified to be true copy

[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of presentation 06-09-18
 Number of
 Copy of
 Name of
 Date of 06-09-18
 Date of 06-09-18

Before the Hon' able service Tribunal kpk
Peshawar

Restoration Appli. No. 273/18

Appeal No. 603/2018

Abdul Qadir Appellant

vs

Sectary Education etc..... Respondents

Service appeal

Subject: Application for restoration of Appeal of appellant

Sir,

Appellant humbly submits as under:-

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5. That absence of appellant is not willful but due to no knowledge of the date fixed.
6. That superior courts are given preference to the decision on merit.
7. That appellant has valuable rights attached with instant case.

It is therefore, humbly requested that order dated 02/08/2018 may please be set aside and the case of appellant may please be re-fixed.

Appellant. Abdul Qadir
Abdul Qadir

Trough counsel Yaqoob Khan
Yaqoob Khan/Advocate High
court at Dist: courts Mardan

Dated: 06/09/2018

Affidavit

I undersigned declared on oath that the contents are true and correct.

Advocate. Yaqoob Khan

ATTESTED
IRFAN ULLAH ADVOCATE
NOTARY PUBLIC

6/9/18

Before The Hon'able Service Tribunal of KPK at Peshawar

1

Appeal No. 603 /2018

Khyber Pakhtunkhwa
644
03/5/2018

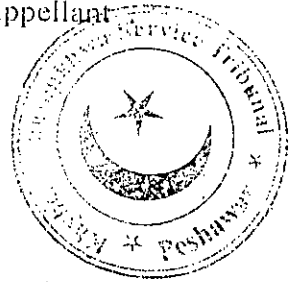
Abdul Qadir PET Teacher GHS Bam Khel Swabi so of Abdul Nazeef R/o Vilalge Kalu Khan Tehsil & District Swabi

.....Appellant

VERSUS

1. Director of (E & SE) KPK Peshawar
2. District Education Officer (Male) Swabi
3. Secretary Education KPK Peshawar

..... Respondent



Appeal U/S-4 of KPK Service Tribunal Act 1974 against the order of respondent No.2 dated 16/01/2018 whereby, appellant is re-instated in service but without back benefit, which is illegal, against law and facts.

02.08.2018

Neither the appellant nor his counsel present. On the previous two dates neither appellant nor his counsel was present and this conduct on his part is suggest that he is not interested to pursue his case, hence this Tribunal is left with no option but to dismiss the appeal in default. Parties are left to bear their own costs. File be consigned to the record room.

Announced:

02.08.2018

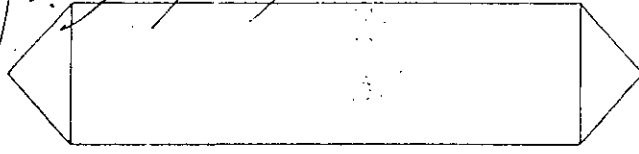
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Chairman 2.8.20

Certified to be true copy

[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation 02-08-18
 Number of Pages
 Copying
 Deposition
 Total 6-
 Name of Counsel
 Date of Court 06-09-18
 Date of Disposal of Case 06-09-18

بعدالت سرور کے لیے موصول شدہ



20/8ء پنجاب

بنام ریکولیشن

کا حکم
عبدالقادر ندیم

مورخہ

مقدمہ

دعویٰ

جرم

رسول

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام لسٹ اور کیلئے لیسٹ اور کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضعی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا ایبل کی برآمدگی
اور منسوخی نیز دائر کرنے ایبل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

20/8ء

کا حکم

6

المرقوم

الع د گ و الع

کے لئے منظور ہے۔

لسٹ اور

مقام

Attested & Accepted
Yours

عبدالقادر ندیم

Before the Hon' able service Tribunal kpk
Peshawar

Restoration Appli. no. 273/18
Appeal No. 603/2018

Abdul Qadir Appellant

Vs

Sectary Education etc..... Respondents

Service appeal

Subject: Application for restoration of Appeal of appellant

Sir,

Appellant humbly submits as under:-

1. That above captioned case was fixed for preliminary hearing on 02/08/2018, which was dismissed in default (copy of appeal and order sheet is attached).
2. That counsel for appellant was personally appeared before the reader of the court of preliminary hearing, how given the date for preliminary hearing on 06/09/2018, which has entered by counsel appellant diary for 06/09/2018 in infirm appellant for said date.
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5. That absence of appellant is not willful but due to no knowledge of the date fixed.
6. That superior courts are given preference to the decision on merit.
7. That appellant has valuable rights attached with instant case.

It is therefore, humbly requested that order dated 02/08/2018 may please be set aside and the case of appellant may please be re-fixed.

Appellant. Abdul Qadir
Abdul Qadir

Trough counsel Yaqoob Khan
Yaqoob Khan Advocate High
court at Distt: courts Mardan

Dated: 06/09/2018

Affidavit

I undersigned declared on oath that the contents are true and correct.

Advocate. Yaqoob Khan

ATTESTED
IRFAN ULLAH ADVOCATE
NOTARY PUBLIC

6/9/18

Before The Hon'able Service Tribunal of KPK at Peshawar

1

Appeal No. 605 /2018

644
03/5/2018

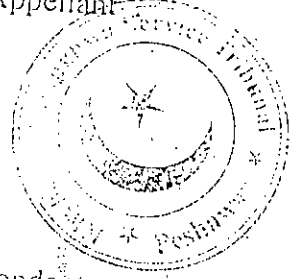
Abdul Qadir PET Teacher GHS Bam Khel Swabi so of Abdul Nazeef R/o Vilalge Kalu Khan Tehsil & District Swabi

Appellant

VERSUS

- 1. Director of (E & SE) KPK Peshawar
- 2. District Education Officer (Male) Swabi
- 3. Secretary Education KPK Peshawar

Respondent



Appeal U/S-4 of KPK Service Tribunal Act 1974 against the order of respondent No.2 dated 16/01/2018 whereby, appellant is re-instated in service but without back benefit, which is illegal, against law and facts.

02.08.2018

Neither the appellant nor his counsel present. On the previous two dates neither appellant nor his counsel was present and this conduct on his part is suggest that he is not interested to pursue his case. hence this Tribunal is left with no option but to dismiss the appeal in default. Parties are left to bear their own costs. File be consigned to the record room.

Announced:

02.08.2018

[Signature]
Chairman 2.8.20

Certified to be true copy

[Signature]
Khyber Pakhtunkhwa
Peshawar

Defendant
Counsel
Total
Name of
Date of
Director

06-09-18
06-09-18

26-09-18

Before the Hon' able service Tribunal kpk
Peshawar

Appeal No. 603 /2018

Abdul Qadir Appellant

Vs

Sectary Education etc..... Respondents

Service appeal

Subject: Application for restoration of Appeal of appellant

Sir,

Appellant humbly submits as under:-

1. That above captioned case was fixed for preliminary hearing on 02/08/2018 , which was dismissed in default (copy of appeal and order sheet is attached).
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7. That appellant has valuable rights attached with instant case .

It is therefore, humbly requested that order dated 02/08/2018 may please be set aside and the case of appellant may please be re-fixed .

Appellant. Abdul Qadir
Abdul Qadir

Trough counsel Yaqoob Khan
Yaqoob Khan/Advocate High
court at Dist: courts Mardan

Dated: 06/09/2018

Affidavit

I undersigned declared on oath that the contents are true and correct .

Advocate. Yaqoob Khan

ATTESTED
MIRKULLAH
NOTARY PUBLIC

6/9/18

Before The Hon'able Service Tribunal of KPK at Peshawar

1

Appeal No. 663/2018

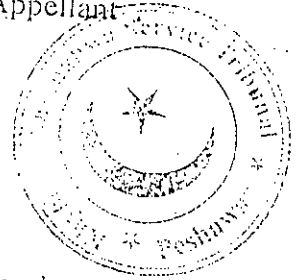
644
03/5/2018

Abdul Qadir PET Teacher GHS Bam Khel Swabi so. of Abdul Nazeef R/o Vilalge Kalu Khan Tehsil & District Swabi

Appellant

VERSUS

- 1. Director of (E & SE) KPK Peshawar
 - 2. District Education Officer (Male) Swabi
 - 3. Secretary Education KPK Peshawar
- Respondent



Appeal U/S-4 of KPK Service Tribunal Act 1974 against the order of respondent No.2 dated 16/01/2018 whereby, appellant is re-instated in service but without back benefit, which is illegal, against law and facts.

02.08.2018

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Announced:

02.08.2018

Chairman 28.20

Certified to be true copy

Secretary
KPK Service Tribunal
Peshawar

Date of ... 06-09-18
 Name of ...
 Director of ...
 66-09-18
 66-09-18

Before The Hon'able Service Tribunal of KPK at Peshawar

①

Appeal No. 603 /2018

Number of Pages
644
Date 03/5/2018

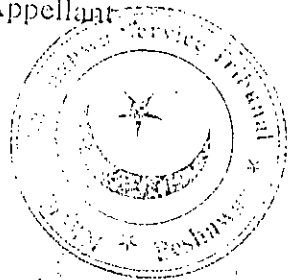
Abdul Qadir PET Teacher GHS Bam Khel Swabi so of Abdul Nazeef R/o Vilalge Kalu Khan Tehsil & District Swabi

Appellant

VERSUS

1. Director of (E & SE) KPK Peshawar
2. District Education Officer (Male) Swabi
3. Secretary Education KPK Peshawar

Respondent



Appeal U/S-4 of KPK Service Tribunal Act 1974 against the order of respondent No.2 dated 16/01/2018 whereby, appellant is re-instated in service but without back benefit, which is illegal, against law and facts.

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Announced:

02.08.2018

[Signature]
Chairman 2.8.2018

Certified to be true copy

[Signature]
Secretary Education
KPK Peshawar

Date of
Name of
No. of
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02-08-2018
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No. of
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06-09-18
66-09-18

Before The Hon'able Service Tribunal of KPK at Peshawar

1

Appeal No. 663 /2018

644
03/5/2018

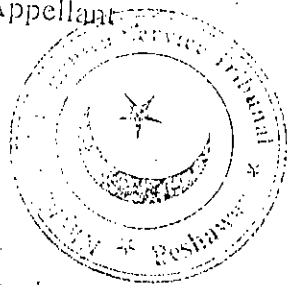
Abdul Qadir PET Teacher GHS Bam Khel Swabi so of Abdul Nazeef R/o Vilalge Kalu Khan Tehsil & District Swabi

Appellant

VERSUS

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2. District Education Officer (Male) Swabi
3. Secretary Education KPK Peshawar

Respondent



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Announced:

02.08.2018

[Signature]
Chairman 2.8.2018

Certified to be true copy

[Signature]
Secretary
KPK Service Tribunal
Peshawar

Date of ...
 Name of ...
 Total ...
 66-09-18
 66-09-18
 66-09-18
 66-09-18

Before the Hon' able service Tribunal kpk

Peshawar

Restoration Appli. no. 273/18

Appeal No. 603/2018

Abdul Qadir Appellant

Vs

Secretary Education etc..... Respondents

Service appeal

Subject: Application for restoration of Appeal of appellant

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3. That today when counsel for appellant along with appellant appeared before this hon'able tribunal and got knowledge that case has already been dismissed in default on 02/08/2018, which is illegal, against law and facts.
4. That no any notice has been issued to the appellant as well as counsel for appellant, due to which appellant as well as counsel for appellant has got no information/ knowledge regarding the date fixed.
5. That absence of appellant is not willful but due to no knowledge of the date fixed.
6. That superior courts are given preference to the decision on merit.
7. That appellant has valuable rights attached with instant case.

It is therefore, humbly requested that order dated 02/08/2018 may please be set aside and the case of appellant may please be re-fixed.

Appellant. Abdul Qadir
Abdul Qadir

Yaqub Khan
Trough counsel
Yaqub Khan/Advocate High
court at Distt: courts Mardan

Dated: 06/09/2018

Affidavit

I undersigned declared on oath that the contents are true and correct.

Advocate. Yaqub Khan

ATTESTED
IRFAN ULLAH ADVOCATE
NOTARY PUBLIC

6/9/18

①

Before The Hon'able Service Tribunal of KPK at
Peshawar

Appeal No. 603 /2018

Khyber Pakhtunkhwa
Service Tribunal

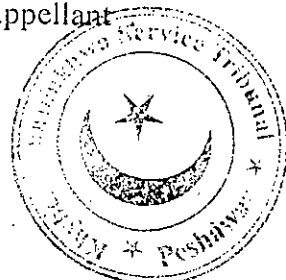
No. 644
Dated 03/5/2018

Abdul Qadir PET Teacher GHS Bam Khel Swabi so of Abdul
Nazeef R/o Vilalge Kalu Khan Tehsil & District Swabi

.....Appellant

VERSUS

1. Director of (E & SE) KPK Peshawar
 2. District Education Officer (Male) Swabi
 3. Secretary Education KPK Peshawar
- Respondent



*Appeal U/S-4 of KPK Service Tribunal Act 1974 against
the order of respondent No.2 dated 16/01/2018 whereby,
appellant is re-instated in service but without back benefit,
which is illegal, against law and facts.*

02.08.2018

Neither the appellant nor his counsel present. On the previous two dates neither appellant nor his counsel was present and this conduct on his part is suggest that he is not interested to pursue his case, hence this Tribunal is left with no option but to dismiss the appeal in default. Parties are left to bear their own costs. File be consigned to the record room.

Announced:

02.08.2018

[Signature]
Chairman 2.8.20

Certified to be true copy

[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation	06-09-18
Number	4900
Copies	2
Pages	6
Total	
Name of Clerk	<i>[Signature]</i>
Date of	06-09-18
Date of Closing	06-09-18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No.603/ 2018

Mr.Abdul Qadir, PET, GHS Bam Khel S/O Abdul Nazeef R/O Village Kalu Khan
Tehsil & District Swabi.....**Appellant**

VERSUS

1. Director (E&SE) Khyber Pakhtunkhwa, Peshawar
2. District Education Officer(Male) Swabi
3. Secretary E&SE) Department Khyber Pakhtunkhwa, Peshawar
.....**Respondents**

INDEX

S#	Description of Documents	Annexure	Page
1	Para wise comments	-	01 to 03
2	Affidavit	-	04
3	Govt:of Khyber Pakhtunkhwa Govt: Servants Conduct rules 1987	A	05-06
4	2003 SCMR 228	B	07-09
5	2017 SCMR 965	C	10-12

ADD-11

*Amir
6/3*

**DISTRICT EDUCATION OFFICER
(MALE) SWABI**

**Dist. Education Officer
(Male) Swabi**

DA/DIE/HWFF
Dp. No. 237
Date. 2-3-19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No.603/ 2018

Mr.Abdul Qadir, PET, GHSS Bam Khel S/O Abdul Nazeef R/O Village Kalu Khan
Tehsil & District Swabi.....**Appellant**

VERSUS

1. Director (E&SE) Khyber Pakhtunkhwa, Peshawar
 2. District Education Officer(Male) Swabi
 3. Secretary E&SE) Department Khyber Pakhtunkhwa, Peshawar
-**Respondents**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS 01 TO 03

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

1. That there is no departmental appeal filed against the impugned order, hence not maintainable
2. That departmental, appeal is not availed , so the instant appeal is not maintainable.
3. That the departmental appeal he claims and Service appeal are badly time barred, hence the instant appeal is not maintainable.
4. That the Appellant has no locus standi or cause of action to file the instant Appeal
5. That the Appellant has not come to the Tribunal with clean hands.
6. That the Appellant concealed the material facts from the Honourable Tribunal.
7. That the Appellant has filed the instant Appeal just to pressurize the respondents.
8. That the Appellant is estopped by his own conduct to file the instant appeal.
9. That, the Appeal is not maintainable in the present form and also in the present circumstances of the issue.

Facts.

1. That the para relates to the appointment of the appellant, hence no need of comments.
2. That the appellant bluntly confesses that he was charged in a murder case. The appellant in fact conceals the fact that he was absconder and did not inform the department well in time, which was mandatory for the appellant being a Government servant. As per Government of Khyber Pakhtunkhwa conduct rules, 1987, rule 20, "Report by Government servant in case of involvement in a criminal case, if a Government servant is involved as an accused in a criminal case. He shall bring the facts of such involvement or convection as the case may be to the notice of the head of the office or department immediately or if he is arrested and released on bail soon after such release" Failure of the Civil servant to do the same would divest him of a right. Thus he had committed misconduct. He was terminated from service on 07.09.2009.(Government of Khyber Pakhtunkhwa Govt: Servants Conduct rules 1987 annexed as A)
3. Incorrect, hence denied, the appellant was absconder and was terminated from service on 07.09.2009. When the appellant was kept under trial behind the bar judicial lock up, he was not on the strength of the Elementary and Secondary Education Department. The statement rendered in this para is false and incorrect.

[Handwritten Signature]
DIA Education Officer
(Male) Swabi

- 4. That the appellant involved in a murder case. He was absconder. He did not inform the department in time, which was mandatory for the appellant, being a Government servant, the department was kept un aware of this episode of the story by the appellant and committed violation of the rule 20 of Government servant conduct rules, 1987. He was terminated during the absconding period, His absence from service was willful and was rightly proceeded and terminated. Hence the order is legal, according to law and facts.
- 5. That the appellant statement rendered in this para, negates the statement rendered by the appellant in para number 03, the appellant appeal to the service tribunal was not accepted but remitted to the respondent department to proceed against the appellant strictly in accordance with law after giving him full opportunity of defense for which reason the impugned order is set aside.
- 6. That the respondent department has filed CPLA against the judgment of Service Tribunal dated 11.06.2015 before the Apex Court of Pakistan. Hence the order dated 28.09.2015 has no legal effect.
- 7. That the para pertains to CPLA. Para 02 of the order is reproduced as under.
The learned Additional Advocate General appearing on behalf of the petitioner contended that if the respondent was involved as an accused in a criminal case he was bound to bring this fact to the notice of the Head of the Department immediately, if arrested and released on bail and that failure of the respondent to do the same would divest him of a right to ask of reinstatement.
- 8. Incorrect, hence denied, the appellant was not declared entitled for back benefits by the inquiry committee, but was left on the discretion of the competent authority to decide to give back benefits or otherwise. The respondent passed the order according to the real soul of F.R 54. As per FR.54 (b)" If otherwise (i.e, reinstated but punished departmentally), such proportion of such pay and allowances as the revising or appellate authority may prescribe. The suspension period in a case falling under clause (b) will not be treated as a period spent on duty unless the revising or appellate authority so directs". It is pertinent to state that appellant was not suspended but was terminated and was not on the strength of the department. In 2003 SCMR 228, held that when there was no work, there was no pay. In 2017 SCMR 965, held that act of absconsion or being fugitive from law would not be regarded as a reasonable ground to explain absence. **(Judgments annexed as B&C)**
- 9. That his reply to the show cause notice was found unsatisfactory, because he did not reply each and every para of the show cause. He concealed the material facts like absconsion, rule 20 of Civil Servant conduct rules 1987 etc;.
- 10. That the reinstatement order is very much clear and self explanatory. An inquiry was conducted, show cause was issued and a chance of personal hearing was provided. Principle of natural justice was done in this particular case. Hence the order is legal in accordance with law, rules, policy and facts.
- 11. Incorrect, hence strongly denied. No departmental appeal filed against the impugned order. The departmental appeal he claims having date 23.01.2018 against the impugned order has not been presented to any one. This claim is false and strongly denied." When departmental appeal was not availed, so the appeal in the Tribunal is not maintainable" Same is reported in PLJ 1991 tr,c (Service)153, 1992 PLC (CS) 666,1994 PLC ICS) 1262,606.
- 12. Incorrect, hence denied, the appellant had the remedy to file a departmental appeal against the impugned order to the appellate authority, which he did not avail.

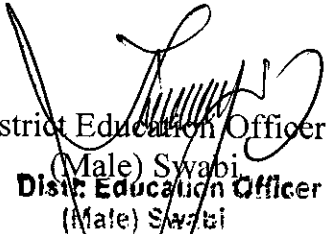
[Handwritten Signature]
 Dir. Education Office
 (Male), Swabi


He annexed the paper just for the propose of completion of formalities, which has no legal effect and is punishable in the eye of law, order of respondents is lawful, legal according to the facts and circumstances of the case. Hence the appellant has no cause of action to file the instant appeal and the appeal in hand is liable to be dismissed on the following grounds.


Grounds:-

- A. Incorrect, hence denied. The order of respondent No.2 dated 30.12.2017 is legal in accordance with law, rules, policy and facts liable to be maintained. He is not entitled for any back benefits.
- B. Incorrect, hence denied, the order dated 28.09.2015 has no legal effect, because the case was subjudice in the Supreme Court of Pakistan. The impugned order dated 30.12.2017 without back benefits is in accordance with law, rules, fact and policy. It has a legal effect. He is not entitled for any back benefits.
- C. Incorrect, hence denied, the appellant was willful absent at the time of termination from service. He has committed concealment of facts. The impugned order dated 30.12.2017 is justified, in accordance with law, rules, facts and policy. The order has legal effect.
- D. Incorrect, hence denied. he was rightly treated as per F.R 54 (b), which states, " If otherwise (i.e, reinstated but punished departmentally), such proportion of such pay and allowances as the revising or appellate authority may prescribe. The suspension period in a case falling under clause (b) will not be treated as a period spent on duty unless the revising or appellate authority so directs". It is pertinent to state that the appellant was not suspended but was terminated and was not on the strength of department.
- E. Incorrect, hence denied, the appellant was involved in a murder case. He remained absconder without any information to the head of the department. The appellant violated the mandatory rule 20 of Government of Khyber Pakhtunkhwa conduct rules 1987 and thus rightly removed him from service. He was not innocent but has committed misconduct. Ignorance of law is no excuse.
The respondents may be allowed to raise further points/ grounds at the time of hearing of this appeal.

In view of the above submissions, it is earnestly requested that the instant appeal may very graciously be dismissed with cost.


District Education Officer
(Male) Swabi
Dist. Education Officer
(Male) Swabi


Director Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar


Secretary Elementary & Secondary Education
Department Govt. of KPK

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No.603/ 2018

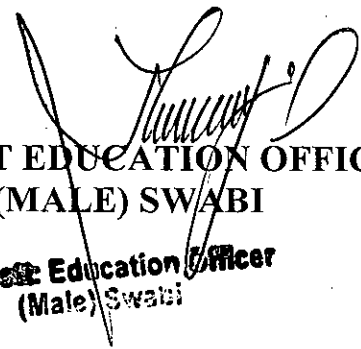
Mr.Abdul Qadir, PET, GHS Bam Khel S/O Abdul Nazeef R/O Village Kalu Khan
Tehsil & District Swabi.....**Appellant**

VERSUS

1. Director (E&SE) Khyber Pakhtunkhwa, Peshawar
 2. District Education Officer(Male) Swabi
 3. Secretary E&SE) Department Khyber Pakhtunkhwa, Peshawar
-**Respondents**

AFFIDAVIT

We do hereby solemnly affirm and declare on oath
that the contents of the para wise comments are true and correct to the best of
our knowledge and belief, nothing has been concealed from this Honourable
Tribunal.


DISTRICT EDUCATION OFFICER
(MALE) SWABI

**Dist. Education Officer
(Male) Swabi**

CHAPTER-3

GOVERNMENT OF KHYBER PAKHTUNKHWA
CONDUCT RULES, 1987

Statutory Provision regarding Conduct.

Section.15 Civil Servants Act, 1973.-The conduct of a civil is regulated by rules made, or instruction issued, by Government or a prescribed authority, whether generally or in respect of a specified group or class of civil servants.

The Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987.

1. Short title and commencement. (1) These rules may be called The Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987.

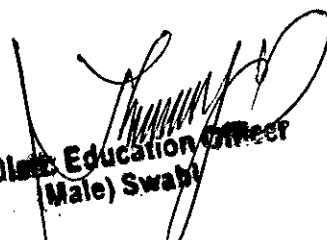
(2) They shall come into force at once.

2. Extent of application:-These rules apply to every person, whether on duty or on leave within or without The Khyber Pakhtunkhwa serving in connection with the affairs of The Khyber Pakhtunkhwa, including the employees of the Provincial Government deputed to serve under the Federal Government or with a statutory Corporation or with a non-Government employer, but excluding:-

- (a) members of an All-Pakistan Service serving in connection with the affairs of the Province;
- (b) employees of the Federal Government or other authority deputed temporarily to serve under the Provincial Government; and
- (c) holders of such posts in connection with the affairs of the Province of Khyber Pakhtunkhwa as the Provincial Government may, by a notification in the official Gazette, specify in this behalf.

3. Definitions :-(1) In these rules, unless there is anything repugnant in the subject or context;

- (a) "Government" or "Provincial Government" means the Government of The Khyber Pakhtunkhwa;
- (b) "Government Servant" means a person to whom these rules apply;
- (c) "Member of a Government Servant's family" includes:-
 - (i) his wife, children and step children, parents, sisters and minor brothers, residing with and wholly dependent upon the Government Servant; and
 - (ii) any other relative of the Government servant or his wife when residing with and wholly dependent upon him; but does not


Dist. Education Officer
(Male) Swabi

20. **Report by Government servant in case of his involvement in a criminal case:-** If a Government servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction, as the case may be, to the notice of the Head of the Office or Department immediately or, if he is arrested and released on bail, soon after such release.

21. **Unauthorized communication of official documents or information:-** No Government servant shall, except in accordance with any special or general order of Government, communicate directly or indirectly any official information or the contents of any official document to a Government servant not authorised to receive it, or to a non-official person, or to the press.

22. **Approach to Members of the Assemblies:-** No Government servant shall, directly or indirectly approach any member of the National Assembly or a Provincial Assembly or any other non-official person to intervene on his behalf in any matter.

23. **Management, etc. of Newspapers or Periodicals:-** No Government servant shall except with the previous sanction of Government, own wholly or in part, or conduct or participate in the editing or management of any newspaper or other periodical publication.

24. **Radio-Broadcast and communications to the Press:-** No Government servant shall, except with the previous sanction of Government, or any other authority empowered by it in this behalf, or in bonafide discharge of his duties, participate in a radio broadcast or television Programme or contribute any article or write any letter, either anonymously or in his own name or in the name of any other person to any newspaper or periodical:

Provided that such sanction shall generally be granted if such broadcast or television programme or such contribution or letter is not, or may not be considered likely to jeopardize the integrity of the Government servant, the security of Pakistan or friendly relations with foreign states or to fend public order, decency or morality, or tantamount to contempt of court, defamation or incitement to an offence:

Provided further that no such sanction shall be required if such broadcast or television programme or such contribution or letter is of a purely literary, artistic or scientific character.

*Note:-Government officials unless so authorized are not allowed to hold press conferences and to have direct contacts with media. *No.SOR-VIE&AD/Misc/VOL-IV Dt: 11-10-2010.

25. **Publication of information and public speeches capable of embarrassing Government :-**(1) No Government servant shall, in any document, published or any public utterance, radio broadcast or television programme, or in any other manner make any statement of fact or opinion which is capable of embarrassing the Federal or any Provincial Government.

Minister of Education
(Male) Swat

07

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 in no pay.

(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 as 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).

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, Advocateai-Record for Respondent.

Date of hearing: 11th September, 2002.

JUDGMENT

SYED DEEDAR HUSSAIN SHAH, J.---Petitioner seeks leave to appeal against that judgment of



District Education Officer
(Male) Swabi

08

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 been paid to him as salary, during the period he worked at Missa Kiswal on the strength of the stay order of NIRC.

3. Feeling aggrieved, the petitioner approached the Tribunal by way of appeal, which was dismissed. Hence, this petition.

4. We have heard Ch. Sadiq Mohammad Warriach, learned counsel for the petitioner, who, inter alia, contended that that petitioner's absence from duty from 2-7-1994 to 8-8-1994 and 5-10-1994 to 10-9-1996 was wrongly treated as Extra Ordinary Leave (EOL) and the Office Memorandum dated 13-2-1999 issued by the respondent/Head Office may be cancelled; that the Tribunal had not exercised its jurisdiction fairly and the recovery/deduction of the amount already drawn by the petitioner from the respondent is unwarranted.

5. Sardar Muhammad Aslam, learned Dy.A.G. vehemently controverted the contention of the learned counsel for the petitioner and pointed out that no doubt NIRC issued an injunction to the petitioner but the same was re-called by the Tribunal on 18-8-1996. He has also referred to the appeal of the petitioner which is at page 57 of the paper book, in which he has stated as under:

"I had reported for duty at Pirkoh Gas Field. Therefore, regularizing the period of stay, ordered by the Court as E.O.L is injustice with me."

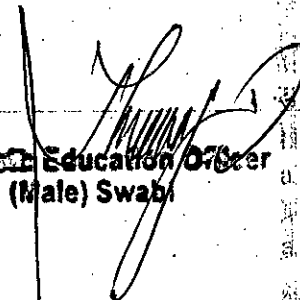
On his application office submitted summary to the Chief Personnel Officer of the respondent/Corporation, which reads as under:

"(70) Reference para-180/N, it is submitted that as per message No.MK.1331 dated 26-11-1999 (PR244/Con.) O.M.(F), Missa Kiswal, Mr. Niaz Hussain Shah was relieved from Missa Kiswal Oil Field, for Pirkoh Gas Field. He neither reported at Pirkoh nor at Missa Kiswal Oil Field, after getting stay order from NIRC. O.K(F), Missa Kiswal Oil Field, did not confirm whether he performed any official duty during his stay (off & on) at Missa Kiswal. Mr. Niaz Hussain neither claimed any field benefit like messing/D.A. and Rota facilities nor paid by the Location Incharge due to his non-performance of any duty.

"(71) In view of above, if approved by Manager (Personnel), his request may be regretted in the light of earlier decision as per para. 141-A, please."

The perusal of the above document shows that the petitioner did not perform his usual duties and was not entitled to salary as claimed by him.

6. Sardar Muhammad Aslam, learned Dy.A.G. further pointed out that recovery was already been


Dist. Education Officer
(Male) Swab

09

affected from the petitioner and that Office Memorandum referred to hereinabove was entirely in accordance with the O.G.D.C. Service Regulations, 1974. It was also pointed out by him that the petitioner in due course of service has already been promoted, to his Managerial post. ,

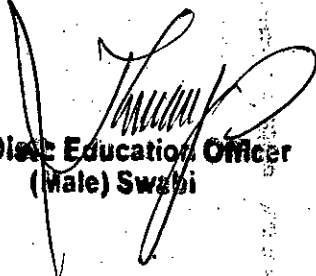
7. We have considered the arguments of the learned counsel for the parties and have carefully examined the record, which shows that the period for which recovery of refund of the salary was effected from the petitioner was the period for which he did not work. By now, it is settled law that when there is no work there is no pay. The petitioner did not perform his duties as mentioned hereinabove and recovery was rightly effected from him; thereafter, he was promoted to the post of Manager. The impugned judgment is entirely based on proper appreciation of the material available with the Tribunal. We further find that there is no jurisdictional error or misconstruction of facts and law. The impugned judgment is not open to exception.

8. Moreover, a substantial question of law of public importance, as envisaged under Article 212(3) of the Constitution, is not made out.

9. For the facts, circumstances and reasons stated hereinabove, we are of the considered opinion that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

S.A.K./N-100/S

Petition dismissed.


District Education Officer
(Male) Swabi

10

2017 S C M R 965

[Supreme Court of Pakistan]

Present: Sh. Azmat Saeed and Faisal Arab, JJ

FEDERATION OF PAKISTAN through Secretary Ministry of Defence and another---
Petitioners

Versus

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

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 absconsion 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 absconsion 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.

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



District Education Officer
(Male) Swabi

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 enmity 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

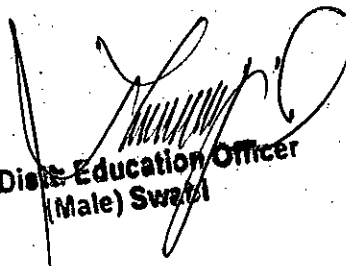

District Education Officer
(Male) Swabi

compromise was reached with the victim's family members. To seek condonation of absence during his absconsion would amount to putting premium on such act. If this is made a ground for condonation of absence, then in every 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 absconsion or being a fugitive from law cannot be regarded as a reasonable ground to explain absence. Even where a person is innocent, absconsion 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 absconsion 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.


District Education Officer
(Male) Swazi

BEFORE THE SERVICE TRIBUNAL PESHAWAR.

Appeal NO. 603/2018

Abdul Qadar VS Director of (E&SE) etc.

REJOINDER ON BEHALF OF APPELLANT.

R/Sir,

Rejoinder on behalf of Appellant

as under:-

PRELIMINARY OBJECTIONS:-

All preliminary objections are incorrect, mis-conceived, hence denied.

F A C T S:-

1. That Para NO. 1 of appeal of appellant is admitted by respondents.
2. That Para NO. 2 of reply of respondent is incorrect, denied. Moreover appellant has properly submitted an application regarding his charging in Criminal Case and after acquittal, appellant again approached before respondent for performing his duty but appellant got knowledge that he has terminated from Service tribunal thereafter appellant filed proper appeal for re-instatement before the Service Tribunal and appellant was re-instated in Service but without back benefit, which is illegal against law FR 54 and facts.

3. That Para NO. 3 of reply of respondent is incorrect, denied. Moreover, appellant is admitted his reply that appellant was behind the bar under judicial lock up, so, appellant has given double punishment being innocent child that one appellant was kept under the lock up and 2nd: he was deprived from his legal-right for granting of his salary and 3rd: put of appellant for his rounding of granting his legal right to get his salary and Service benefit for the period for which appellant kept under lock up being innocent child.
- 4-5. That Para 4-5 of reply of respondents are incorrect, denied and those of appeal of appellant are correct. Moreover, detail of Paras are mentioned in Para 2 of instant rejoinder.
- 6-7. That Para 6-7 of reply of respondents are incorrect, denied and those of appeal of appellant are correct. Moreover, CPLA of respondents are dismissed by Apex of Supreme Court of Pakistan.
- 8-10. That Para NO. 8 to 10 of reply of respondents are incorrect, denied and those of appeal of appellant are correct.
- 11-12. That Para NO. 11-12 of reply of respondents are incorrect, denied and those of appeal of appellant are correct.

...3...

G R O U N D S:-

All Grounds reply of respondents are incorrect, denied and those of appeal of appellant are correct.

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

Dated: 06.05.2019

Appellant Abdul Qadar
(ABDUL QADAR)

Through Counsel:

Yusuf

A F F I D A V I T.

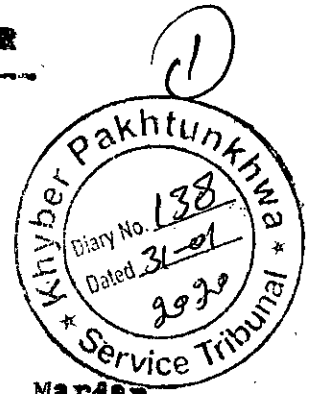
Certified that the contents of the appeals are true and correct to the best of my knowledge and belief, nothing has been concealed from this Honourable Court.

Appellant Abdul Qadar
(ABDUL QADAR)



BEFORE THE HON'BLE SERVICE TRIBUNAL KPK PESHAWAR

Appeal No. 695/2018.



put up to the court with relevant appeal.

Abdul Qadir

Vs

D B O (M), Mardan

31/1/2020

SERVICE APPEAL

Sub:-

APPLICATION FOR PLACING ON FILE ADDITIONAL DOCUMENTS IN CASE TITLED ABOVE.

R/Sir,

1. That above captioned case is fixed for today ie 8-01-2020.
2. That appellant is requesting for placing on file of the following documents as under:-
 - (i) B.D No. 09 dated 18/01/2011 of PS Swabi.
 - (ii) Judgment/Order of A.S.J III Swabi, dated 15/6/2011.
 - (iii) Secretary Education letter dated 13/11/2019.
 - (iv) Order/Judgment of SVC Tr dated 25-10-2017.

It is therefore, humbly requested, that above mentioned documents may please be placed on file for further proceeding.

Dated: 08/01/2020

Appellant

Abdul Qadir

Through Counsel

Yaqub Khan Advocate

High Court, At District Courts
Mardan.

صلح ہمدان

تقریر 9 روزنامہ 18/11

عدو 9 آکر ٹر ٹناروں طلبہ 0 محمد ضیاء الحق خاں SAH وقت 07:15 صبح 18/11 اس وقت 0 م عبد القادر ولد عبد النظیم ساکن کالو خان و طلبہ بمقدم عدو 852 صبرم 34/3 مقام ہمدان خود بخود بخاطر ان کا ہانہ آ کر دینی ٹناروں پیش رس کے حکومند ہذا میں حسب ضابطہ ٹناروں کے کارڈ ٹناروں علی گڑھ جاتے ہیں م بالا لیک کارڈ ٹناروں کے ضمن برضا قانون کارڈوں کو راج انوسٹی گٹی نظام لیا گیا

صاحب عالی

نقل عجبائی اصل 4



Q

تقریرات - 18-01-2011

برجائی - 15-06-2011

Attested

(3)

IN THE COURT OF MUHAMMAD ZAFAR KHAN
ADDITIONAL SESSIONS JUDGE-III, SWABI

CASE No. 16/SC of 2011
DATE OF INSTITUTION 02/02/2011
DATE OF DECISION 15/06/2011

THE STATE
VERSUS---

Ullah
NR

ABDUL QADIR SON OF ABDUL NAZIF
RESIDENT OF KALU KHAN, TEHSIL & DISTRICT SWABI
(Accused Facing Trial)

FIR No. 852 dated: 03/09/2008 under section
302/34-PPC Police Station Swabi

JUDGMENT:-

Accused named Abdul Qadir aged about 34 years son of Abdul Nazif resident of Kalu Khan, District Swabi is facing trial in case FIR No. 852 dated: 03/09/2008 under section 302/34 PPC pertaining to Police Station Swabi in which the complainant is Zar Nabi Khan. The FIR is ExPA and has been lodged on the basis of murasala ExPA/1.

The contents of which reflects that the complainant brought the dead body of his son Fazal Rabi to the Civil Hospital Swabi and reported the matter that his nephew Imtiaz Ahmad son of Sher Nabi came from North Waziristan, he made a telephone call to the complainant to come behind him to Swabi Adda, upon which the he along with his son Sheraz riding on one Motorcycle, while his another son Fazal Rabi on another motorcycle proceeded towards Swabi, Fazal Rabi was ahead of them, when they reached the place of occurrence, a motorcar while colour, the number of which not known to the complainant, came, in which Abdul Nasir (acquitted co-accused) and the present accused facing Trial Abdul Qadir were sitting, crossing the motorcycle of the complainant, started firing on Fazal Rabi with deadly weapons with an intention to kill him, as result of firing made his son sustained injuries and died. The accused according to him has been identified in the lights of the motorcycle. The motive advanced to be some two/three months earlier before the occurrence the sister of the accused named Mst. Uzma eloped with the son of the complainant Muhammad Fayaz, she was returned to

ATTESTED

[Signature]
15/6/11

(B) (B) (4)

them. According to him the occurrence has been witnessed by him along with his son Sheraz and hence booked the accused.

The record would show that the initially challan was put in court against the accused Abdul Nasir and to the extent of Abdul Qadir within the meaning of section 512 Cr.PC. The trial was commenced and Abdul Qadir was acquitted on 29/10/2010. Abdul Qadir was declared proclaimed offender and after his arrest supplementary challan was submitted, the accused was summoned and who being in custody was produced before the court, he was charge sheeted to which he met with denial and claimed trial. The prosecution was then invited to record their evidence and the prosecution produced PW.1 Dr. Fahim, he is the person who conducted the autopsy upon the deceased, the post mortem report is ExpW1/1 which in his handwriting and correctly bears his signature and that he also endorsed the injury sheet ExpW1/2 and the inquest report ExpW1/3. According to him there were multiple entry wounds and exit wounds on both lumber region of the body. Crushed wounds on left hand, crushing fracture of almost all hand bone. According to him he has not given specific number of entry and exit wounds as those were many in number and he also has not given the size of the wounds and that he also cannot given the direction of the bullets. He is also of the view that the probable duration between injury and death was given as 30-minutes which means the death of the deceased was not instantaneous.

PW2 Said Rahim FC appeared, his statement would show that he was posted at Casualty District hospital Swabi and he escorted the dead body to the mortuary for PM examination. After examination the body was received by his relatives and the clothes were handed over to him by the doctor which he delivered to the IO.

PW3 is Ishaq Ali DFC, according to him the warrant of arrest ExpW3/1 was entrusted to him against Abdul Qadir, he was searched but could not be found and it was reported that he has gone into hiding avoiding lawful arrest. He examined the local elders and returned the warrant unexecuted with his report ExpW3/2. He also referred about the proclamation issued in triplicate against the accused facing trial, he pasted one copy on the outer gate of the house of the accused, second on the notice board of the court and third copy returned to the IO with report ExpW3/4 bearing his signatures. His statement also reflects that he has not prepared the sketch of the house of the house nor has mentioned the boundaries thereof in his report.

AD
12/10/10

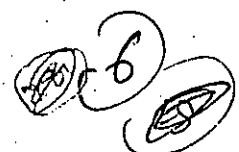
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PW4 is Rehmanhullah SI, his statement shows that on the receipt of murasifa he registered the case vide FIR ExPA and during the days of occurrence he was posted at Police Station Swabi. The FIR is in his handwriting correctly bearing his signature.

PW5 Muhammad Shoab appeared, according to him Abdul Qadir voluntarily surrendered before Fayaz Khan who arrested him in the instant case and issued his card of arrest ExPW5/1 under his signature. The custody of the accused was handed over to him, vide application ExPW5/2 he obtained police custody, interrogated him, vide ExPW5/3 sought for further custody which was refused and accused was sent to Judicial lockup. Thereafter he handed over the case file to the SHO for submission of challan.

Afsar Said appeared as PW6; he is the person who conducted investigation in the instant case. he proceeded to the spot, prepared the site plan, which is in his handwriting bearing his signature, he recovered the blood stained earth and cloth from the place of the deceased vide recovery memo ExPW6/1. He also recovered two empties of 7.62 bore through recovery memo ExPW6/2. He also referred about the blood stained garments of the deceased, consisting of Qamees already exhibited as ExP1, P2 through recovery memo ExPW6/3. Vide memo ExPW6/4 he sent the blood stained articles to the FSL, vide application ExPW6/5 he sent the parcel of empties to the firearms expert, thereafter he was transferred and the investigation taken by some other officer. Munawar Khan was then SHO Swabi who submitted completed challan against the accused for proceeding under section 512 Cr.PC under his signature. When confronted to cross he is of the view that Imtiaz in his statement recorded on 03/09/2008 stated that he identified the dead body of the deceased before the police as well as before the doctor and nothing more. It has been admitted by him to be correct that the said PW did not disclose in his police statement about his arrival at Swabi on that night, contacting the complainant on the phone and asking him to come for him to the Swabi. According to the IO he has not obtained the cell phone from which the Imtiaz made call or the cell phone number upon which the call was received. He is also of the view that he has not obtained the registration numbers of the motorcycle on which the deceased party were travelling on that relevant time. He has not recovered any motorcycle on the spot or ever shown to him by the complainant party. On the point of motive he stated that except the complainant non else including lady in the

IO
18/5/11



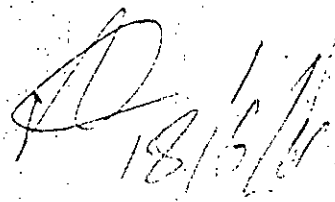
record was examined for confirmation of the motive. He also stated that he sent the empties to the FSL for safe custody and that nothing is available on record that the same were received back to the Police Station. He is also of the view that 2 empties of 7.62 bore were recovered from the point.

PW7 Zar Nabi appeared, in his chief he narrated the same story and also stated that they stayed for the spot for sometime where after a police vehicle arrived to the spot in which they put the dead body and took the same to the Swabi hospital and in the hospital he made his report in the shape of murasila ExPA/1 which correctly bears his signature. When confronted to cross he is of the view that he has given the reference in his report that the accused brought their car close to them, take out their heads from the car and they were identified, confronted taking out of the head was not mentioned. He further stated that a police mobile came from behind to the spot after 6-10 minutes of the occurrence, he did not make report to the police when they arrived at the spot He also stated that he has not disclosed the date time when the sister of the accused had come behind his son. He is of the view that he has not presented to the IO the registration papers of the motorcycles and he do not know about the motorcycles as to who removed it from he spot. He is also of the view that the phone call from Imtiaz was received to him on cell phone which he was having at that time, he has not provided the cell phone number, or the cell phone mentioned above

PW8 Sheraz appeared, he narrated the same story in his chief and when confronted to cross, he is of the view that in the report it was stated that after the occurrence they were standing on the post when the police mobile came there and on inquiry his father disclosed the names of the accused and thereafter shifted the dead body to the hospital. He is also of the view that both the motorcycles were left on the spot while the dead body to the hospital and that he do not know as to who has removed the motorcycles from the spot.

PW9 Fahim Rabi appeared who is the marginal witness to the recovery memo ExpW6/1 which according to him bears his signature and also referred about ExpW6/3 which is also the recovery memo.

Khushroz Khan SI appeared as PW10, who has conducted partial proceedings in the present case, as vide application ExpW10/1 and 10/2 he has obtained the warrant and proclamation notice against both the accused mentioned in the FIR



PW11 Muntaz Khan ASI appeared, according to him on 02/09/2008 the complainant Zar Nabi brought the dead body of his son and reported the matter to him which was recorded in the shape of murasila ExPA/1, sent the murasila to the Police Station for registration of the case through FC Nasir. Prepared the injury sheet and inquest report and referred the dead body for post mortem.

The prosecution closed its evidence abandoning PW Munwar Khan SHO in respect of the Imtiaz and Saddam Hussain it has been consented jointly by the counsel for the complainant and SPP for the State and to this extent their joint statement has been recorded that in previous trial the statement of Saddam was recorded as PW5 while Imtiaz abandoned being unnecessary. Saddam has proceeded abroad to Italy so could not be produced. Imtiaz serving in Army somewhere in Malakand region whose attendance cannot be procured. Through the statement recorded it was requested that the statement of Saddam Hussain recorded in previous may be transferred to the file of present trial and Imtiaz be abandoned. Along with this PW Safdar ASI, Mir Fazlullah Khan SI, Saidul-Ibrar, Sr-O and Shah Jehanzeb FC along with PW Saifur Rehman have also been abandoned by the prosecution. So in the instant trial the statement of Saddam recording earlier be also

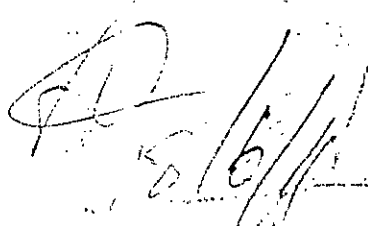
The statement of accused was recorded within the meaning of section 342 Cr.P.C. on the strength of which he considered himself to be innocent not connected with the commission of offence; however, he neither opted to be examined on oath nor desired to produce defence.

Arguments heard and file perused.

After perusal of evidence and material available on file, the evaluation of which inclines me that from various angle the prosecution case suffers from serious doubts and the benefit of which in the light of the numerous judgments of the superior court is hereby extended to the accused. The reasons upon which I have based my opinion are:


REASONS

1. It is the case of prosecution that according to the complainant he received a phone call from one Imtiaz, who came from Waziristan and was waiting at Swabi Adda, to come behind him, whereupon the complainant along with his son Sheraz boarded on one motorcycle and Faza Rabi deceased boarded on another motorcycle and when they reached the place of occurrence, a motorcar in which acquitted co-accused Abdul Nasir and accused facing trial Abdul Qadir were


2/6/11

sitting, came, started firing on Fazal Rabi as result of which he died and hence booked the accused. The evidence adduced would show that neither the motorcycles on which the accused were sitting at that relevant time have been produced to police and this fact has been admitted by the IO that the said motorcycles have not been shown to him neither the documents of the said motorcycles have been produced to the IO.

2. No doubt in the FIR it has not been mentioned that after the occurrence on the road the complainant party were present and thereafter a police vehicle came over there but when the said PWs appeared in the witness box, they stated that after 5/6 minutes a police vehicle came and in that they shifted the dead body of the accused to the Hospital. Here I deem it necessary to mention that when the police came to the spot over there then why not the complainant made the report over there to the police when the complainant is also alleging that he has seen the accused in the light of the motorcycles and when the police came over there and they were shifting the dead body to the hospital in the said vehicle then why the motorcycles have been left over there as the complainant is alleging now that it is not in his knowledge that who has taken the motorcycles from the spot.
3. In the light of the version of the complainant the deceased after receiving injuries died on the spot but the medical report available on file in the shape of the statement of Dr. Wahid Alam, it has been mentioned that the probable duration between injury and death was 30-minutes and as the complainant is alleging that the police came within 6/7 minutes behind them on the same road and this aspect of the case also throws a serious doubt on the prosecution case.
4. It is the case of the complainant/prosecution as evident from the medico-legal report/statement of the doctor that the deceased has received multiple entry and exit wounds but contrary to it from the spot only two empties of 7.62 bore have been recovered.
5. It is the case of prosecution that the complainant is alleging that he received a phone call from one Intiaz that he should be picked up from Swabi Adda and this call was received by the complainant on his cell phone and he admitted that he was possessing a cell phone at that time but no record of call of Intiaz has been collected by the IO nor any record of the call received by the complainant has been


18/6/11

collected by the IO, nor that particular cell phone was taken into possession by IO belonging to the complainant nor the complainant has shown that cell phone to the IO.

6. It is the case of prosecution that Imitaz was waiting for then to be picked up by the complainant party but when IO appeared as PW6 in his cross he admits that PW Imitiaz in his statement recorded by him on 03/09/2008 stated to the extent of identifying the dead body deceased before the police as well as before the doctor and nothing more, coupled with the fact that the said Imitiaz has been abandoned in the previous trial and similarly in the trial at hand and under the given circumstances the inference within the meaning of 129-G of the Qanun-e-Shahadat is hereby drawn against the complainant party because this Imitiaz is important witness to the case in hand because behind him the complainant party in light of their version proceeded.

7. It is the case of prosecution/complainant they have identified the accused in light of motorcycles, here I deem it necessary that perusal of FIR would reflect that the complainant has not stated that the accused have taken out their heads from the motorcar but when they appeared as witness they stated that the accused taken out their head from the motorcar and identified in light of motorcycle but on one hand the presence of motorcycle on the spot has become doubtful, in light of above discussion, coupled with the fact if for the sake of arguments the site plane be seen the same would reflect that the accused have been shown to be on point 2 & 3 where as the complainant party has been shown to be on point 4 & 5 but the footnotes of the site plan ExFB are silent to the extent of distance between these points and when it was mid of the night, means pitch dark then the identification of the accused in light of the motorcycle could not be possible coupled with the fact that distance has not been given, and presence of motorcycle has already been doubtful.

No doubt the accused remained absconder for considerable period but in light of above discussion, the case of the accused has already become extremely doubtful and it has been laid down in the judgments of the superior courts that prolonged noticeable abscondance of the accused per se would not prove case of prosecution against the accused because abscondance at the most can be taken as corroborative of charge and not evidence of charge. In absence of any other

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S.No. 47111

Roll No. 73427

Group. Humanities



Board of Intermediate and Secondary Education

Mardan N.W.F.P. Pakistan

SECONDARY SCHOOL CERTIFICATE

SESSION 2004 - ANNUAL

This is to certify that IMRANULLAH Son of MUHAMMAD ZAMAN

and student of Govt. High School Kass Koroona Mardan has passed the Secondary School Certificate Examination of the

Board of Intermediate & Secondary Education Mardan, held in March/April, 2004 as a Regular candidate. He obtained 361 Marks

out of 850 and has been placed in Grade D representing Fair. The candidate passed the following subjects:

1. English 2. Urdu 3. Islamiyat (Comp) 4. Pakistan Studies 5. Mathematics 6. General Science 7. Islamic Studies 8. Civics

His date of birth according to admission form is (in Figures) 21-04-1988 (in Words) 21st April N/H Eighty Eight.

Rashidul
Asstt. Secretary

[Signature]
Secretary

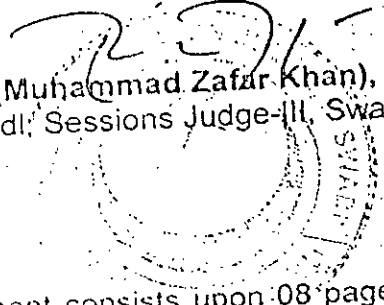
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corroborative evidence, of abscondance even if found convincing would not be sufficient for itself to warrant conviction of accused on a charge of murder. Abscondance alone could not be substituted for real evidence.

Thus in light of my above discussion, by extending the benefit of doubt to the accused facing trial, he is acquitted of the offence charged with. He is in custody, he be released forthwith if not required to be detained in jail in any other case. Case property shall remain intact till the expiry of mandatory period of appeal/revision and thereafter be dealt with in accordance with law. File be consigned to record room after completion and compilation.

Announced
15/06/2011

(Muhammad Zafar Khan),
Addl. Sessions Judge-III, Swabi

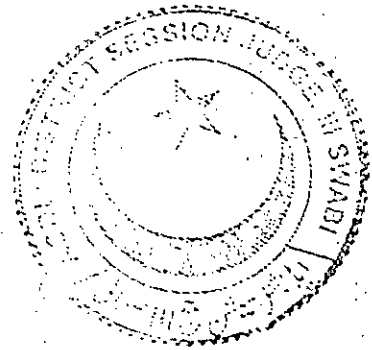


CERTIFICATE

This is to certify that this judgment consists upon 08 pages. Each and every page has been read, checked, corrected wherever necessary and signed by me.

(Muhammad Zafar Khan),
Addl. Sessions Judge-III, Swabi

[Handwritten signature]



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Certified true copy
18/6/11

18/6/11

Regd

GOVERNMENT OF KHYBER PAKHTUNKHWA

Elementary and Secondary Education Department

Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar

NO.SO (LIT-II)/E&SED/1-3/SA NO.603/2018.

Dated Peshawar the 13-11-2019

To

14/11/19
Q

The District Education Officer(M)
Swabi

SUBJECT: - DEPARTMENTAL APPEAL FOR BACK BENEFITS

I am directed to refer to your letter No.13074 dated 5-10-2019 on the subject noted above and to state that this office after going through the record noticed that the teacher concerned has been re-instated by the Hon'ble Service Tribunal in terms that the appellant is re-instated into service for the purpose of fresh disciplinary proceedings against him, back benefits will be subject to the outcome of the fresh proceedings. The same has been upheld by the Supreme Court of Pakistan vide its judgement dated 16-10-2017.

It is further added that the teacher concerned has been re-instated with all back benefits subject to the decision of apex Court judgement. The inquiry officer has left the issue of the back benefits on the discretion of the DEO(M) concerned. FR-54 also support the contention of the teacher concerned.

Hence it is evident that there exist no dilemma regarding payment of back benefits to the teacher concerned. To avoid un-necessary and meaningless litigation the matter may be resolved in light of the above guidelines.

Endst.NO & date as above.

Copy to:-

1. The Registrar Supreme Court of Pakistan Islamabad..
2. The Director E&SED KP Peshawar.
3. PA to DS (Legal) E&SED

[Signature]
Section officer (Lit-I)

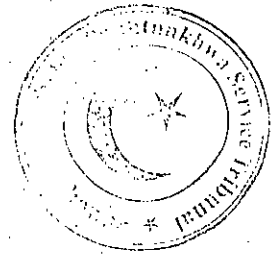
[Signature]
Section officer (Lit-I)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 669/2014

Date of Institution ... 06.05.2014

Date of Decision ... 25.10.2017



Darwaiz Khan Constable No. 54, District Police Line, Swabi. ... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others. ... (Respondents)

MR. MUHAMMAD ASIF YOUSAFZAI, Advocate ... For appellant

MR. ZIAULLAH, Deputy District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, MR. GUL ZEB KHAN, ... CHAIRMAN MEMBER

ATTESTED

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN. Arguments of the

learned counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service due to his involvement in criminal case on 11.09.2012. He was arrested and criminal case proceeded against him in which he was finally acquitted by the Worthy Peshawar High Court on 23.01.2014.

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

In the meantime the department also conducted two enquiries and in the first enquiry he was exonerated but in the second enquiry he was found guilty and then he was dismissed from service. After acquittal on 23.1.2014, the appellant filed departmental appeal and the departmental authority on 07.04.2014 reinstated the appellant with immediate effect by treating the absence period as leave without pay and also awarded minor punishment of censure. The appellant now has challenged that part of the appellate order wherein the intervening period from the date of his arrest upto reinstatement was treated as leave without pay.

ARGUMENTS.

3. The learned counsel for the appellant argued that the appellant was acquitted by the court of law and on the basis of the said acquittal he was reinstated by the appellate authority. That the appellate authority in this regard under FR 54 treated the period of absence as leave without pay. That under FR-54, the appellate authority should have granted full pay for the said period. The learned counsel for the appellant further argued that the words "honorable acquittal" used in FR-54(a) are to be interpreted in the light of the judgment reported in 1998-SCMR-1993 by treating every acquittal as "honorable acquittal". He further argued that the period of suspension is also to be included for the purpose of full pay in view of F.R 53(b).
4. On the other hand, the learned Deputy District Attorney argued that FR-54 is not applicable in the present case. According to the learned D.D.A FR-54 comes into play only and only when the civil servant is dismissed or removed from service on the basis of the judgment of the court and not on the basis of any independent enquiry. That in the present appeal, the appellant was dismissed on the basis of independent enquiry. That it is now a settled principle of administrative law that

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Deputy District Attorney
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

24

criminal case has got no effect on the departmental proceedings. He also relied upon a judgment reported as 2003-SCMR-228 that no work no pay.

CONCLUSION.

5. It is correct that it is the principle of administrative law that the departmental proceedings and the criminal proceedings are independent entities having no effect on each other. But when we see the present case, in the original order the appellant was exonerated by the enquiry officer firstly but when he was convicted and sentenced to life imprisonment another enquiry was ordered and the enquiry officer opined that the appellant was guilty. On acquittal of the appellant from the court of law, he preferred departmental appeal and the departmental authority without referring to the merits of the enquiry, reinstated the appellant in service on the ground of his acquittal. It shows that on each occasion the departmental authority and appellate authority followed the verdicts of the courts of law. Had the appellate authority reinstated the appellant not on the ground of acquittal by the court of law then certainly FR-54 would have had no application but when the appellate authority without considering the merits of the enquiry report, considered the acquittal order as the criteria for reinstatement of the appellant, then certainly FR-54 will come into play in the present case.

6. Now it is to be seen whether the appellant was honorably acquitted as laid down in FR-54(a). The answer is yes in accordance with the judgment pressed into service by the learned counsel for the appellant that every acquittal is honorable acquittal. The judgment relied upon by the learned DDA that no work no pay is applicable in circumstances where FR-54 is not involved. This Tribunal, therefore,

ATTESTED

Signature
 Service Tribunal,
 Peshawar

25

is of the view that the stance of the appellant is correct and in view of FR-54, he is entitled for the full pay for the intervening period.

7. In view of the above discussion, this appeal is accepted. Parties are left to bear their own costs. File be consigned to the record room.

[Signature]

(NIAZ MUHAMMAD KHAN)
CHAIRMAN

[Signature]

(GUL ZEB KHAN)
MEMBER

[Signature]
Certified true copy
K... ..
Teshawar

ANNOUNCED
25.10.2017

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