BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT SWAT

Service Appeal No. 354/2013

Date of Institution... 11.02.2013

Date of decision... 09.11.2017

Amjad Ali S/O Wazir Ahmad,
R/o Ouch, Tehsil Adenzai, District Dir Lower ... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary E&SE, Education Department, Peshawar. and 3 others. ... (Respondents)

MR. Abdul Haq,
Advocate ... For appellant.

Mr. Kabir Ullah Khatta,
Additional Advocate General ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD HAMID MUGHAL, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. Appellant was removed from service on 08.03.2012 against which he filed departmental appeal on 26.03.2012 which was rejected on 31.12.2012 and communicated to the appellant on 16.01.2013. thereafter the appellant filed the present appeal on 08.03.2013.

ARGUMENTS

3. The learned counsel for the appellant argued that the appellant was appointed in service on 01.06.1992. That he applied for leave without pay which was granted to him from 02.04.2002 to 01.5.2004. That due to some enmity in the village the appellant and his family could not manage to return back to their

village and the appellant could not join his duty for almost six (06) years. That the appellant then submitted an application for allowing him to resume his duty on 09.03.2010. That an inquiry was appointed which submitted its report on 09.06.2011. That in the said inquiry report it was recommended that the appellant should be adjusted against the vacant post. But the authority instead issued show cause notice to the appellant and finally terminated the appellant vide the impugned order. Learned counsel for the appellant stressed on the harshness of the penalty of removal from service. In this regard, he relied upon 2008 SCMR 214 and 2006 SCMR 60.

4. On the other hand Learned Additional Advocate General argued that this appeal is not maintainable being time barred and in this regard he pressed into service judgment reported as 2005-SCMR-1206. He further argued that the appellant has himself admitted his absence by filing the application for adjustment. He next argued that no plausible explanation was given by the appellant in support of his enmity in the village that the authority has rightly removed the appellant from service.

CONCLUSION

5. The judgment relied upon by the Addl; AG regarding the limitation is not attracted in the present appeal as in the reported judgment the appeal was not decided and in the present case the appeal was decided on 31.12.2012 and communicated to appellant on 16.01.2013 and thereafter he filed the present service appeal within thirty (30) days which is within time. Regarding the absence of the appellant the appellant himself has admitted that he remained absent for almost six (06) years in his application submitted to the authority. Since the appellant himself has admitted his absence and this Tribunal is of the view that there was no need of further inquiry regular or otherwise any advantage of any

lapses in the inquiry or the decision of the authority could be given to the appellant. Learned counsel for the appellant has also not touched any legal weakness in the whole proceedings. His main argument was severity of the penalty and the judgment upon which he relied also speaks about the quantum of punishment. keeping in view of the charges leveled against the delinquent proceedings were initiated under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 by removing the appellant and not under the special provision like Rule 8-A of the Khyber Pakhtunkhwa Government Servant (E&D) Rules 1973 in which the authority has no option but to remove the delinquent. Under the RSO 2000 the authority had the option of imposing the penalties other than removing from service. Keeping in view the nature of guilt and charge against the appellant this Tribunal is of the view that in the circumstances the penalty of removal from service is too harsh. The appellant had completed service of ten (10) years and the allegations against the appellant was not of any disobedience of the orders of the superiors nor was he contumacious in any respect. He simply absented himself which is surely a misconduct but in such circumstances he should have been treated leniently in imposition of penalty. This Tribunal by accepting this appeal converts the penalty of removal from service into compulsory retirement. Parties are left to bear their own costs. File be consigned to the record room.

(Niaz Muhammad Khan)
Chairman
Camp Court, Swat

(Muhammad Hamid Mughal)
Member

ANNOUNCED
08.11.2017

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Amended Service Appeal No.354/2013

Amjad Ali S/o Wazir Ahmad,
R/o Ouch, Tehsil Adenzai, District Dir Lower.....**Appellant**

VERSUS

1. Govt. of KPK, through Secretary E&SE, Education Department, Peshawar

2. District Education Officer, Elementary, Secondary Ecucation, Dir Lower at Timargara.

3. District of Education Govt. of KPK, Peshawar

4. District Coordination Officer, Dir Lower Now Director Education at Peshawar.....**Respondents**

Respondent No.4 Board and got co-partner vide order dt 24.1.14

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974, AGAINST THE ORDER DATED 31.12.2012 WHEREBY APPELLANT HAS BEEN TERMINATED ON THE BASIS OF NOTIFICATION ISSUED BY THE RESPONDENT NO.2, VIDE NOTIFICATION FROM THE DATE OF HIS ABSENCE.

PRAYER IN APPEAL

On acceptance of the order of termination /removal passed by the respondent No.2 & 4 may please be

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT SWAT

Service Appeal No. 354/2013

Date of Institution... 11.02.2013

Date of decision... 09.11.2017

Amjad Ali S/O Wazir Ahmad,
R/o Ouch, Tehsil Adenzai, District Dir Lower ... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary E&SE, Education Department, Peshawar. and 3 others. ... (Respondents)

MR. Abdul Haq, Advocate ... For appellant.

Mr. Kabir Ullah Khatta, Additional Advocate General ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD HAMID MUGHAL, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. Appellant was removed from service on 08.03.2012 against which he filed departmental appeal on 26.03.2012 which was rejected on 31.12.2012 and communicated to the appellant on 16.01.2013. thereafter the appellant filed the present appeal on 08.03.2013.

ARGUMENTS

3. The learned counsel for the appellant argued that the appellant was appointed in service on 01.06.1992. That he applied for leave without pay which was granted to him from 02.04.2002 to 01.5.2004. That due to some enmity in the village the appellant and his family could not manage to return back to their

village and the appellant could not join his duty for almost six (06) years. That the appellant then submitted an application for allowing him to resume his duty on 09.03.2010. That an inquiry was appointed which submitted its report on 09.06.2011. That in the said inquiry report it was recommended that the appellant should be adjusted against the vacant post. But the authority instead issued show cause notice to the appellant and finally terminated the appellant vide the impugned order. Learned counsel for the appellant stressed on the harshness of the penalty of removal from service. In this regard, he relied upon 2008 SCMR 214 and 2006 SCMR 60.

4. On the other hand Learned Additional Advocate General argued that this appeal is not maintainable being time barred and in this regard he pressed into service judgment reported as 2005-SCMR-1206. He further argued that the appellant has himself admitted his absence by filing the application for adjustment. He next argued that no plausible explanation was given by the appellant in support of his enmity in the village that the authority has rightly removed the appellant from service.

CONCLUSION

5. The judgment relied upon by the Addl; AG regarding the limitation is not attracted in the present appeal as in the reported judgment the appeal was not decided and in the present case the appeal was decided on 31.12.2012 and communicated to appellant on 16.01.2013 and thereafter he filed the present service appeal within thirty (30) days which is within time. Regarding the absence of the appellant the appellant himself has admitted that he remained absent for almost six (06) years in his application submitted to the authority. Since the appellant himself has admitted his absence and this Tribunal is of the view that there was no need of further inquiry regular or otherwise any advantage of any

lapses in the inquiry or the decision of the authority could be given to the appellant. Learned counsel for the appellant has also not touched any legal weakness in the whole proceedings. His main argument was severity of the penalty and the judgment upon which he relied also speaks about the quantum of punishment. keeping in view of the charges leveled against the delinquent proceedings were initiated under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 by removing the appellant and not under the special provision like Rule 8-A of the Khyber Pakhtunkhwa Government Servant (E&D) Rules 1973 in which the authority has no option but to remove the delinquent. Under the RSO 2000 the authority had the option of imposing the penalties other than removing from service. Keeping in view the nature of guilt and charge against the appellant this Tribunal is of the view that in the circumstances the penalty of removal from service is too harsh. The appellant had completed service of ten (10) years and the allegations against the appellant was not of any disobedience of the orders of the superiors nor was he contumacious in any respect. He simply absented himself which is surely a misconduct but in such circumstances he should have been treated leniently in imposition of penalty. This Tribunal by accepting this appeal converts the penalty of removal from service into compulsory retirement. Parties are left to bear their own costs. File be consigned to the record room.

354/2013

03.04.2017 Clerk of the counsel for appellant and Mr. Muhammad Zubair, Senior Government Pleader for respondents present. Clerk of the counsel for appellant requested for adjournment on the ground that his counsel is not available. Adjourned. To come up for arguments on 07.08.2017 before D.B at Camp Court Swat.

(AHMAD HASSAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
Camp Court Swat.

07.08.2017 Appellant present in person and Mr. Muhammad Zubair, District Attorney for the respondents present. Appellant seeks adjournment as his counsel is not in attendance due illness. To come up for arguments on 9.11.2017 before the DB at camp court, Swat.

Member

Chairman
Camp court, Swat

09.11.2017 Counsel for the appellant and Addl. A.G for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.

Member

Chairman
Camp Court, Swat.

ANNOUNCED
09.11.2017

24.03.2016 Appellant in person and Mr. Muhammad Jan, GP for respondents present. Appellant stated that the case may be transfer to Camp Court Swat. Request is accepted. To come up for arguments on 02.08.2016 at Camp Court Swat.

Member Member

02.08.2016 Appellant in person and Mr. Fayazud Din, ADO alongwith Mr. Muhammad Zubair, Sr.GP for the respondents present. Due to non-availability of D.B arguments could not be heard. To come up for arguments on 06.12.2016 before D.B at camp court, Swat.

Chairman
Camp court, Swat.

06.12.2016 None present for the appellant. Mr. Muhammad Zubair, Sr.GP for the respondents present. Since none is present for the appellant and the bench is also incomplete, therefore, arguments could not be heard. To come up for final hearing on 03.04.2017 before D.B at camp court, Swat.

Chairman
Camp court, Swat.

10.6.2014 Appellant in person and Mr. Khurshid Khan, SO for respondent No. 1 with AAG for the respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 5.12.2014.

Member

05.12.2014 Appellant in person and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for arguments on 15.04.2015.

Reader

15.04.2015 Clerk of counsel for the appellant and Mr. Ziaullah, GP with Javed Ahmad, Supdt. for the respondents present. Due to general strike of the Bar, counsel for the appellant is not available. To come up for arguments on 24.11.2015.

MEMBER

24.11.2015 Counsel for the appellant and Mr. Hameed-ur-Rehman AD (Litigation) alongwith Asst. AG for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I. Khan. Therefore, the case is adjourned to 24/3/16 for arguments

Member

25.6.2013

No one is present on behalf of the appellant and Mr. Khurshid Khan, SO for respondents with Mr. Usman Ghani, Sr. GP present. To come up for written reply/comments on 3.10.2013.

Chairman

03.10.2013

Appellant in person, M/S Khurhsid Khan, SO for respondent No. 1, Fayaz-ud-Din, ADO for respondent No. 2 and Mosam Khan, AD for respondent No. 3 with AAG for respondents No. 1 to 3 present. No one is present on behalf of respondent No. 4, therefore, respondent No. 4 is proceeded against ex-parte. Written reply/para-wise comments received on behalf of respondents No. 1 to 3, a copy whereof is handed over to the appellant for rejoinder on 24.1.2014.

Chairman

24.01.2014

Appellant in person and Mr. Khurhsid Khan, SO for respondent No. 1 with AAG for the respondents present. Rejoinder has not been received, and appellant stated that there was no need to file rejoinder, and that the appeal be fixed for arguments. To come up for arguments on 10.6.2014.

Chairman

Appeal No. 354/2013.
Mr. Amjad Ali

4. 22.4.2013

Counsel for the appellant present and heard. Counsel for the appellant contended that the appellant was posted as PST Teacher in BPS-7 vide order dated 1.6.1992. He was transferred to G.P.S Laram, Dir Lower vide order dated 27.11.2001. Appellant applied for grant of long leave without pay for the period from 2.4.2002 to 1.5.2004 and his application was accepted by the competent authority vide order dated 1.4.2002. During period from 5.2.2004, to 8.3.2010, the appellant was out of his Home Town due to unavoidable and critical circumstances, and security risk to his family so he was not in position to resume his duty within time. When the situation became bearable the appellant returned home and file application in the office to [illegible] adjustment on his post. Inquiry was conducted against the appellant who submitted their inquiry report dated 9.6.2011 and removed the appellant from service vide order dated 8.3.2012. Feeling aggrieved the appellant filed departmental appeal which is turned down on 31.12.2012. Respondents sent the termination order to the appellant through postal address which he received on 20.1.2013. Points raised need consideration; therefore, the appeal is admitted to regular hearing. Process fee and security be deposited within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 25.6.2013.

Member

Appellant deposited security & process fee Rs 200/- Bank receipt is attached with file

5. 22.4.2013

This case be put up Before the Final Bench for further proceedings.

Chairman

3.

28.3.2013 Counsel for the appellant present and requested for adjournment to submit application for correction/modification and to make out some legal deficiencies in the subject as well as in the prayer of appeal. Case adjourned to 22.4.2013 for P.H.

Member.

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 354/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11/02/2013	The appeal of Mr. Amjid Ali presented today by Syed Abdul Haq Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing. REGISTRAR
2	18-2-2013	This case is entrusted to ~~Touring Bench Swat~~ for preliminary hearing to be put up there on 28-3-2013. at peshawar CHAIRMAN

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Amended Service Appeal No.354/2013

Amjad Ali S/o Wazir Ahmad,
R/o Ouch, Tehsil Adenzai, District Dir Lower.....**Appellant**

VERSUS

1. Govt. of KPK, through Secretary E&SE, Education Department, Peshawar
2. District Education Officer, Elementary, Secondary Education, Dir Lower at Timargara
3. District of Education Govt. of KPK, Peshawar
4. District Coordination Officer, Dir Lower Now Director Education at Peshawar.....**Respondents**

Respondent No.4 Proceeded against ex-parte vide order dt 24.1.14

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974, AGAINST THE ORDER DATED 31.12.2012 WHEREBY APPELLANT HAS BEEN TERMINATED ON THE BASIS OF NOTIFICATION ISSUED BY THE RESPONDENT NO.2, VIDE NOTIFICATION FROM THE DATE OF HIS ABSENCE.

PRAYER IN APPEAL

On acceptance of the order of termination /removal passed by the respondent No.2 & 4 may please be

set aside and the appellant be reinstated back to his service with all back benefits.

Respectfully Sheweth:-

1. That the appellant is bonafide resident of Dir lower and appointed as P.T.C Teacher in BPS-7, vide order dated 01.06.1992. (Copy of the appointment order is attached as annexure Ä").

2. That the appellant filed appeal in which during preliminary hearing on 28.03.2013 on the request of appellant the learned tribunal allowed the appellant to file an amended appeal.

3. That the appellant was transferred to Sub-Division Wari Dir Upper and for a long time serving and after he w was transferred to Sub-Division at Timargara, Dir Lower.

4. That the appellant was transferred to G.P.S Laram Dir Lower vide order dated 27.11.2001.

5. That the appellant applied for grant of long leave without pay for the period from 02.04.2002 to 01.05.2004 and his application was accepted by the competent authority vide order dated 01.04.2002. (Copy of application & order regarding leave is attached as annexure "B" & "C").

6. That the appellant during period from 05.02.2004, to 08.03.2010, was out his Home Town due to unavoidable and critical circumstances, and security risk to his family so the appellant was not in position to resume his duty within time.

7. That after the appellant seeking further leave without pay through postal service as because it was not possible for him to attend the concerned office personally for the reason mentioned above.

8. That when the situation become bearable the appellant returned home and immediately file an application in the office of respondent No.2 for his adjournment on his post. (Copy of application is attached as annexure "D").

9. That the respondent No.2 appointed an inquiry committee who submit their inquiry report dated 09.06.2011. (Copy of the inquiry report is attached as annexure Ë"). And the respondent No.2 issued show cause notice basing the inquiry report. (Copy of show cause notice is annexure "F").

10. That the respondent No.2, was not satisfied and based inquiry report for removal from service of the appellant vide order dated 08.03.2012. (Copy of removal order is attached as annexure "G").

11. That feeling aggrieved the appellant filed a Departmental appeal before respondent No.4, which was turned down vide order dated 31.12.2012. (Copy of Departmental Appeal and termination order is attached as annexure "H"& I").

12. That the respondent sent the termination order to the appellant through postal address which he received on 20.01.2013. (Copy of termination order received by the appellant is attached as annexure "J").

13. That when the appellant got knowledge about his termination then the appellant have not other remedy except to approach this Hon'ble Tribunal on the following grounds:

GROUNDS:-

A. That the above said order of termination /removal of the appellant is illegal, unlawful, without authority/ jurisdiction and being based on the malafide intention because the removal from service ordinance 2000 has been repelled in 2011 so concerned authority has no jurisdiction to termination the appellant of the basis of said repelled ordinance

B. That on inquiry proceedings has been prescribed under the prevailing laws was ever conducted, and in the findings of the inquiry the absence period of the teacher/appellant has been proposed to be convert in leave without pay, but the appellant was awarded the

major penalty of termination from service without mentioning any reason for dis-aggring of the recommendation of the inquiry committee.

C. That the punishment awarded to the appellant was not proportionate with his fault and he was awarded the maximum punishment and the funning authority die not considered the situation face by the appellant as during the said period the appellant was migrated to some other place due to threat to his life.

D. That no process /procedure as prescribed in the service Laws were ever adopted by the respondent, not he was ever serviced with a final show cause Notice.

E. That the termination order of the appellant was not in accordance with the allegations leveled in the show cause and it was harsh punishment as against the misconduct whatsoever mentioned in the show cause Notice.

F. That on the basis of enquiry conducted in the matter the respondent No.2 have not power to hold the Civil Servant guilty of misconduct and as per law he has the power for denovo inquiry but the respondent/ Department violated all the settle principles of law, hence the impugned removal order is ineffective in the interest, and upon the rights of the appellant.

G. That the unauthorized absence on the basis of which major penalty was imposed upon the appellant although Department responsible for the lapse and for not taking notice of such absence at an early stage, so the unavoidable circumstances metni0oined by the appellant requires due consideration of this Hon'ble Tribunal, so the respondent exercise their power not vested in them.

H. That impugned order of removal from service without holding regular inquiry without issuing final show cause notice and also without giving an opportunity of hearing to appellant can not be maintained.

I. That some other grounds may be adduced at the time of arguments with the permission of this Hon'ble Court.

It is, therefore, prayed that on acceptance of this appeal the order of termination/removal from service passed by respondent No.2 & , may please be set aside and the appellant be reinstated back to his service with all back benefits.

Appellant

Through

Syed Abdul Haq
Advocate High Court
Cell #0333-9546154

Dated 22/04/2013

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Amended Service Appeal No._____/2013

Amjad Ali .....**Appellant**

VERSUS

Govt. of KPK, through Secretary E&SE,
Education Department, Peshawar & others.....**Respondents**

AFFIDAVIT

I, Amjad Ali S/o Wazir Ahmad, R/o Ouch, Tehsil Adenzai, District Dir Lower, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified by:-

DEPONENT

Syed Abdul Haq
Advocate High Court

KHALID MAHMOOD ADVOCATE HIGH COURT PESHAWAR
ATTESTED
OATH COMMISSIONER

22-4-2013

BEFORE THE SERVICE TRIBUNAL K.P.K. PESHAWAR.

SERVICE APPEAL NO. 354 / 2013.

Amjad Ali ..... Versus..... Govt: of K.P.K. through Secretary E & S.E) & others.

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Appellant
Amjad Ali,

Through:-

(SYED ABDUL HAQ) Advocate
High Court, Peshawar
Cell# 03339546154.

Dated : 8/2/2013.

(1)

BEFORE THE SERVICE TRIBUNAL K.P.K. PESHAWAR.

SERVICE APPEAL NO. 354 / 2013.

Amjad Ali son of Wazir Ahmad , R/O Ouch, Tehsil Adinzai, District Dir Lower . . . . . APPELLANT.

VERSUS.

1. Govt: of K.P.K. through Secretary E & S.E. Education Department, Peshawar.

2. District Education Officer, Elementary & Secondary Education, Dir Lower at Timargara.

3. Director of Education Govt: of K.P.K. Peshawar.

4. Deputy Commissioner, (D.C.O) Dir Lower at Timargara.

..... RESPONDENTS.

APPEAL U/S 4 of THE K.P.K. SERVICE TRIBUNAL ACT, 1974, AGAINST THE ORDER DATED 31/12/2012. WHEREBY APPELLANT HAS BEEN TERMINATED ON THE BASIS OF NOTIFICATION ISSUED BY THE RESPONDENT NO. 2, VIDE NOTIFICATION DATED 8/3/2012, FROM THE DATE OF HIS ABSENCE I.E. 2/5/2004.

PRAYER IN APPEAL: On acceptance of this appeal the order of termination / removal passed by the Respdt: No. 2, & 4 may please be set-aside and the Appellant be re-instated back to his service with all back benefits.

RESPECTFULLY SHEWETH:

1. That the appellant is bonafide resident of Dir Lower and appointed as P.T.C. Teacher in BPS-7, vide order dated 1/6/1992. (Copy of the appointment order is Annexure "A").

2. That the appellant was transferred to Sub-Division Wari Dir Upper and for a long time serving and after he was transferred to Sub-Division at Timargara, Dir Lower.

3. That the appellant was transferred to G.P.S. Laram Dir Lower vide order dated 27/11/2001.

4. That the appellant applied for grant of long leave without pay for the period from 2/4/2002 to 1/5/2004 and his application was accepted by the Competent Authority vide order dated 1/4/2002. (Copy of [illegible] order regarding leave is Annexure "B" & "[illegible]").

5. That the appellant during period from 5/2/2004, to 8/3/2010, was out his Home Town due to unavodiable and critical circumstances , and security risk to his family so the appellant was not in position to resume his duty within time.

6. That after the appellant seeking further leave without pay through postal service as because it was not possible for him to attend the concerned office personally for the reason mentioned above .

7. That when the situation became bearable the appellant returned home and immediately file an application in the office of Respondent No.2 for his adjoustment on his post. (Copy of application is Annexure "D").

8. That the Respondent No.2 appointed an Inquiry Committee who submit their inquiry report dated 9/6/2011 . (Copy of the inquiry Report is Annexure "E"), and the Respondent No.2 issued a Show Cause Notice basing the inquiry Report . (Copy of Show Cause Notice is Annex:F").

9. That the Respondent No.2, was not satisfied and based Inquiry Report for Removal from Service of the appellant vide order dated 8/3/2012. (Copy of Removal order is Annexure "G").

10. That feeling aggrieved the appellant filed a Departmental Appeal before Respondent No.4, which was turned down vide order dated 31/12/2012. (Copy of Departmental appeal and termination order is Annexure "H" & I").

11. That the Respondent sent the termination order to the appellant through postal address which he recived on 20/1/2013. (Copy of termination order received by the appellant is Annexure "J").

12. That when the appellant got knowledge about his termination then the appellant have no other remedy except to approach this Hon'ble Tribunal on the following grounds:-

G R O U N D S :

A). That the above said order of termination / Removal of the appellant is illegal, unlawful, without authority/ jurisdiction and being based on the malafide intention, is liable to be set-aside.

B). That no inquiry proceedings has been prescribed under the prevaling Laws was ever conducted, and in the findings of the inquiry the absence period of the teacher/ appellant has been proposed to be convert in leave without pay, but the appellant was awarded the major penalty of termination from service without mentioning any reason for dis-aggring of the recommendation of the Inquiry Committee.

C). That the punishment awarded to the appellant was not proportionate with his fault and he was awarded the maximum punishment and the funing Authority did not considered the situation face by the appellant as during the said period the appellant was migrated to some other place due to threat to his life .

D). That no process / procedure as prescribed in the service Laws were ever adopted by the Respondent, not he was ever servied with a final Show Cause Notice .

E). That the termination order of the appellant was not in accordance with the allegations levelled in the Show Cause and it was harsh punishment as against the misconduct

whatsoever mentioned in the Show Cause Notice.

F). That on the basis of enquiry conducted in the matter the Respondent No.2, have no power to hold the Civil Servant guilty of misconduct and as per law he has the power for denovo inquiry but the Respondent / Department violated all the settle principles of law , hence the impugned removal order is ineffective in the interest, and upon the rights of the appellant.

G). That the unauthurise absence on the basis of which major penalty was imposed upon the appellant although Department responsible for the lapse and for not taking notice of such absence at an early stage , so the unavidable circumstances mentioned by the appellant requires due consideration of this Hon'ble Tribunal, so the Respondent exercise their power not vested in them.

H). That impugned order of removal from service without holding regular inquiry without issuing final Show Cause Notice and also without giving an opportunity of hearing to appellant can not be maintained .

I). That some other grounds may be adduced at the time of arguments with the permission of this Hon'ble Court.

It is, therefore, prayed that on acceptance of this appeal the order of termination/ Removal from service passed by Respondents No. 2 & 4, may please be set-aside and the appellant be re-instated back to his service with all back benefits.

Appellant

Amjad Ali, Ex-P.T.C.

Through:-

(SYED ABDUL HAQ)
Advocate, High Court,
17-B, Haroon Mansion,
Peshawar.
Cell# 03339546154.

Dated : 8/2/2013.

A F F I D A V I T.

I, Mr. Amjad Ali S/O Wazir Ahmad R/O Cauch, Tehsil Adinzai, Dir Lower, do hereby solemnly affirm and declare on oath that the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.

DEPONENT.

Amjad Ali

KHALID MAHMOOD ADVOCATE ★ OATH COMMISSIONER ★ PESHAWAR HIGH COURT
ATTESTED
8-2-13

(7)

BEFORE THE SERVICE TRIBUNAL K.P.K. PESHAWAR.

IN RE: SERVICE APPEAL NO. _____/ 2013.

=====

ADDRESSES OF THE PARTEIS.

Amjad Ali S/O Wazir Ahmad R/O Oach , Tehsil Adinzai, District Dir Lower . . . . . .Appellant.

Versus.

1. Govt: of K.P.K. through Secretary E & SE, Education Department , Peshawar.
2. District Education Officer, Elementary & Secondary Education , Dir Lower at Timargara.
3. Director of Education Govt: of K.P.K. Peshawar.
4. Deputy Commissioner, (D.C.O.) Dir Lower , at Timargara . . . . . Respondents.

=======

Appellant

Through:-

(SYED ABDUL HAQ)
Advocate High Court,
27/B, Haroon Mansion,
Khyber Bazar, Peshawar
Cell # 03339546154.

Dated : 8/2/2013.

BEFORE THE SERVICE TRIBUNAL , K.P.K. PESHAWAR.

C.M. No. _____/ 2013.

IN

Service Appeal No. _____/ 2013.

==========

Amjad Ali . . . . Versus.... Govt: of K.P.K. through secretary E & S.E. & others.

==========

APPLICATION FOR CONDONATION OF DELAY IN FILING OF INSTANT APPEAL.

==========

Respectfully Sheweth:

1. That the Departmental was rejected on 31/12/2012, which was sent to the appellant through postal address , the impugned termination order was sent to the appellant by the concerned post office on 16/1/2013 and the same was received on 20/1/2013. (The envolp bearing termination order already attached with the service appeal may be considered part of petition.

2. That the appellant / petitioner has got a strong prema facie case and the said period may be condoned as per law.

It is, therefore, humbly prayed that on acceptance of this application the appeal of appellant may be considered well within time.

Appellant/petitioner

Through (SYED ABDUL HAQ) Advocate High Court, at Peshawar.

Dated : 8/2/2013.

BEFORE THE SERVICE TRIBUNAL K.P.K. PESHAWAR.

IN RE: C.M. NO. _____/ 2013.

IN

Service Appeal No. ____/ 2013.

======

Amjad Ali ..... Versus..... Govt: of K.P.K. through Secretary E & S.E. & others.

=====

A F F I D A V I T.

I, Amjad Ali S/O Wazir Ahmad, R/O Cuch, Tehsil Adinzai, Distt: Dir Lower, do hereby solemnly affirm and declare on oath that the contents of the accompnying application for condonation of delay are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

KHALID MAHMOOD ADVOCATE ATTESTED OATH COMMISSIONER PESHAWAR HIGH COURT

Deponent.

Amjad Ali.

"A" (10)

OFFICE ORDER:-

The following untrained PTC, candidates are hereby appointed as PTC, teachers in BPS, NO.7 with effect from 1/6/92 in the schools as noted against their names subject to the following conditions:- purely from the M/list.

SNO.	Name of Candidate/ Father's Name	Village.	School where Appointed.	Name of S.Div:	Remarks.
1.	Mohammad Rahim, S/O Sarfaraz Khan,	Khadigzai.	MPS, Shagai.	T.Gara.	N.C.Post.
2.	Amjad Ali, S/O Wazir Ahmad,	Ouch,	:.Zarbaig Batan.	-dO-	-dO-
3.	Fazal Akbar, S/O Menjawar.	Brangola.	:.Shorshing Khurd.	-dO-	-dO-
4.	Fazal Hadi. S/O Abdul Ahad,	Warsak.	:.Deran Asbanr.	-dO-	-dO-
5.	Hasham Khan, S/O Mohd Zaman Khan,	Shawa.	:.Amin Khan Korona.	-dO-	-dO-
6.	Ali Mohammad, S/O Abdul Qadar.	Shingrai.	:.Jabagai Badwan.	-dO-	-dO-
7.	Rashid Ahmad, S/O Habibur Rehman,	Chakdara.	:.Sangzal Osakai.	-dO-	-dO-
8.	Iqbal Shah, S/O Mohd Salim,	Tazagram.	:.Doga Mayar.	-dO-	-dO-
9.	Bacha Khan, S/O Naeem Shah.	Shalambaba.	:.Danda.	-dO-	-dO-
10.	Ijaz Ahmad, S/O Mohd Mehtar,	Ouch,	:.Dada Khairabad.	-dO-	-dO-
11.	Alam Khan, S/O Yusaf Khan,	Tazagram.	:.Shawa Kohai.	-dO-	-dO-

TERMS AND CONDITIONS:-

1. NO TA/DA is allowed.
2. Charge report should be submitted to all concerned.
3. Health & Age certificate should be produced from the Civil Surgeon, Dir at Timergara.
4. Their appointment being temporairly are liable to termination at any time without notice. In case of leaving service in this Deptt: they will have to give one months notice in advance or deposit one month,s pay.
5. They may not be handed over the charge if their age exceeds 28 years or below 18 years.
6. Their original certificates should be checked before handing over charge to them.
7. In case they failed to take over charge with in 15 days from the date of issue of this order, their appointment orders shall stand automatically cancelled.

Attested

(KARIMULLAH KHAN)
DISTT: EDUCATION OFFICER (M)
PRY: DIR AT TIMERGARA.

OFFICE OF THE DISTT: EDUCATION OFFICER (M) PRY: DIR AT TIMERGARA.

Endst: NO. 1566-79 /PED/A-I Dated Timergara the, 28/5/92

Copy of the above is forwarded for information necessery action and compliance, to:-

1. The SDEO, (M) Timergara.
2-13. The Candidates concerned.
14. The Distt: Accounts Officer, Dir at Timergara.

DISTT: EDUCATION OFFICER (M)
PRY: DIR AT TIMERGARA 27/5/92

M.Anwar/

(11)

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (L&E) DIR LOWER AT T.GARA.

OFFICE ORDER -

On return from Long leave Mr.Amjad Ali,PTC GPS Ouch Gharbi, is hereby adjusted at GPS Laram Timergara Sub Division against vacant PTC post with effect from 20.11.2001.

Charge report should be submitted to all concerned.

(MR.GUL NAWAZ KHAN)
Executive District Officer,
(L&E) Dir Lower at T.Gara.

Endst:No. 4-60 - 62 / Dated Timergara the 27 /11/2001.

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

1. The Dy:District Officer (Primary Education Timergara w/r to his Memo:No.1571 dated 20.11.2001.
2. The District Accounts Officer Dir Lower at Timergara.
3. The teacher concerned.

District Officer (Literacy),
Literary Education Dir,
Lower at Timergara.
27/11/2001.

Attested

Better Copy

OFFICE OF THE EXECUTIVE DISTRICT OFFICER(E & SE) DIR LOWER TIMARGARA.

OFFICE ORDER :

On return from long leave Mr. Amjad Ali PTC, GPS. Ouch Ghabi ass hereby adjusted at G.P.S. Laram Timargar Sub Division against vacant PTS. post w.e.f. 20/11/2001. Charge report should be submitted to all concerned.

Mr. GUL NAWAZ KHAN)
Executive Distt: Officer
(L&E) Dir lower at Timargara.

No. 4060/62, dated Timargara the 27/11/2001.

Copy of the above is forwarded for information and n/ action .

1. The DY: District Officer(male) Primary Education Timargara.
2. The Distt: Account Officer Dir lower at Timargara.
3. The candidate concerned.

Sd/- Executive Distt:
officer Timargara.

"B" (12)

OFFICE OF THE EXECUTVIE DISTRICT OFFICER(L&E)DIR LOWER AT T.GARA.

OFFICE ORDER:-

Sanction is hereby accorded to the grant of long leave with out pay for the period from 2.4.2002 to 1.5.2004(765 Days) in favour of Mr.Amjad Ali,PTC Govt:Primary School Laram Sub-Division Timergara as due and admissible to him under the leave rules.

Necessary entries to this effect should be made in his Service Book & Leave Account form accordingly.

(MR.QADAR KHAN)
District Officer(Admn:&Dev:),
(Lit:&Edu)Dir Lower at T.Gara.

Endst:No. 3531-35/ Dated Timergara the 01/04/2002.

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

1. The Deputy District Officer (M)Primary Education Timergara.
2. The District Accounts Officer Dir Lower at Timergara.

District Officer(Admn:&Dev:),
(Lit:&Edu)Dir Lower at T.Gara.

Attested

"D"

بخدمت جناب ڈپٹی ڈسٹرکٹ ایجوکیشن آفیسر صاحب تیمرگرہ ضلع دیر (پائین)

(13)

درخواست برائے اپڈیٹ سٹیٹس

جناب عالی!

معروضانہ گزارش ہے۔ کہ فروری کے گھریلو مسائل کی وجہ سے دو سال Without Pay چھٹی (2002 تا یکم مئی 2004) کیلئے درخواست دیا تھا۔ جو منظور ہوا تھا۔ لیکن 2004 میں ہمارے گھریلو مسائل بہت زیادہ آپنے شدت اختیار کر گئے۔ کہ ہمیں گاؤں چھوڑنا پڑا۔ اور حالات اتنے سنگین ہو گئے۔ کہ میرے لئے مقررہ تاریخ پر ڈیوٹی پر حاضر ہونا ناممکن ہو گیا۔ اور اسی وجہ سے میں آفس میں مقررہ وقت پر رپورٹ نہ کر سکا۔ قلم بدر لیکن اور اسی وجہ سے میں آفس میں LEAVE WITHOUT کے لیئے درخواست دے دیا۔ لیکن اس کا ڈاک میں نے دوبارہ مجھے کوئی رسپانس نہیں ملا۔ اس دوران میں نے وقتاً فوقتاً بذریعہ ڈاک رابطہ رکھا لیکن اس کا بھی مجھے کوئی رسپانس نہیں ملا۔ بذریعہ ڈاک رابطہ کرنا میری مجبوری تھی۔ کیونکہ بذات خود آفس آکر رپورٹ کرنا میرے زندگی کیلئے خطرناک تھا۔ اور میں واپس گاؤں اچھا ہو کر اب جبکہ حالات میرے لئے سازگار ہو گئے ہیں۔ اسلئے اپنے پہلے ہی فرصت میں بذریعہ درخواست رابطہ کر رہا ہوں۔ اور درخواست کرتا ہوں۔ کہ برائے مہربانی میرے باقی ماندہ سروس کیلئے Leave without پے کی منظوری دے کر کسی پرائمری سکول میں خالی پوسٹ پر میرے تعیناتی کے احکامات صادر فرما کر مشکور و ممنون فرماویں۔

نوازش ہوگی۔

Attested

العارض

(ایف اے بی ایڈ علی پی ٹی سی ضلع دیر (پائین)

No 3920 dt. 09/03/2015

Forwarded to original to the EDO (E&SE) Dir (L) with remarks that the teacher remained absent for more than six (6) years. However sympathetic action be taken in this regard on human basis

DEO (M&E) Timergara

'E' (14)

ENQUIRY REPORT IN RESPECT OF AMJAD ALI PST.

Introduction:-

Muhammad Nagin DO (M) (E&SE) Dir lower along with Mr.Sneed Ullah SET GHS.Kotigram Dir lower commenced the enquiry of Mr Amjad Ali PST vide EDO(E&SE) Dir lower letter No.6940 dated 26-4-2011 received on 5-5-2011 with vigilant eyes and cold mind from his departmental and personal record / Service book. The Service book of the teacher concerned not only shows illegalities, negligence and irregularities. but have also violated all the rules and regulations.

All kinds of entries related to transfers , annual increments , adjustments and long leave are seemed ambiguous w.e.from 31-3-1998 upto 2-5-2004. No leave account proforma / form has used. Entry of the last granted leave in the service book is incomplete in that there is no signature and seal of the immediate boss/officer,.

It is not only a plain and clear negligence , but is the climax of tyranny with the department in that the Service Book of the teacher concerned is deep and dumb from all sort of procedures and actionsafter ending the leave on 1-5-2004 /

There upon we visited GPS.Laram to detect in detail about the out put and activities of the teachers concerned. We reached there at 9:00 A:M and met with the Head teacher. We asked him for the provision of the present and ex attendance registers of the staff, files / record consist upon correspondence and official letter /order of the department.

We checked the aforesaid record with the presence of mind and with vigilant eyes. The teacher Mr. Amjad Ali had taken over the charge on 20-11-2001 vide order No.4060-62 dated 27-11-2001 which is existed on the schools record.

In this period / duration the school record, attendance register shows nice and better performance of the teacher from the date of takingover the charge upto closing the school for winter vacation on 24-12-2001 wihtout availing casual leave . After ending winter vacation, teacher attendance register is silent about the duty and other activities or out put of Mr.Amjad Ali PST w.e.from 1-3-2002 upto 01-14-2002.

Then the teacher has been succeeded in gaining long leave w.e.from 2-4-2002 upto 1-5-2004. But it is so regretted that the negligence of the department workers have violated all the rules and regulations once again in that the salary of absentsum /absent teacher has been drawn and paid to Mr. Zar Muhammad ex-head teacher of GPS.Laram .Signature of the aforesaid Head teacher is existed on the cash book. The monthly pay of Mr.Amjad Ali in March

Naushad
PU
9/6/11

Attested

14A

0945-925 0003 — Office-
0812 — Resi.

2002 was Rs,3436-43.In this connection we met with Mr.Bakht roidar PST pay centre incharge and gave him a written questionnaire . The questionnaire along with his response is attached with this report.

Findings:-

1. The service book of the concerned has not been maintained by the drawing and disbursing authority in a proper way or time to time.
2. Entry of the granted leave w.e.from 2-4-2002 upto 1-5-2004 is incomplete because of without seal and signature.
3. Illegal increments for the yrar 1999 and 2000 have been allowed while the teacher has availed leave without pay . Entry in the service book is existed.
4. The teacher has not properly applied for long leave in that the service book was in his custody / possession during the absence period.
5. Both the parties viz the teacher concerned , the DDOs reporting officer and the local account branch have committed negligence and ignorance.

Proposal:-

a. Necessary deduction of illegal annual increments of 1999 and 2000 may be made.
b. The illegal paid / drawn pay of Rs.3436/43 for the month of March 2002 may be refunded.
c. The teacher is a trained and senior one, so his services for E&SE department may be kept in view and the absentism /absence period of the teacher may be converted in leave without pay under the rules and then may be adjusted against vacant post in Dir lower.

Saeed Khan SET
GHS.Kotigram Dir(L).

Muhammad Nagin .
Enquiry Officer/DO(Male
(E&SE) District Dir Lower.

"F" (15)

SHOW CAUSE NOTICE.

I Mohammad Ibrahim Executive District Officer (E&SE) Dir lower as a competent authority, under the Khyber Pukhtoonkhwa Removal from Service (Special Powers) Ordinance 2000, do here by serve you **Mr,Amajd Ali ex PST GPS Ouch Gharbi Tehsil Adenzai Distt;Dir(L).**

2. .Consequent upon the Inquiry report conducted against you,and on going through its reports/recommendation of the Inquiry committee,about your willful absence w.e.f 2/5/2004 to-date has been proved.

3.I am satisfied that you have committed the following acts / omissions specified in the section 3 of the said ordinance.

a. In efficiency.
b. Miss conduct.
c. Negligence in government duty.

4.As a result thereof, I being a competent authority have tentatively decided to impose upon you the penalty of termination from service.

5.You are therefore directed to submit reply to show cause notice as to why the aforesaid penalty should not be imposed upon you.

6.If no reply to this notice is received within 15 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defense to put in, in that case , ex party decision will be taken against you.

Executive District Officer
(E&SE)District Dir lower

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (E&SE)DISTRICT DIR LOWER.

Endst:No. 17049-51 / Dated Timergara the 23/10/2011.

1. Copy forwarded to:-

1. The District Coordination officer Dir lower at Timergara.
2. Mohammad Raza Shah ADO O/O DDO(M)Timergara, with direction to serve the show cause notice on the accused official and acknowledgement receipt may be sent to this office for record.
3- The accused concerned.

Executive District Officer

Attested

خدمت جناب EDO (E&SE) صاحب تیمرگرہ - ضلع دیر

(16)

عنوان: جواب طلبی

جناب عالی!

آپ کا شوکاز نوٹس حوالہ نمبر 17049-51 بتاریخ 3/10/2011 کے جواب میں عرض کیا جاتی ہے - کہ گھریلو مسائل اور خاندانی دشمنی کی وجہ سے میرے گھریلو حالات اتنے خراب ہوگئے - کہ ڈیوٹی دینا میرے لئے ناممکن ہوگیا - اور ہمیں گاؤں چھوڑنا پڑا - جس کی وجہ سے میں نے دو سال کیلئے چھٹی کی درخواست دی - اور 2/5/2004 تک میری چھٹی منظور ہوگئی - لیکن بدقسمتی سے میری چھٹی ختم ہونے تک پھر بھی میرے حالات ایسے نہ تھے - کہ میں آکر ڈیوٹی جائن کرتا -

اسلئے میں نے بذریعہ ڈاک دربارہ چھٹی کیلئے درخواست دی - جس پر واپسی پتہ بھی درج تھا - لیکن مجھے اس کا کوئی جواب نہیں ملا - دو تین مرتبہ رابطہ کرنے کے بعد بھی جب مجھے چھٹی کی منظوری یا نامنظوری کی کوئی اطلاع نہ ملی - تو حالات سازگار ہونے کا انتظار کرنے لگا - اس امید پر کہ حالات جلد سازگار ہوتے ہی میں بذات خود دفتر میں حاضری دوں گا - لیکن بدقسمتی کی وجہ سے اس میں بہت وقت لگا - اور ڈیوٹی سے غیر حاضر رہا - اب جب 2010 میں ہماری صلح ہوگئی اور حالات میں بہتری آئی - تو اپنے پہلی فرصت میں دفتر میں حاضری دی - اور Leave without pay اور ایڈجسٹمنٹ کیلئے 2010 میں درخواست دے دی - اور تقریباً دو سال تک برابر دفتر کے چکر لگا رہا ہوں - لیکن ابھی تک آپ کے ہمدردانہ کارروائی کا منتظر ہوں -

جناب عالی میں غریب آدمی ہوں - اور یہی نوکری میری ذریعہ معاش ہے - آئندہ میں اپنی ڈیوٹی میں کبھی بھی کوتاہی نہیں کروں گا - میری نوکری خدا اور آپ کے ہاتھ میں ہے -

میں آپ کے خدمت میں عرض کرتا ہوں - کہ مجھے اور میرے بچوں کو دردر کی ٹھوکریں کھانے سے بچائیں - اور اپنے خصوصی اختیارات کو استعمال کرکے میرے ایڈجسٹمنٹ کے احکامات صادر فرما کر مشکور و ممنون فرمائیں - تو بندہ، میرے والدین اور میرے بچے زندگی بھر آپ کو دعائیں دیتے رہیں گے -

Attested

العارض

الیکا تابعدار

امجد علی پی ٹی سی

18/10/11

"G" (17)

OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY & SECONDARY EDUCATION DISTRICT DIR (L).

Notification:-

WHEREAS one Mr,Amajd Ali PST GPS Laram was on long leave wef 2/4/2002 to 01/5/2004.He was required to report for joining his service on 2/5/2004,but he failed,and willfully remained absent wef 2/5/2004 to 8/3/2010.On 9/3/2010,he submitted an application for adjustment,and grant of leave for the absence period wef 2/5/2004 to 8/3/2010(05 years 10 months & 08 days)which was beyond from the competency of the undersigned.The case was sent to the Distt;Coordination Officer Dir Lower vide this office No,9468 dated 22/6/2010,and No,18386 dated 7/10/2010 for decision,which was returned,and directed that the case may be thoroughly investigated by conducting Inquiry,and fix the responsibility on the person at fault vide letter No,10843 dated 08/11/2010.Inquiry conducted in the instance case,and was submitted to the quarter concerned vide this office No,10959 dated 15/6/2011.After that the Distt;Coordination Officer Dir Lower directed this office that "proper action under Removal from service(Special Powers)Ordinance 2000(amended from time to time)may be initiated and concluded against the teacher vide letter No,7511 dated 8/7/2011.

AND WHEREAS show cause notice was issued / served upon him through ADO Circle.Reply to the show Notice received from the accused teacher,and put up to the District Coodination Officer Dir Lower,for which again directed to comply with the directives issued vide letter No,7511 dated 8/7/2011 referred above.

Now,the undersigned, being the competent authority do hereby order the removal from service of Mr,Amjad Ali PST Govt; Primary School Laram Tehsil Adenzai Dir Lower,under the Khyber Pakhtun Khwa Government Servants (Efficiency & Discipline) rules 2011, from the date of his absence.

(Mohd Ibrahim)
EXECUTIVE DISTT: OFFICER
(E&SE)DISTRICT DIR LOWER

Endst: No. 3420-24 / Dated Timergara the 08 /05/2012.

Copy to:-

1. The District Coordination Officer Dir lower
2. The District Accounts Officer Dir lower.
3. The District Officer (F) local office.
4. The Deputy Distt;Officer(F)Samar Bagh.
5. The accused Teacher concerned.

Attested

EXECUTIVE DISTT: OFFICER
(E&SE)DISTRICT DIR LOWER

بخدمت جناب D.C.O صاحب تیمرگرہ۔ ضلع دیر لوئر

عنوان: اپیل برائے بحالی ملازمت

(18)

جناب عالی!

مؤدبانہ گزارش ہے۔ کہ بندہ نے عرصہ دو سال سے Leave without pay اور تصدیقات کیلئے درخواست دی تھی۔ اور مختلف قسم کی محکمانہ کارروائیاں اور تحقیقات کی گئی۔ جو میرے حق میں ہیں۔ جس میں میرے ساتھ ہمدردانہ کارروائی کی سفارش کی گئی ہے۔ میں نے بھی تحریری طور پر بیان دیا ہے۔ کہ آئندہ کیلئے کسی بھی قسم کی غفلت اور لاپرواہی کا مظاہرہ نہیں کروں گا۔

آپ کی طرف سے بھی میرے ساتھ ہمدردانہ کارروائی کی سفارش کی گئی تھی۔ لیکن ابھی تک میرے ساتھ کسی قسم کی ہمدردانہ کارروائی عمل میں نہیں لائی گئی ہے

جناب عالی!

میں ایک انتہائی غریب آدمی ہوں۔ اور مشکل سے اپنے بیوی۔ بچوں کی کفالت کی ذمہ داری اٹھا رہا ہوں۔ اور اس مہنگائی کے دور میں یہی نوکری میرا واحد سہارا ہے۔

جناب عالی!

میرے اور میرے بیوی بچوں کے مستقبل کی خاطر اور مجھے اور میرے بیوی بچوں کو در در کی ٹھوکریں کھانے سے بچانے کی خاطر میری نوکری بچائیں۔

جناب والا میری نوکری اللہ اور آپ کے ہاتھ میں ہے۔

مہربانی فرما کر ہمیں ذلت کی زندگی گزارنے سے بچائیں۔

لہٰذا آپ صاحبان کی خدمت میں عرض کی جاتی ہے۔

کہ میری "LEAVE WITHOUT PAY" کی منظوری دے کر میری "بحالی ملازمت" کے احکامات صادر فرما کر مشکور و ممنون فرمادیں۔

نوازش ہوگی۔

ہم اور میرے گھر والے آپ کے احسان مند رہیں گے۔ اور ساری عمر آپ کو دعائیں دیتے رہیں گے۔

العارض

الہ کائنات فرمان

(محمد علی) کلرک

21/3/12

Attested

Reader

26-03-2012

"1" (19)

OFFICE OF THE
DISTRICT COORDINATION OFFICER,
DIR LOWER.

No. 16761 /EA
Dated Timergara the 31 / 12 /2012.

To

Mr. Amjad Ali
Ex- PTC GPS Laram.

Subject: **RE-INSTATEMENT / APPEAL.**

In order to decide your appeal, the same was sent to Deputy District Officer (J)/ Executive Magistrate Timergara for report/ comments. Now, comments of the Deputy District Officer (J)/ Executive Magistrate has been received.

On the basis of his report/ comments, it reveals that your service has been terminated by the Executive District Officer E&SE Dir Lower, after fulfilling the laid down procedure & rules, therefore, your appeal is filed.

District Coordination Officer,
Dir Lower.

No._____/

Copy forwarded to the Executive District Officer E&SE Dir Lower for information.

District Coordination Officer,
Dir Lower.

Attested

بعدالت

سروس ٹریبونل

پشاور

مورخہ 8 فروری 2013ء منجانب اپیلانٹ

مقدمہ بنام

دعویٰ امجد علی (EX.P.T.C)

جرم بنام

حکومت K.P.K بذریعہ سیکرٹری ایجوکیشن پشاور

سروس اپیل

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ

آن مقام پشاور کیلئے سید عبدالحق ایڈووکیٹ

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 وتقرر ثالث وفیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک وروپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی 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 بااختیارات حاصل ہوں گے

اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ 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۔ لہٰذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم 8 ماہ فروری 2013ء

امجد علی

العبد گواہ العبد

مقام پشاور سروس ٹریبونل کے لئے منظور ہے۔

Attested and accepted

عدنان سٹیشنری
چوک مشتگری پشاور سٹی فون: 3
0345-9223239

BEFORE THE SERVIE TRIBUNAL KHYBR PUKTHUN KHWA AT PESHAWAR.

SERVICE APPEAL NO. 3548 2013.

AMJAD ALI PST S/O WAZIR AHMAD R/O OUCH DISTRICT DIR LOWER.

..... Appellant

VERSUS

The Secretary Elementary & Secondary Education Department Khyber Pakhtun khwa, Peshawar & Others .....Respondents

PARA WISE COMMENTS?REPLY FOR AND ON BEHALF OF THE RESPONDENTS No: 1, 2, 3.

Respectfully Sheweth:-

Preliminary objections

1 The appellant has no cause of action/locus standi.

2 The instant appeal is badly time barred.

3 The appellant has concealed the material fact from this Hon! Able Tribunal hence liable to be dismissed.

4 The appellant has not come to Hon! Able Tribunal with clean hands.

5 The present appeal is liable to be dismissed for non-joinder/mis-joinder for parties.

6 The appellant has filed the instant appeal on malafide motives.

7 The instant appeal is against the prevailing laws & rules.

8 The appellant is stopped by his own conduct to file in present appeals.

9 The instant appeal is not maintainable in the present form & also in the present circumstances of the issue.

10 Hon! able Tribunal has no jurisdiction to adjudicate the present appeal.

ON FACTS

1 Pertain to appellant service record, however, it would not be out of place to mentions here the appellant was appointed on fixed pay.

2 Incorrect & not admitted. The statement of the appellant in this Para has no concern with the prayer of the appeal, hence denied without proof.

3 Incorrect. The statement of the appellant is against the facts and material record.

4 Correct however the appellant remained absent willfully form his duty after availing the sanctioned leave.

5 Incorrect. The appellant after the expiry of the leave did not report of his arrival to the department & remained absent since 2 -5-2004. It is further stated that appellant did not report any un-avoidable critical circumstances which he faced through any FIR nor through his parents. He did not report to the department willfully.

6 Incorrect and not admitted. No such leave has been sought by the appellant through any means.

7 Incorrect. The appellant never reported any critical situation due to which he was not able to perform his duty, hence denied.

8 The mention enquiry was initiated by the competent authority in accordance with the rules on the subject.

9 Correct. As the appellant remained absent for along time, hence removed from service under the rule on the subject in vogue at that time.

10 Incorrect. The appellant has not locus stnadi case, hence the competent authority has filed the said appeal as per law & rules.

11 Incorrect.

12 Incorrect. The statement of the appellant is false, baseless one which the appellant himself confessed his negligence and willful absence (annexure "H" of the appeal) in his application dated 21-3-2012, hence the whole is denied.

ON GROUNDS.

A. Incorrect. The order was issued after performing all the codal formalities i.e enquiry & show cause notice, hence legal, lawful and by the lawful authority.

B. Incorrect. Proper enquiry was conducted in after that show cause notice was issued to him and according to the finding of the enquiry committee the appellant committed in-efficiency, misconduct & negligence in duty.

C. Incorrect. The appellant remained absent for along time, hence removal from service was justified and according to the law & rules.

D. Incorrect all the codal formalities were observed, hence denied.

E. Incorrect. As replied in Para - B above.

F. As replied in foregoing, the appellant was found guilty after complying the codal formalities.

G. As replied in foregoing Para.

H. Incorrect & not admitted. The order of removal from service is in accordance with rules on the subject in vogue for the time.

The respondents also seeks the permission of this Hon! Tribunal to adduce more grounds in proofs at the time of arguments.

In view of the above submission, it is requested that his Hon' able Tribunal may very graciously be pleased to dismiss the appeal with cost in favour of the respondent Department.

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshwar.

Secretary
Elementary & Secondary Education
Department, Government of Khyber
Pakhtunkhwa.

District Education Officer (M)
E & SE District Dir (Lower)

BEFORE THE SERVIE TRIBUNAL KHYBR PUKTHUN KHWA AT PESHAWAR.

SERVICE APPEAL NO. 354~~8~~ 2013.

AMJAD ALI PST S/O WAZIR AHMAD R/O OUCH DISTRICT DIR LOWER.

..... Appellant

VERSUS

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The respondents also seeks the permission of this Hon! Tribunal to adduce more grounds in proofs at the time of arguments.

In view of the above submission, it is requested that his Hon' able Tribunal may very graciously be pleased to dismiss the appeal with cost in favour of the respondent Department.

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshwar.

Secretary
Elementary & Secondary Education
Department, Government of Khyber
Pakhtunkhwa.

District Education Officer (M)
E & SE District Dir (Lower)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 2493 /ST Dated 20 /11/2017

To

The District Education Officer,
Government of Khyber Pakhtunkhwa,
Dir Lower at Timaraga.

Subject: **JUDGEMENT IN APPEAL NO. 354/13, MR.AMJID ALI .**

I am directed to forward herewith a certified copy of Judgment dated 09/11/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

BEFORE THE SERVICES TRIBUNAL PESHAWAR

Service appeal No._____/2012.

Amjad Ali son of Wazir Ahmad resident of Ouch Dir Lower.....Appellant.

VERSUS

Government of KPK Peshawar.....Respondants.

APPLICATION FOR THE TRANSFER OF THE ABOVE TITLED APPEAL TO DARUL QAZA KALAKAND DIVISION SWAT.

Respectfully Sheweth:-

1. That the above titled case/appeal is pending adjudication before this Honourable Service Tribunal since last three years.

2. That during this long period no proceedings have been initiated and every in the case is more then 6/7 months.

3. That the petitioner come from District Dir and for comming and going sufficient expenses have been occured and the petitioner being poor employee has got no source to arrange this havey expenses and borrowed from the local persons.

4. That the petitioner/appellant have got no other adequate and speedy remey except to file this applicatio for entrustment of the case to Malakand Division Distt Swat for just and proper disposal of the case.

5. That in compelling circumstances the instant petition has been filed for proper adjudication of the case.

It is, therefore, humbly prayed that on acceptance of this application the case may very graciously be transferred to Darul Qaza Swat for proper disposal of the case, any other relief which deems fit and proper in the interest of justice may also be awarded in favour of the petitioner.

Petitioner/appellant

(AMJAD ALI SON/OF WAZIR AHMAD
R/O OUCH DISTRICT DIR LOWER

Dated:-24.3.2016.

AFFIDAVIT

I, Amjad Ali appellant, do hereby solemnly affirm and declare that the contents of the above application are true and correct to the best of my knowledge and belief.

DEPONENT

ATTESTED
Rahmat Ullah Khan Advocate
Oath Commissioner
Distt. Courts Peshawar
24-3-16