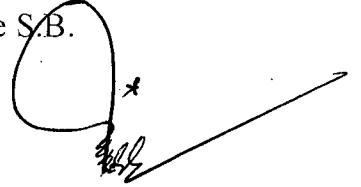


21.06.2022

Petitioner in person present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Syed Shafique Ahmad, ADEO for the respondents present.

In pursuance of the judgement of the Service Tribunal in service appeal No. 978/2016 dated 11.07.2019 and subsequent observations as per order sheet dated 14.12.2021, the department has issued corrigendum Notification bearing No. 3275 dated 20.06.2022, partially modifying its earlier Notification dated 03.11.2021 and the date of reinstatement has been corrected and shown as 24.02.2014. Copy of the said corrigendum Notification is placed on file as well as provided to the petitioner. The petitioner as well as his learned counsel make sure appearance on 05.08.2022 before S.B.



(Mian Muhammad)
Member (E)

05.08.2022

Nemo for petitioner. Mr. Kabir Ullah Khattak, Additional Advocate General for respondents present.

Counsel informed telephonically on 07/08/22

Revised implementation report had already been submitted. Fresh notice be issued to petitioner and his counsel for further proceedings on 23.09.2022 before S.B.



(Fareeha Paul)
Member (E)

14.12.2021

Petitioner alongwith his counsel present. Mr. Asif Masood,
Deputy District Attorney for respondents present.


Learned counsel for the petitioner raised a relevant observation on revised reinstatement order dated 03.11.2021 on the ground that the petitioner has been reinstated in service w.e from 26.09.2014 whereas he had been terminated retrospectively w.e.f 24.02.2014 vide impugned order and as such he is required to be reinstated in service from that very date. The revised reinstatement order dated 03.11.2021 is therefore, required to be rectified. Adjourned. To come up for further proceedings on 01.02.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

01.02.2022

Clerk of learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Clerk of learned counsel for the petitioner seeks adjournment. Adjourned. To come up for further proceedings on 21.03.2022 before S.B.


(Mian Muhammad)
Member(E)

21-03-2022

Due to retirement of the Honorable
Chairman the case is adjourned
to come up for the same as
before on 21-06-2022

Reader

Sajid Khan

21.06.2022

Petitioner in person present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Syed Shafique Ahmad, ADEO for the respondents present.

In pursuance of the judgement of the Service Tribunal in service appeal No. 978/2016 dated 11.07.2019 and subsequent observations ^{as per} ~~raised by the court vide~~ order sheet dated 14.12.2021, the department has issued ~~a~~ corrigendum Notification bearing No. 3275 dated 20.06.2022, partially modifying its earlier Notification dated 03.11.2021 and the date of reinstatement has been corrected and shown as 24.02.2014 ~~i.e. the date of his reinstatement~~. Copy of the said corrigendum Notification is placed on file as well as provided to the petitioner. ~~As such the execution petition in hand stands disposed of as implemented. Consign.~~

~~Pronounced in open court at Peshawar and given under my hands and seal of the Tribunal this 21st of June 2022.~~

The Petitioner as well as his learned Counsel make sure appearance on ~~_____~~ ~~at the court of District Peshawar~~

(Mian Muhammad)
Member (E)

entitled to the payment of salary w.e.f. 15.12.2016 to 22.05.2018. Parties are left to bear their own costs. File be consigned to the record room.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 3rd of June, 2022.*

(SALAH-UD-DIN)
MEMBER (J)

(MIAN MUHAMMAD)
MEMBER(E)



SOUTH WAZIRISTAN
OFFICE OF THE DISTRICT EDUCATION OFFICER
SOUTH WAZIRISTAN TRIBAL DISTRICT

No. 3275

Dated Tank the 20/06/2022

CORRIGENDUM:

In the light of Khyber Pakhtunkhwa Service Tribunal Peshawar Decision issued on dated 11.07.2019, in appeal No.978/2016 and further direction of the Directorate of (E&SE) Merged Areas, Khyber Pakhtunkhwa, Peshawar, in partial modification to this office reinstatement order (Revised) issued vide this office Endst: No.2805-9 Dated 03.11 2021, the date of reinstatement in respect of Mr. Muhammad Sajid S/O Bahader Sher Khan, PST GPS Khega. Khe Tehsil Shaki may be read as 24.02.2014 instead of 26.09.2014 as per directions of the Honourable Service Tribunal in the interest of public service


DISTRICT EDUCATION OFFICER
SOUTH WAZIRISTAN TRIBAL DISTRICT AT TANK

Endst: No 3276-80 / Dated Tank the 20/06/2022

Copy forwarded for information & necessary action to the:-

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
2. Additional Director (Estab) E&SE NMDs, Peshawar
3. Chairman Khyber Pakhtunkhwa Service Tribunal, Peshawar.
4. Accounts Officer S/WTD Tank
5. Concerned


DISTRICT EDUCATION OFFICER
SOUTH WAZIRISTAN TRIBAL DISTRICT AT TANK

26.10.2021

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

Learned AAG has taken the DEO (M) South Waziristan Tribal District at District Tank on board with the sensitization that if the necessary implementation is not made, he will have faced the coercive measures under orders of the Tribunal. In response the said DEO has given assurance to the learned AAG to submit implementation report within a week. Granted. To come up for further proceedings on 04.11.2021 before S.B.


Chairman

04.11.2021

Petitioner in person and Mr. Kabirullah Khattak, Addl. AG alongwith Yasir Khan, Junior Clerk for the respondents present.

Representative of the respondents has produced copy of revised reinstatement order bearing endst No. 2805-9, dated 03.11.2021 of the petitioner. Placed on file. Case to come up for objection, if any, on behalf of the petitioner on next date. Case to come up on 14.12.2021 before S.B.


Chairman

EP 413/2019

05.08.2021 Petitioner in person and Mr. Kabirullah Khattak,
Addl. AG for the respondents present.

Copy of the order dated 14.06.2021 was sent to the concerned authority for compliance but none is present on behalf of them today. Learned AAG is required to contact the respondents and ensure compliance of the order dated 14.06.2021 on the next date. Case to come up on 16.09.2021 before S.B.


Chairman

16.09.2021 Junior to counsel for the petitioner and Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Learned AAG assured that he will take up the matter with the respondents and requests for further time. Request is accorded. To come up for compliance of the order dated 16.06.2021 positively on the next date. Case to come up on 26.10.2021 before S.B.


Chairman

termination of his service. Rather the termination of his service resulted due to certain technical reasons which in view of observation in the judgment are no more available to the department to press against the petitioner. The department was given opportunity of denovo enquiry but failed to conduct the same. The compliance of judgment dated 11.07.2019 after remission to departmental authority to conduct the denovo enquiry requires its compliance in letter and spirit. Accordingly, the petitioner was required to be reinstated in service from the date of his termination from service and in consequence thereof he was entitled for the back benefits. However, the departmental authorities have passed the order of reinstatement of the appellant on 17.11.2020 with immediate effect citing reference of the judgment dated 11.07.2019 and termination order dated 26.09.2014. The said order does not fulfill the demand of compliance of judgment, when the department has omitted to conduct the denovo enquiry despite opportunity given through judicial course, it necessitates to direct the department to issue a corrigendum of reinstatement order dated 17.11.2020 for its alignment with spirit of judgment of this Tribunal and in the light of observations herein before. The Registrar is directed to send copy of this order to the concerned authority for compliance. To come up for compliance report on 05.08.2021 before S.B.


Chairman

14.06.2021

Counsel for the petitioner and Mr. Kabirullah Khattak, Addl. AG for the respondents present and have been heard.

Learned AAG has placed before the Tribunal an enquiry report No. Nil dated Nil of the District Education Officer South Waziristan District at Tank with the subject of Writ Petition regarding back benefits to Mr. Muhammad Sajid Khan. The said report pointed out that Mr. Sajid Khan petitioner did not perform his duty from the date of his termination and the enquiry committee observed that in view of clear cut judgment of August Supreme Court of Pakistan, no one is entitled to any kind of benefit if not performed duty. Although the citation of the judgment is not referred in the order but learned AAG produced copy of the judgment for perusal which bears the citation. The observations of August Supreme Court of Pakistan in the cited judgment are related to a case of absence from duty. Here in this case, the petitioner was neither absent from duty nor any ground of absence from duty before his termination was taken by the respondents before this Tribunal. Therefore, the cited judgment is not work against the petitioner due to dissimilarity of factual account.

The plain reading of the judgment dated 11.07.2020, pressed into service for implementation through this execution petition, reveals that the question of stoppage of salary and termination of the petitioner from service were dealt with by respective observations by the Tribunal in the said judgment. Nothing in the said judgment is there to reveal that the petitioner/appellant did not perform his duty before his

18.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 19.04.2021.


Reader

19.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 14.06.2021 for the same as before.


Reader

18.11.2020 Petitioner with counsel present and Addl; AG alongwith Hayatullah, ASDO for respondents present.

The representative of respondents has produced reinstatement order of the petitioner dated 17.11.2020 which is to take effect immediately.

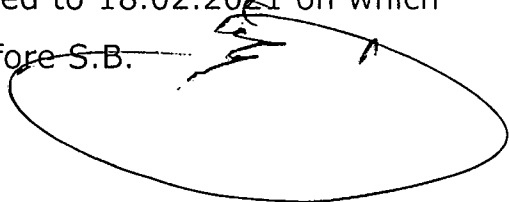
Learned counsel for the petitioner objects to the contents of order as far as these relate to the reinstatement with immediate effect. In that regard he referred to Para 7 of the judgment under implementation and stated that the respondents failed to carry out proper inquiry while the issue of back benefits was made subject to the outcome of De-novo inquiry. In that manner, the petitioner was deprived of back benefits. He further stated that as per judgment the petitioner was entitled for reinstatement in service from the date his appointment was cancelled by the respondents.

The respondents shall furnish the reply of the objections on behalf of the petitioner on 06.01.2021 positively before S.B.


Chairman

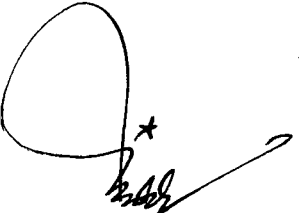
06.01.2021 Mr. Inayat Ullah Khan, Advocate, for petitioner is present. Mr. Noor Zaman Khattak, District Attorney, for the respondents is also present.

Learned District Attorney submitted reply of the objection, which is placed on record. Learned counsel for petitioner sought time for examining the same. Adjourned to 18.02.2021 on which date file to come up for arguments before S.B.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

24.06.2020

Petitioner in person present. Addl: AG for respondents present. Petitioner seeks adjournment as his learned counsel is not available today. Adjourned. To come up for further proceedings on 11.08.2020 before S.B.



MEMBER

11.08.2020

Counsel for the petitioner and Addl. AG for the respondents present.

Mr. Waheedullah, ADO present before the Tribunal in connection with other cases accepts notice of instant proceedings on behalf of the respondents and requests for time to submit the implementation report.

Adjourned to 28.09.2020 for the needful.



Chairman

28.09.2020

Petitioner
Counsel for the ~~petitioner~~ and Addl. AG for the respondents present.

Learned AAG requests for time due to non-representation of the respondents today. Learned counsel for the petitioner ~~has~~ objected to the request and stated that the matter is being delayed by the respondents without any good reason.

The proceedings in hand are adjourned to 18.11.2020 for submission of implementation report. Failing which necessary proceedings would be initiated against the officer(s) responsible for the delay.



Chairman

09.01.2020

Petitioner in person and Addl. AG for the respondents present.

Learned AAG requests for time to contact the respondents and furnish implementation report. To come up for implementation report on 19.02.2020 before S.B.


Chairman

19.02.2020

Petitioner in person and Mr. Kabirullah Khattak, Additional AG for the respondents present. Neither implementation report submitted nor representative of the department is Present; ^M therefore, notices be issued to the respondents with the direction to direct the representative to attend the court on the next date positively. Adjourned to 01.04.2020 for implementation report before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

01.04.2020

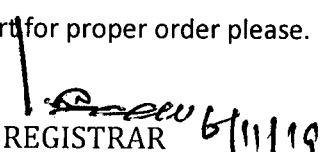

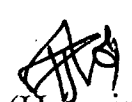
Due to public holiday on account of COVID-19, the case is adjourned to 24.06.2020 for the same. To come up for the same as before S.B.


Reader

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 413/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.11.2019	<p>The execution petition of Mr. Muhammad Sajid Khan submitted today by Mr. Inayatullah 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 6/11/19</p>
2-	11/11/19.	<p>This execution petition be put up before S. Bench on <u>29/11/19.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	29.11.2019	<p>Petitioner in person present and seeks adjournment that his counsel is not available today. Notices be issued to the respondents for implementation report on 09.01.2020 before S.B</p> <p style="text-align: right;"> (Hussain Shah) Member</p>

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

Execution petition No. 413/2019

Civil Misc. Application in
Service Appeal No.978/2016-P

Muhammad Sajid Khan

Versus

Secretary FATA, FATA Secretariat Warsak Road,
Peshawar & others

I N D E X

S#	Description of Documents	Annex	Pages
1.	Application/petition		1-3
2.	Affidavit		4
3.	Copy of Service Appeal No.978/2016	A	5-11
4.	Copy of judgment dt.11.07.2019	B	12-15
5.	Wakalatnama		16

محمد ساجد خان
Applicant/Appellant

Through

Inayat Ullah Khan

Inayat Ullah Khan

Advocate

High Court, Peshawar

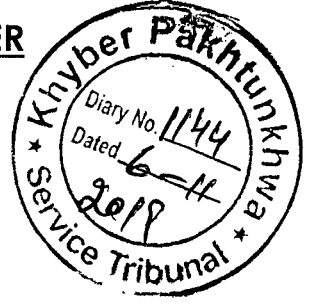
LLM (UK)

Cell No.0333-9227736

Dated 04.11.2019

**BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Execution Petition No. 413/2019



Civil Misc. Application in
Service Appeal No.978/2016-P

Muhammad Sajid Khan

Versus

✓ Secretary FATA, FATA Secretariat Warsak Road,
Peshawar & others

**APPLICATION/PETITION FOR IMPLEMENTATION
/EXECUTION OF JUDGMENT/ ORDER DATED
11.07.2019 IN ITS LETTER AND SPIRIT**

Respectfully Sheweth:

Brief fact giving rise to the instant application/
petition are as under:

1. That the Applicant/Appellant filed service Appeal No.978/2016 before the Hon'ble Tribunal on 19.09.2016 which was decided on 11.07.2019 whereby the impugned order bearing Endorsement No.5861-64 was communicated to the appellant on 31.05.2016 which was set aside by this Hon'ble Tribunal. (Copy of Service Appeal & Order dated 11.07.2019 are attached as Annexures "A" & "B" respectively).

2. That this Hon'ble Tribunal vide order dated 11.07.2019 reinstated the appellant in service with the directions to respondents to conduct proper inquiry in accordance with law and rules within a period of 90 days after receipt of this judgment. The issue of back benefit shall be subject to the final come out of de-novo inquiry.
3. That the appellant approached the respondents immediately after judgment of this Hon'ble Tribunal to implement the same in its letter and spirit but so far he has not been reinstated hence, willfully negating to give effect to the judgment of this Hon'ble Tribunal which amounts to contempt of court.
4. That the applicant/appellant constrained to file the instant execution petition for his reinstatement in service with effect from 11.07.2019 with arrears of pay on the following amongst other grounds:-

G R O U N D S:-

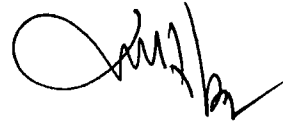
- A. That the respondents are legal bound to give effect to the judgment of this Hon'ble Tribunal by reinstating the Applicant/ Appellant in service with arrears of pay with effect from 11.07.2019 when the impugned order was set aside.

- B. That the respondents are willfully negating to comply and implement the judgment of this Hon'ble Tribunal, therefore, liable to be proceeded under the contempt of Court Act.
- C. That the applicant/appellant since his illegal termination from service suffered a lot and even after his reinstatement by this Hon'ble Tribunal, the adamant/ inflexible attitude of respondents further exposed/subjected him to mental torture, agony and anxiety, therefore, this petition may kindly be accepted with heavy cost.

Keeping in view what has been stated above, it is therefore, humbly prayed from this Hon'ble Tribunal to allow this application/petition with heavy cost and further to direct the respondents to immediately reinstate the Applicant/Appellant in terms of the judgment/Order passed by this Hon'ble Tribunal in its letter and spirit.

محمد ساجد خان
Applicant/Appellant

Through



Inayat Ullah Khan

Advocate

High Court, Peshawar

LLM (UK)

Dated 04.11.2019

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

Civil Misc. Application in
Service Appeal No.978/2016-P

Muhammad Sajid Khan

Versus

Secretary FATA, FATA Secretariat Warsak Road,
Peshawar & others

AFFIDAVIT

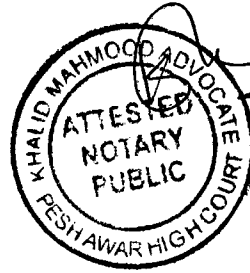
I, Muhammad Sajid Khan, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified by



Inayat Ullah Khan
Advocate High Court
LLM (UK)

محمد ساجد خان
DEPONENT

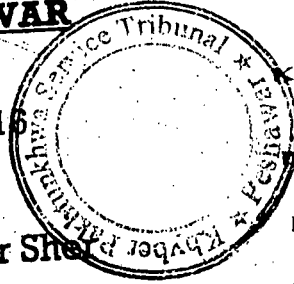


4-11-19

Annexure "A" (5)

**BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KP,
PESHAWAR**

Service Appeal No. 978 /2016



Khyber Pakhtunkhwa
Service Tribunal

Slary No. 992

Dated: 19-9-2016

Mohammad Sajid Khan S/o Bahadar Sheer
R/o House No.460, Street No. 12 E-4, Phase-7, Hayatabad,
Peshawar, Ex-PTC (BPS-12), GPS Khojal Khel S.W. Agency Tank
.....Appellant

Versus

- 1) Secretary FATA, FATA Secretariat, Warsak Road, Peshawar
- 2) Director Education FATA, FATA Secretariat, Warsak Road, Peshawar.
- 3) Sercretary Education FATA, FATA Secretariat, Warsak Road, Peshawar.
- 4) Agency Education Officer, South Waziristan Agency at Tank

.....Respondents

**SERVICE APPEAL U/S 4 OF KPB,
SERVICE TRIBUNAL ACT, 1974,
AGAINST THE IMPUGNED ORDER
ENDST NO.5861-64, WHICH WAS
COMMUNICATED TO THE APPELLANT
ON 31.05.2016; WHEREBY THE
DEPARTMENTAL APPEAL DATED
10.06.2016, WAS PREFERRED BEFORE
THE RESPONDENT NO.2 WHICH WAS
NOT RESPONDED DESPITE LAPSE OF
STATUTORY PERIOD OF 90 DAYS.
HENCE THE INSTANT SERVICE APPEAL
IS WELL WITH IN TIME.**

Filed to-day

Registrar

19/9/16

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Respectfully Sheweth:-

ATTESTED

(6)

Brief facts giving rise to the instant appeal are as under:-

1. That the appellant was appointed by Departmental Selection Committee as PTC BPS-7 against newly created post at Government Committee School Muhallah Qadir Pandai Kot Sub Division Toi Khila vide order Endst No.1118-1144/ dated 24.02.2007.(Copy of appointment order dated 24.02.2007 is attached as Annexure "A").
2. That the appellant took over charge as PTC at GCS Muhallah Qadir Pandai Kot Sub Division Toi Khila on 01.03.2007, keeping in view, the appointment order mentioned in Para No.1.(Copy of charge report is attached as Annexure "B").
3. That the Governor Khyber Pakhtunkhwa in his capacity as competent authority has been pleased to approve the re-appointment of Community School Teachers against the regular posts of PST (BPS-7), purely on merit basis in accordance with existing recruitment criteria.(Copy of notification No. SO(E)/SSD/CSTR/99-108/dated 11.05.2012 is attached as Annexure "C").
4. That the Governor's Secretariat, Khyber Pakhtunkhwa vide letter No. SO-1/1-1/OS/2012/10935-S2/E/E may 28, 2013, regularized project employees working in FATA. The decision of the competent authority i.e Governor was communicated to all Secretariat (FATA) and all Directors (FATA).(Copy of the letter dated 28.05.2013, is attached as Annexure "D").

ATTESTED

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

5. That keeping in view, the directives of the Governor Khyber Pakhtunkhwa referred above, the appellant was appointed as regular PST in (BPS-12) plus usual allowance as admissible under the rule w.e.f 01.03.2014 at GPS Khujal Khel Tehsil Shaki SWA. (Copy of the appointment order is attached as Annexure "E").
6. That the appellant over charge as PTC regular on 01.03.2014. (Copy of charge report is attached as Annexure "F").
7. That the Agency Education Officer S.W. Agency at Tank vide order Endst No.3413/3541 dated 19.05.2014 adjusted the appellant as PTC (BPS-12) at GMPS Azam Warsak against the vacant post. (Copy of order dated 19.05.2014 is attached as Annexure "G").
8. That the respondents without assigning any reason or cause stop the salary of the appellant against which he preferred various applications and departmental representative but instead to release the pay of the appellant communicated the impugned order on 31.05.2016 vide which the appointment of the appellant was "Cancelled with retrospective effect". (Copy of impugned order is attached as Annexure "H").
9. That the appellant preferred his departmental appeal dated 10.06.2016, before the respondent No.2 but instead of deciding the same on merit, respondent No.4 communicated the impugned order mentioned above on 31.05.2016. (Copy of departmental appeal is attached as Annexure "I").

ATTACHED

[Handwritten signature]

Director
Khyber Pakhtunkhwa
Services

[Handwritten signature]


10. That besides the above mentioned appeal, the appellant presented various applications for the redressal of his grievance but no response was ever communicated to him. (Copy of applications/representations are attached as Annexures "J", "J-1", "K", "L", "M", "N" & "O" respectively).
11. That being dissatisfied with the impugned order, the appellant prefers Service Appeal before this Hon'ble Service Tribunal on the following amongst other grounds;

GROUND S:-

- A. That the impugned order is against law and facts on record.
- B. That the appellant services were regularized by the respondents, keeping in view, the Governor's directives contained in Notification No.SO(E)/SSD/CSTR/99-108/dated 11.05.2012, again vide letter No. 10935-52/U/E dated 28.05.2013, whereby the appellant got a vested right, therefore, subsequent impugned order of cancellation of appointment/regularization is illegal, unlawful in the eyes of law.
- C. That once the services of the appellant got regularized, the authority could not retrace its foot steps by cancelling order of appointment/regularization unceremoniously and against the Principle of "locus poenitentiae", therefore, legally,

ATTESTED

ATTESTED



Khyber Pakhtunkhwa
Service Tribunal
Peshawar


10. That besides the above mentioned appeal, the appellant presented various applications for the redressal of his grievance but no response was ever communicated to him. (Copy of applications/representations are attached as Annexures "J", "J-1", "K", "L", "M", "N" & "O" respectively).

11. That being dissatisfied with the impugned order, the appellant prefers Service Appeal before this Hon'ble Service Tribunal on the following amongst other grounds;

GROUND S:-

- A. That the impugned order is against law and facts on record.
- B. That the appellant services were regularized by the respondents, keeping in view, the Governor's directives contained in Notification No.SO(E)/SSD/CSTR/99-108/dated 11.05.2012, again vide letter No. 10935-52/U/E dated 28.05.2013, whereby the appellant got a vested right, therefore, subsequent impugned order of cancellation of appointment/regularization is illegal, unlawful in the eyes of law.
- C. That once the services of the appellant got regularized, the authority could not retrace its foot steps by cancelling order of appointment/regularization unceremoniously and against the Principle of "locus poenitentiae", therefore, legally,

ATTESTED



Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

(10)

speaking the order of regularization of the appellant had taken effect retrospectively.

- D. That the impugned order is also violative of the principles of natural justice as the same was passed without issuing the appellant a show cause notice.
- E. That the impugned order is also against the law on the ground that the appellant since his recruitment rendered almost eight (8) years service at his credit, therefore, he would be deemed as a regular employee for all intent and purposes and that too when his services were already regularized, keeping in view, the Governor's KP directives.
- F. That the respondents since 2014 stop the salary of the appellant without assigning any reason or cause till date now for the Work/Job already performed by him would offend the notion of fair play, equity and justice which is a recurring cause of action as well.
- G. That the appellant was appointed as PTC by the departmental Selection Committee after fulfilling all the codal formalities of test & interview purely ^{on merit} vide his appointment order dated 24.02.2007 and later on, his services were regularized, keeping in view, the Governor's KP directives.
- H. That the appellant rendered his service to the entire satisfaction of his immediate superiors, as there was no complaint ever registered against him.

ATTESTED

ATTESTED



EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Keeping in view what has been stated above, it is therefore, humbly requested to allow this service appeal and accordingly;

Firstly; set aside the impugned order;

Secondly; to direct the respondents to immediately pay all his outstanding salaries since the time when his salaries were illegally stopped; and

Thirdly; to direct the respondents to regularize the services of the appellant with effect from 24.02.2007.

Any other relief not specifically asked for may also be granted.

محمد ساجد خان

Appellant

Through

[Signature]

Inayat Ullah Khan
Advocate, High Court
Peshawar
LLM (UK)

CERTIFICATE:

Certified as per information furnished by my client that no such like appeal has earlier been filed by the appellant before this Hon'ble Tribunal.

[Signature]
Advocate

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

Number of Words	12-7-2019
Copying Fee	24.00
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Annexure "B"

(12)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 978/2016

Date of Institution ... 19.09.2016

Date of Decision ... 11.07.2019



Mohammad Sajid Khan S/o Bahadar Sher, R/o House No. 460, Street No. 12 E-4, Phase-7, Hayatabad, Peshawar, Ex-PTC (BPS-12), GPS Khojal Khel S.W. Agency Tank. ... (Appellant)

VERSUS

Secretary FATA, FATA Secretariat, Warsak Road, Peshawar and three others. ... (Respondents)

MR. INAYAT ULLAH KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

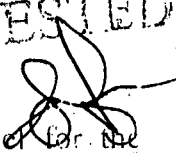
--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

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

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ARGUMENTS

02. Learned counsel for the appellant argued that on the recommendations of Departmental Selection committee, he was appointed as PTC (BPS-07) vide order dated 24.02.2007. He assumed the charge on 01.03.2007 and started performing duty. That the Governor, Khyber Pakhtunkhwa through notification dated 11.05.2012, approved reappointment of Community School Teachers, qualified to be posted against the regular posts of PST(BPS-07) in a phased manner. Subsequently, the Governor's Secretariat, Khyber Pakhtunkhwa regularized project employees working in FATA through letter dated 28.05.2013. These instructions were accordingly communicated to the concerned lower foundations. As a sequel to the above directions, the appellant was appointed as PST (BPS-12) on regular basis

ATTESTED

w.e.f 01.03.2014 and posted at GPS Khujal Khel, Tehsil Shaki, South Waziristan Agency. After charge assumption, he was adjusted by the Agency Education Officer, S.W. Agency vide order dated 19.05.2014 as PST at GMPS Azam Warsak.

03. That respondents without assigning any reason stopped salary of the appellant, which compelled him to submit numerous applications for release of salary. However, vide impugned order dated 31.05.2016, his appointment order was cancelled with retrospective effect. Feeling aggrieved, he filed departmental appeal on 10.06.2016, which remained unanswered, followed by the present service appeal. After regularization of his services, cancellation of his appointment order was against the principle of "locus poenitentiae". Having rendered more than eight years service as a regular employee, he should have been dealt with according to the invogue rules. As no show cause notice was issued before cancellation of the appointment, therefore, this act on the part of the respondents was also violative of principles of natural justice. Denial of salary for work done goes against the established norms of fair play, equity and justice. Reliance was placed on case law reported as 2003 SCMR 1128, 2009 SCMR 412, 2004 SCMR 630 1996 PLC (C.S)851, 1998 PLC (C.S) 337, 2018 SCMR 1405 and 2015 SCMR 1257.

4. Learned Deputy District Attorney argued that the appellant was appointed purely on temporary basis against a project post under Regional Development Package in 2007 which expired in 2009. Notification dated 11.05.2012 covered only those Community School Teachers, who were regularly performing duty in functional Community Schools under ADP Project "Reopening of functional Community Schools". As services of the appellant were dispensed with in 2009, therefore, he could not avail the benefits of the said notification. As the appellant was wrongly adjusted against regular PST post, therefore, his appointment order was rightly withdrawn/cancelled by the competent authority. All codal formalities were observed before withdrawing the appointment order.

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

(14)

CONCLUSION

5. The record placed before us revealed that the appellant was appointed against the post of PTC (BPS-7) on temporary basis funded out of an approved ADP project w.e.f 01.03.2007. After assumption of charge, he started performing duty. That through notification dated 11.05.2012, the Governor, Khyber Pakhtunkhwa was pleased to approve re-appointment of Community Teachers, who stood qualified and to be posted against the regular post of PST (BPS-07). Through another communication circulated by the Governor's Secretariat, Khyber Pakhtunkhwa all project employees were regularized through letter dated 28.05.2013. Thereafter, the appellant was appointed as PST (BPS-12) vide order dated 24.02.2014. Accordingly he was posted/adjusted vide order dated 19.05.2014 as PST on GMP^S Azam Warsak.

6. To the utter astonishment of the appellant, his salary was stopped by the respondents without assigning any reason. Thereafter, through impugned order dated 31.05.2016 his appointment order was canceled with retrospective effect. The contention of the respondents is that his initial appointment made in 2007 was against a project post, which expired after completion of the time span given in the relevant documents in 2009. However, the plea taken by them was quite perplexing, whenever a project is completed either employees are regularized, if converted on regular budget or their services terminated by issuing formal termination order, however, no such order is available on record to support the view point/stance of the respondents. Furthermore, he was again appointed as PST (BPS-12) on regular basis w.e.f 01.03.2014 vide order dated 24.02.2014 and started performing duty. After stoppage of salary the respondents through impugned order cancelled his

appointment with retrospective effect. In the absence of any documentary evidence,

we have every reason to believe that there was no break in the appointment of the

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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar.



15

appellant and instructions of Governor, Khyber Pakhtunkhwa dated 11.05.2012 were equally applicable in his case. Respondents have also not been able to rebut the claim of the appellant that he served in FATA for more than eight years as regular employee. A government servant having rendered more than eight years service could not be shown exit door by a single stroke of pen. He should have been dealt with according to the invogue rules and observance of codal formalities confirmed therein. As right of defense was not afforded to him, thus, condemned unheard. Action on the part of respondents was arbitrary, erratic, illegal and unlawful. In the present case factual controversy is involved and can only be resolved by conducting regular/proper enquiry under the prevalent rules.

7. As a sequel to the above, the instant appeal is accepted, impugned order dated 31.05.2016 is set aside and the appellant is reinstated in service. The respondents are directed to conduct proper enquiry strictly in accordance with law and rules within a period of ninety days after the date of receipt of this judgment and thereafter pass orders as deemed appropriate. The issue of back benefits shall be subject to the final outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

(MUHAMMAD HAMID MUGHAL)
MEMBER

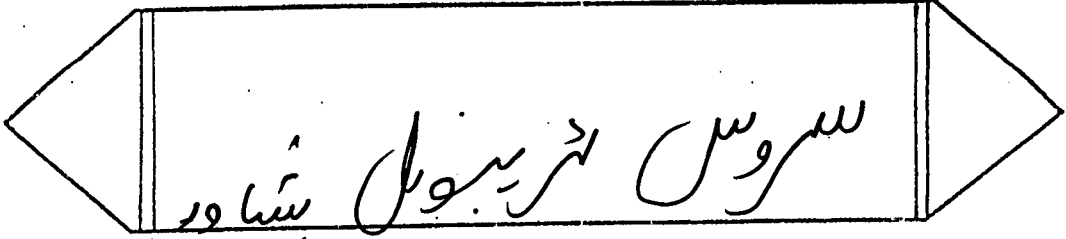
(AHMAD HASSAN)
MEMBER

ANNOUNCED
11.07.2019

Certified to be a true copy
Secretary
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

ATTESTED

بعدالت



محمد سعید خان بنام سروس
FATA

موزخہ
مقدمہ
دعویٰ
جرم

SA 928/2016

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام J.H.C کیلئے محمد سعید خان لٹریچر سٹور کی برائے کوہٹ

مقرر کر 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 ثالت ہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بسورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار 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 با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔
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۔

المرقوم 4 ماہ 11 2019

واہ العب

بمقام
کے لئے منظور ہے۔
accept
Imy at
Peh
MTC
LHM
(HK)

محمد سعید خان

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.
Recd
I

Execution Petition No. 413/19
Appeal No.....978..... of 2015

..Muhammad Sajid Khan.....Appellant/Petitioner
Versus

.....Secy FATA Peshawar.....Respondent

Respondent No.....4.....

Notice to: - Agency Education Officer, South Waziristan
Agency at Tank.

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on.....9-01-2015.....at 8.00 A.M. If you wish to urge anything against the appellent/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.


Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of FIP is attached. ~~Copy of appeal has already been sent to you vide this office Notice No.....dated.....~~

Given under my hand and the seal of this Court, at Peshawar this.....5/12.....

Day of.....Dec.....20 15.

(Implementation report)


Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.