

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1297/2019

Date of Institution ... 08.10.2019

Date of Decision ... 15.09.2022

Muhammad Qayum, Ex-Chowkidar, GPS Bakhshali, District Mardan.

...(Appellant)

VERSUS

The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

MISS. UZMA SYED,
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MR. MIAN MUHAMMAD

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Appellant Muhammad Qayum, who was serving as Chowkidar in Government Primary School *Bakhshali* District Mardan, was proceeded against departmentally on the allegations of absence from duty and he was removed from service vide order dated 26.07.2012. The Service appeal of the appellant was, however allowed by this tribunal vide judgment dated 12.09.2017 and the appellant was reinstated in service with directions to the department to initiate and conclude inquiry proceedings against the appellant under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 within a period of 90 days from the receipt of copy of the judgment. It was also observed in the said judgment that in case the respondents failed to conduct and conclude de-novo proceedings within the stipulated period, then the appellant shall




be deemed to have been reinstated in service. On conclusion of the de-novo inquiry, major penalty of removal from service was imposed upon the appellant vide impugned order dated 10.04.2018 passed by the competent Authority. The departmental appeal of the appellant remained un-responded, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the appellant was not at all associated in the de-novo inquiry proceedings and no opportunity of self defense was provided to him; that as de-novo inquiry proceedings were not concluded within the period provided by this Tribunal in its judgment dated 12.09.2017, therefore, the impugned order of removal of the appellant is having no legal sanctity as the appellant stood reinstated on expiry of the period provided for de-novo inquiry; that it has been established during the inquiry, that the appellant had applied for two years leave and his application was also forwarded to the competent Authority but the same was neither accepted nor rejected; that as the appellant was under the impression that his leave application has been allowed, therefore, his absence from duty could not in any way be considered as willful absence; that the de-novo inquiry proceedings are nullity in the eye of law for the reason that the same were not completed within the period ordered by this Tribunal. Reliance was placed on 2017 PLC (C.S) Note 20, 2007 SCMR 834, 2015 SCMR 795, 2009 PLC (C.S) 161, 2003 SCMR 1126, 2009 SCMR 339, 2008 SCMR 1369, 2009 SCMR 412 and judgment dated 29.07.2017 passed by this Tribunal in Service Appeal No. 831/2012 titled "Zulfiqar Ali Shah Versus DIG of Police Region-III at Saidu Sharif Swat and another".


4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant had remained absent from duty without any sanctioned leave or permission of the competent Authority; that the appellant had though



submitted an application for two years leave, however he proceeded abroad without waiting for the decision on his application; that the de-novo inquiry proceedings were conducted by fulfilling all legal and codal formalities and as the charge of willful absence from duty stood proved against the appellant in a proper inquiry, therefore, he has rightly been removed from service.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that the appellant was initially removed from service vide order dated 26.07.2012, however his service appeal was allowed by this Tribunal vide judgment dated 12.09.2017 with the observations re-produced as below:-



"6. As a consequence of the above discussion, the appeal is accepted, however the department is directed to initiate and conclude the proceedings against the appellant under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 within a period of 90 days from the date of receipt of this judgment. The question of back benefits shall be subject to outcome of de-novo proceedings. In case the respondents failed to conduct and conclude de-novo proceeding within the stipulated period, then the appellant shall be deemed to have been reinstated in service. Parties are left to bear their own costs. File be consigned to the record room."

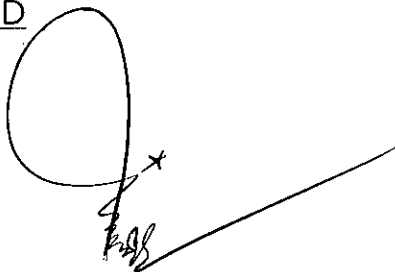
7. It is evident from the perusal of the record that stipulated period of 90 days as provided to the department for concluding of the inquiry proceedings has not been honored as the impugned order has been passed by the competent Authority on 10.04.2018. This Tribunal in its judgment dated 12.09.2017 had categorically observed that in case of failure of the respondents to conduct and conclude the de-novo inquiry proceedings within the stipulated period, then the appellant shall be deemed to have been reinstated in service. No justifiable reason has been put forward by the respondents for not honoring the time frame provided by this Tribunal for completion of the de-novo inquiry proceedings, therefore, the de-novo proceedings had become

nullity in the eye of law and no legal sanctity could be attached to it.

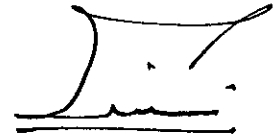
8. While going through the judgment dated 12.09.2017 passed by this Tribunal, we have observed that the proceedings conducted against the appellant in the previous inquiry were declared to have not been conducted within the spirit of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Similarly, the inquiry officer has categorically observed in the de-novo inquiry proceedings that the required codal formalities were not fulfilled by the office of DEO (Male) Mardan. It is thus an admitted fact that the removal order of the appellant was passed without fulfilling of the formalities as prescribed in Rule-09 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The fact of submission of an application by the appellant for two years leave has also been established during the de-novo inquiry proceedings, which supports the contention of learned counsel for the appellant that the appellant was under the impression that his application for leave was allowed by the competent Authority.

9. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned order and the appellant is reinstated in service. The absence period with effect from 15.11.2011 till 14.11.2013 shall be treated as leave without pay, while the intervening period with effect from 15.11.2013 till reinstatement of the appellant shall be treated as on duty with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
15.09.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
15.09.2022

Learned counsel for the appellant present. Mr. Muhammad Jameel, Litigation Officer alongwith Mr. Muhammad Riaz Khan Painsdakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned order and the appellant is reinstated in service. The absence period with effect from 15.11.2011 till 14.11.2013 shall be treated as leave without pay, while the intervening period with effect from 15.11.2013 till reinstatement of the appellant shall be treated as on duty with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
15.09.2022



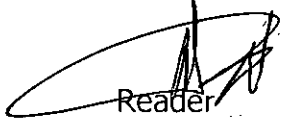
(Mian Muhammad)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)

15.02.2022

Due to retirement of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 07.06.2022 for the same as before.




Reader

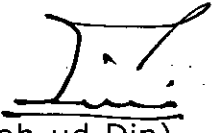
07.06.2022

Appellant alongwith clerk of his counsel present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of lawyers. Adjourned. To come up for arguments on 13.07.2022 before the D.B.



(Fareeha Paul)
Member (E)




(Salah-ud-Din)
Member (J)

13th July, 2022

Appellant present in person. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Appellant seeks adjournment as his learned counsel is not in attendance. Last chance is given to the appellant to ensure the present of his learned counsel and arguments, failing which the case will be decided on the basis of record before the Tribunal without the arguments. To come up for arguments on 15.09.2022 before the D.B.



(Fareeha Paul)
Member(E)

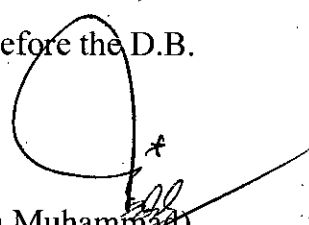


(Kalim Arshad Khan)
Chairman

09.11.2020

Junior to counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 19.01.2021 for hearing before the D.B.


(Mian Muhammad)
Member (E)

19.01.2021

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

Former requests for adjournment as his learned counsel is not in attendance today due to some private engagement. Adjourned to 22.04.2021 for hearing before the D.B.


(Mian Muhammad)
Member(E)


Chairman

22.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 16.08.2021 for the same as before.


Reader

16.08.2021

Since 16.08.2021 has been declared as Public holiday on account of Moharram, therefore, case is adjourned to 2/12/2021 for the same as before.


Reader

2/12-21

Proper D.B. is not available, therefore case is adjourned to 15.2.22 for same



09-4 .2020

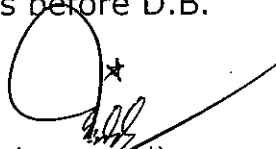
Due to COVID19, the case is adjourned to
07/07/2020 for the same as before.

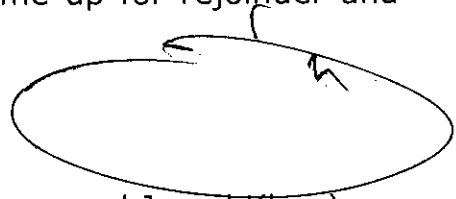

Reader

07.07.2020 Due to COVID19, the case is adjourned to 01.09.2020 for
the same as before.


Reader

01.09.2020 Appellant is present in person. Mr. Muhammad Jan,
Deputy District Attorney for the respondents is also present.
According to the appellant his counsel is not available today
and seeks adjournment. Formal request for adjournment.
Adjourned to 09.11.2020. File to come up for rejoinder and
arguments before D.B.


(Mian Muhammad)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

25.02.2020

Appellant in person present. Mr. Kabirullah Khattak learned Additional AG alongwith Mr. Sajid ADO for the respondents present.

Representative of the respondent department submitted written reply/comments which is placed on file, copy of the same is handed over to the learned Additional AG. Adjourned. To come up for rejoinder if any and arguments on 09.04.2020 before D.B.


(Hussain Shah)
Member

27.11.2019

Counsel for the appellant present.

It is the argument of learned counsel that the impugned order dated 10.04.2018 was passed against the appellant without his reinstatement into service and the appellant was not associated with the denovo departmental proceedings before passing of the order. So much so, that the appellant was not even in the knowledge of passing of the impugned order which came to limelight on 19.06.2019 during hearing of execution petition No. 253/2017, submitted by the appellant. In that regard learned counsel referred to the order of this Tribunal dated 19.06.2019 in the afore-said execution petition.

In view of the record and arguments of learned counsel, the appeal in hand is admitted to regular hearing but subject to exceptions regarding delay in submission of departmental appeal. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 20.01.2020 before S.B.

Appellant Deposited
Security Process Fee
27/11/19

Chairman

20.01.2020

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

Learned AAG requests for time to contact the respondents and furnish reply/comments on the next date of hearing. Adjourned to 25.02.2020 on which date the requisite reply/comments shall positively be furnished.

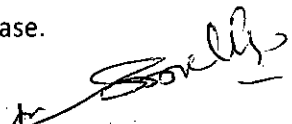

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1297/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/10/2019	<p>The appeal of Mr. Muhammad Qayum presented today by Uzma Syed Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	14/10/19.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27/11/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 1297 /2019

MUHAMMAD QAYUM

V/S

EDUCATION DEPTT:

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5	Order sheet	D	11- 12.
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7	Departmental appeal	F	14.
8	Vakalatnama	15.

محمد قیوم
APPELLANT

THROUGH:

UZMA SYED
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1297 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1416

Date 08/10/2019

Muhammad Qayum, Ex-Chowkidar,
GPS Bakhshali, District Mardan.

..... APPELLANT

VERSUS

- 1- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Mardan.

..... RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE IMPUGNED ORDER DATED 10.04.2018
COMMUNICATED TO THE APPELLANT ON 19.06.2019
WHEREBY MAJOR PENALTY OF REMOVAL FROM
SERVICE HAS BEEN IMPOSED ON THE APPELLANT IN
UTTER VIOLATION OF LAW AND RULES AND AGAINST
NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL
OF THE APPELLANT

PRAYER:

That on acceptance of this appeal the impugned dated 10.04.2018 may very kindly be set aside and the appellant may very kindly be reinstated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Filed to
Registrar
08/10/19

R/SHEWETH:

ON FACTS:

- 1- That appellant was the employee of the respondent Department and was serving as Chowkidar at GPS Bakhshali, District Mardan quite efficiently and upto the entire satisfaction of his superiors.
- 2- That during service the appellant submitted an application for leave due to the reason of some domestic problems but no reply was received from the quarter concerned. That the appellant was time and again approached the concerned quarter but the authorities kept mum on the so many requests of the appellant and finally the appellant absented himself from duty.
- 3- That after resolving the aforementioned problems the appellant approached the concerned quarter for re-joining of his duty but

instead of taking arrival of the appellant respondent Department handed over removal order dated 26.07.2012. Copy of the order is attached as annexure.....A.

- 4- That feeling aggrieved the appellant preferred Departmental appeal followed by service appeal No.670/2014 before this august Tribunal which was allowed vide judgment dated 12.09.2017 with the directions to the respondents to conduct de-novo inquiry in the matter within the period of ninety days and if the respondents fail to conduct and conclude de-novo proceedings within the stipulated period, then the appellant shall be deemed to have been re-instated into service. Copies of the service appeal & judgment is attached as annexure.....B & C.
- 5- That the appellant has got attested copy of the judgment dated 12.09.2017 submitted before the respondents but the respondents were willing to implement the same and finally the appellant filed execution petition No.253/2017 and during the proceedings the respondent Department submitted the impugned order dated 10.4.2018 before this august Tribunal on 19.06.2019. Copies of the order sheet and impugned order are attached as annexure.....D & E.
- 6- That appellant feeling aggrieved from the impugned order dated 10.04.2018 communicated to the appellant on 19.06.2019 preferred Departmental appeal but no reply has been received so far. Hence the appellant having no other remedy filed the instant service appeal before this august Tribunal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure.....F.

GROUND:

- A- That the impugned order dated 10.04.2018 communicated to the appellant on 19.06.2019 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents have violated Article-4 & 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the impugned order dated 10.04.2018 has not been issued by the respondents in accordance with law and Rules.
- D- That no charge sheet and statement of allegations has been served on the appellant before issuance the impugned order dated 10.04.2018.

- E-** That no chance of personal hearing/defense has been given to the appellant while issuing the impugned order dated 10.04.2018.
- F-** That the respondents are badly failed to conduct de-novo proceedings within the stipulated period of ninety days as per directions of this august Tribunal, hence the impugned order dated 10.04.2018 is not tenable in the eye of law and is liable to be set aside.
- G-** That as per directions of this august Tribunal the appellant is fully entitle for re-instatement into service with all back benefits.
- H-** That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 08-10-2019

APPELLANT

محمد قیوم
MUHAMMAD QAYUM

THROUGH:

UZMA SYED
ADVOCATE,
HIGH COURT, PESHAWAR

A-4

In exercise of KPK removal from service (Special Powers) ordinance 2000, revised in devolution of powers w.e.f. 15.11.2011 conferred upon as competent authority ordered initiation of disciplinary proceedings against Mr. Muhammad Qayum Chowkidar GPS, Bakhshali and constituted enquiry committee vide order No. 6651-54/P.F Dated 14.05.2012 to scrutinize the conduct of the accused for the allegation attached therewith.

You, Mr, Muhammad Qayum Chowkidar GPS, Bakhshali Mardan remained well full absent from duty w.e.f 15.11.2011 till date and through a reliable sources you are reported to be abroad without permission of the competent authority.

And whereas a departmental inquiry was constituted against you to find out the facts and figures.

And whereas you did not appear before the inquiry committee and failed to produce any defence in your support, and therefore the inquiry committee recommended you for removal from service.

And whereas show cause was sent to you on your home address vide letter 3836-38 Dated 27.03.2012 which was received by Muhammad Naem PST.

And whereas show cause notice was published in 2 (two) newspapers, which you did not responded.

And whereas you have submitted an application for one month time on 12.06.2012. But you did not attend this office upto 21.07.2012.

Now, the undersigned as competent authority is satisfied that the charges against you are proved and therefore ordered your removal from service w.e.f 15.11.2011.

(BAHADAR KHAN MARWAT)
EXECUTIVE DISTRICT OFFICER
(E & S) EDUCATION MARDAN.

Endst: No 10594-96 /P.F

Dated 26/7/2012

Copy forwarded to the:-

1. Dy: District Officer (M) Pry: Mardan.
2. District Accounts Office Mardan.
3. Official Concerned.

No. 1947
Dated 28/7/12
DDO (M) Mardan
E & S

EXECUTIVE DISTRICT OFFICER
(E & S) EDUCATION MARDAN.

OFFICE OF THE DY: DISTRICT OFFICER (MALE) PRIMARY MARDAN.

Endust: No 2080-9 Circle Gujrat File. 1/8/12.

Copy to the:-

- 1, Assistant District Officer Circle Gujarat Mardan follow up the above case immeditely.

Attended

Stamp: MARDAN

Stamp: 15/7/2012

B-5

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Appeal No. 670 /2014

62-4
24/4/2014

Mr. Muhammad Qayum s/o Ziarat Muhammad (Ex-Chowkidar GPS Bakhshali, Mardan) r/o Mohallah Gharib Abad, Village Khair Abad, Tehsil and District Mardan.

(Appellant)

VERSUS

1. The Executive District Officer (Elementary and Secondary) Education Department, Mardan.
2. The Principal Government Primary School, Bakhshali, Mardan.
- ✓3. The District Education Officer (Male), Mardan.
4. The Director (Elementary and Secondary) Education Department, KPK, Peshawar.
5. The Secretary Education, KPK, Peshawar.

(Respondents)

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974,
AGAINST THE ORDER OF THE EDO (E&S)/RESPONDENT
NO.1 VIDE ENDST NO.10594-96/PF DATED 26-07-2012,
TERMINATING THE SERVICE OF APPELLANT.

FACTS:

1. That the Appellant was posted by EDO, Schools and Lit; vide Order No. [redacted] posted at GGHSS Rustam, District Mardan (Annexure "A").
2. That the Appellant was terminated by EDO (E&S)/Respondent No.1 vide Order No. [redacted] dated 26-07-2012 on the alleged ground of being "Absent from Duty". (Copies are attached as Annexure "B").
3. That grieved there from, the Appellant represented there against on 12-03-2014 which representation was rejected vide Order dated 27-03-2014, hence this appeal. (Copies are attached as Annexure "C" and "D").
4. That the impugned order is unjustified, illegal, against principles of natural justice and liable to be set aside on the following amongst other grounds:

24/4/14

is submitted to and filed.

2/5/14

ATTESTED

Attested

GROUND:

6

- i. That no doubt that representation was preferred after the period of 30 days, but the same is decided on fact without objection as to Limitation, hence, delay stands condoned.
- ii. That in the year 2011 mother of the Appellant fell seriously ill and was taken to Karachi due to her bad health condition and was hospitalized there. The Appellant had to remain with her for her proper care. (Copies of medical certificates and ticket of Karachi are attached as Annexure "E" to "J").
- iii. That while leaving for Karachi the Appellant moved an application for grant of leave to the Respondent No.1 on 10-11-2011, but the rejection thereof was not conveyed to the Appellant, he considered the same to have been accepted. (Copy is attached as Annexure "K").
- iv. That absence of Appellant was not willful and deliberate, but on the sole grounds as mentioned above.
- v. That the Appellant has never been to Saudi Arabia and the said allegations are incorrect and false.
- vi. That advertisement through press does not fulfill the requirements of the show cause notice. (Copy is attached as Annexure "L").
- vii. That the Appellant is condemned unheard and is not provided any chance of defense, throughout.
- viii. That the Appellant is jobless after the impugned order.
- ix. That the Appellant seeks leave of this Honorable Tribunal to claim further grounds also.

It is, therefore, prayed that on acceptance of this Appeal, the impugned order may be set-aside and the Appellant may be re-instated in service with back service benefits and cost of this Appeal may also be awarded.

Dated: 24-04-2014

Appellant:

M. Qayum
(Muhammad Qayum)

Through:

Syed Muhammad Imran Advocate

&

Muhammad Ashfaq Advocate

43
attached
ATTACHED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 670/2014

Date of Institution ... 24.04.2014

Date of Decision ... 12.09.2017

Muhammad Qayum son of Ziarat Muhammad (Ex-Chowkidar, GPS Bakhshali, Mardan) R/O Moh. Gharib Abad, Village Khair Abad, Mardan. ... (Appellant)

VERSUS

1. The Executive District Officer (E&SE), Mardan ... (Respondents)
and 4 others.

MST. UZMA SYED,
Advocate

For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney.

For respondents.

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

CHAIRMAN
MEMBER

JUDGMENT

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

FACTS

2. The appellant was removed from service vide order dated 26.07.2012 from a retrospective date i.e. 15.11.2011 against which the appellant filed a departmental appeal on 12.3.2014 which was rejected on 27.3.2014 and thereafter the present appeal was filed on 24.04.2014.

ARGUMENTS

3. The learned counsel for the appellant argued that the authority initiated the proceedings and passed the impugned order under the repealed Ordinance i.e.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

89

Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000.

That in view of judgment reported in NLR-2006-Services-51, the whole proceedings are void ab-initio. She also argued that the order has been given retrospective effect and in view of the judgment reported as 2007-PLD-Supreme Court-52, no retrospectivity can be given to an executive order. That no limitation runs against the appellant as the order is void being passed under the repealed law.

4. On the other hand, the learned Deputy District Attorney argued that mere citing of a wrong law does not vitiate the proceedings and in this regard he relied upon a judgment reported as 2010-SCMR-354. He further argued that the departmental appeal was time barred and the present appeal is therefore also time barred and limitation would run in the present case as the impugned order is not a void order and merely citing of a wrong law does not make the order even illegal. He further relied upon 2016-PTD-296.

CONCLUSION.

5. This is a settled position of law that mere citing of a wrong law would not make an order illegal provided that the spirit of the relevant law is followed by the authority. We are to see as to whether the spirit of the relevant law in vogue i.e. Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 has been fulfilled in the impugned order. While going through the impugned order we see that the competent authority had appointed an enquiry committee to scrutinize the conduct of the appellant. The competent authority had also issued a show cause notice at the home address of the appellant. Coming to the E&D Rules, 2011 the procedure was not to appoint an enquiry committee nor the competent authority was to issue show cause notice. According to Rule 9 of the said rules, the competent authority was to issue a simple notice through registered acknowledgement on the home address of the appellant, directing him to resume duty within 15 days of the issue of such notice. But the competent authority instead issued a show cause notice to the appellant and also appointed an enquiry committee and then issued advertisement in

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

two newspapers. All this shows that the spirit of E&D Rules, 2011 is not fulfilled and this is not an issue of mere citing of wrong law but the proceedings cannot be held to be undertaken under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. If this is the case then the judgment relied upon by the learned Deputy District Attorney of the august Supreme Court of Pakistan of 2010 is not attracted to the present case. Similarly another judgment relied upon by him of 2015 regarding void order does also not favour the department because when the whole proceedings were held to be initiated not under the E&D Rules, 2011 then the authority acted without jurisdiction and *coram non judice*. In such situation, the order becomes void and no limitation shall run against the appellant.

90

6. As a consequence of the above discussion, the appeal is accepted, however, the department is directed to initiate and conclude the proceedings against the appellant under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 within a period of ninety days from the date of receipt of this judgment. The question of back benefits shall be subject to outcome of denovo proceedings. In case the respondents fail to conduct and conclude denovo proceedings within the stipulated period, then the appellant shall be deemed to have been reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.

SD/-
(GUL ZEB KHAN)
MEMBER

SD/-
(NIAZ MUHAMMAD KHAN)
CHAIRMAN

Certified to be true copy

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ANNOUNCED

12.09.2017

ANNOUNCED

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.



Execution Petition No. 253 /2017
In Service Appeal No.670/2014

Page No. 1114
Date 22/09/2017

Muhammad Qayum S/o Ziarat Muhammad, Ex. Chowkidar,
GPS Bakhshali, Mardan, R/o Moh, Gharib Abad, Village.
Khair Abad, Mardan.

PETITIONER

VERSUS

1. The Executive District Officer (E&SE) (Male), Mardan.
2. The Director, Education (E&SE), Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (M) Mardan.
4. The Secretary Education K.P.K., Peshawar
5. The Principal Ghant Primary School, Bakhshali, Mardan.

RESPONDENTS

**EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO
IMPLEMENT THE JUDGMENT DATED: 12.09.2017 OF THIS
HONORABLE TRIBUNAL IN LETTER AND SPIRIT.**

RESPECTFULLY SHEWETH:

1. That the applicant/appellant filed Service Appeal No.670/2014 in this august Tribunal against the order dated 26.07.2012 and 27.03.2014.

That the said appeal was finally heard on 12.09.2017 and the Honorable Tribunal was kind enough to accept the appeal and the impugned orders were set aside with the direction to the competent authority initiate and conclude the proceedings against the appellant under the Khyber Pakhtunkhwa Government Servant E&D Rules, 2011 within period of 90 days. The issue of back

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Attested

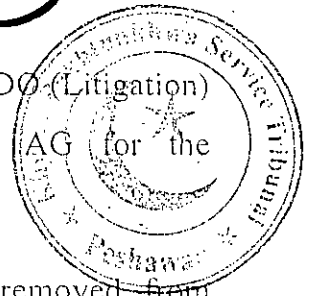
ATTESTED

E.P. NO. 253/2017
M. Qayum vs Govt

12

19.06.2019

Counsel for the petitioner and Mr. Sajid, ADO (Litigation) alongwith Mr. Kabirullah Khattak, Additional AG for the respondents present.



Record reveals that the petitioner was removed from service and he challenged the same through service appeal the service appeal of the petitioner was partially accepted and the respondent-department was directed to initiate and conclude the proceedings against the petitioner under the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 within a period of 90 days from the date of receipt of the judgment. The question of back benefits shall be subject of de-novo proceeding. In case the respondents failed to conduct and conclude the de-novo proceeding within stipulated period then the appellant shall be deemed to have been reinstated in service vide judgment dated 12.09.2017. Today, representative of the department furnished relevant copy of inquiry report including the order of removal from service of the petitioner by the competent authority vide order dated 10.04.2018. Learned Additional AG stated that the order of removal from service of the petitioner was already placed on record by the department vide order sheet dated 03.07.2018. However, learned counsel for the petitioner stated at the bar that the petitioner came to know about the removal order today. Learned counsel for the petitioner further contended that the de-novo proceeding including the removal order was not completed within stipulated period as per judgment of this Tribunal, therefore, the removal order of the petitioner is ineffective upon the right of the petitioner. Learned counsel for the petitioner requested for adjournment. Adjourned to 25.07.2019 for further proceedings before S.B.

34
Attended

MA
(Muhammad Amin Khan Kundi)
Member

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MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Appeal 28-6-19
Number of Words 800
Copying Fee 6
Urgent 25
Total 8
Name of Counselor
Date of Court Order 28-6-19
Date of Delivery of Copy 28-6-19

ATTENDED

E-13

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN

OFFICE ORDER

WHEREAS, Mr. Muhammad Qayum s/o Ziarat Muhammad, Ex-Chowkidar GPS Bakhshali Mardan r/o Gharib Abad Village Khairabad Mardan remained willful absent from duty with effect from 15-11-2011 till the date and through reliable sources you are reported to be abroad without any sanction of leave/permission of the Competent Authority.

AND WHEREAS, a departmental inquiry was constituted against you to find out the facts and figures.

And WHEREAS, you did not appear before the inquiry committee and failed to produce any defense in your support, and therefore the inquiry committee recommended you for removal from service.

And WHEREAS, a show cause notice was issued on your home address vide letter No. 3836-38 dated 27-03-2012 through Muhammad Naeem PST.

And WHEREAS, a show cause notice was published in 02 daily newspapers, which you did not respond.

AND WHEREAS You have submitted an application for one month time on 12-06-2012 but you did not attend this office upto 21-07-2012.

AND WHEREAS the competent authority being satisfied that the charges against you are proved, ordered your removal from service w.e.f 15-11-2011.

AND WHEREAS, in the compliance of judgment of Honorable Khyberpakhtunkhwa Service Tribunal Peshawar announced on 19-02-2017 in appeal No.670/2014 the responded department conducted De-novo inquiry.

AND WHEREAS, You Mr. Muhammad Qayum s/o Ziarat Muhammad, Ex-Chowkidar GPS Bakhshali Mardan remained willful absent from duty w.e.f 15-11-2011, the charges against you are proved.

AND WHEREAS, You Mr. Muhammad Qayum s/o Ziarat Muhammad found guilty of habitual absenting yourself from duties without prior approval of leave under rules-3(d) of the khyberPakhtunkhwa Govt servants E&D rules 2011.

Now in exercise of the power conferred under khyberPakhtunkhwa Govt servants E&D rules 2011 (4b-iii), the undersigned being Competent Authority is pleased to impose the major penalty of Removal from Service upon You, Mr. Muhammad Qayum Ex-Chowkidar GPS Bakhshali with immediate effect.

(Signature)

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

Endst No. 3018-19 /P/F Dated: 10-4-2018

copy forwarded for information and necessary action to the:-

1. Director E&SE Education KPK, Peshawar.
2. DAO Mardan
3. SDEO(M) Mardan with the remarks to made entry in his service book.
4. Mr. Muhammad Qayum s/o Ziarat Muhammad, Ex-Chowkidar GPS Bakhshali R/o Gharib Abad Khairabad.(Registry)

ATTESTED

(Signature)
District Education Officer
(Male) Mardan

Handwritten notes in Urdu on the left margin, including "25/11" and "ATTESTED".

Handwritten Urdu text at the bottom of the page.

F-14

درخواست بہوار بحالی ملازمت

تم ادشا کی جاتی ہیں۔

کہ سائل محکم ایجوکیشن میں بطور چوکیدار مقرر تھے

سائل 7 26 کو غیر حاضری کی وجہ سے نوکری سے نکالا گیا۔

سائل نے اس کے خلاف سروس ٹریبونل میں اپیل کی جو

9 19 کو سائل کے حق میں فیصلہ ہوا۔ جس میں عدالت

نے حکم کر دیا کہ دوبارہ انکوائری کر کے اسے 90 دن کا وقت دیا اور

ساتھ ہی بھی حکم دیا کہ اگر انکوائری وقت پر نہ کی تو سائل

بحال ملازمت تصور ہوگا لیکن حکم نے بروقت انکوائری نہ

کی اور بغیر انکوائری ایک آرڈر جاری کیا جس میں سائل

کو دوبارہ ملازمت سے برخاست کیا گیا مورخہ 4 10 2018 کے آرڈر

سائل کو execution کے دوران مورخہ 6 19 2019 کو موصول ہوا۔

تم ادشا کی جاتی ہیں کہ سائل کے ساتھ یہ سراسر زیادتی ہے۔

لہذا سائل کو سروس ٹریبونل کے فیصلہ کے مطابق بحال ہو

چکا۔ لیکن حکم ایجوکیشن نے بغیر کسی نوٹس کے سائل کو

دوبارہ ملازمت سے مورخہ 4 10 2018 کو برخاست کر دیا جو سراسر زیادتی

اور ٹریبونل کے فیصلہ کے خلاف ہے۔

آپ صاحبان سے تم ادشا کی جاتی ہیں کہ سائل کو بحال کر کے

سے آرڈر 4 10 2018 کو حکم کیا جائے۔ آپ کی بی بی تم ادشا ہوگی

محمد قیود
(Ex-Chaukidar)
مورخہ 28-6-2019

اپنے
لکھنؤ
17-06-2019

بعدالت

KP Service Tribunal, Peshawar

2019ء منجانب

محمد قلید نام

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

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

آن مقام Peshawar کیلئے عظمیٰ سپیڈ

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 ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی 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 مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے۔

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

2019ء

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المرقوم

Attested by
Mir Zameer
Advocate
Peshawar

العہد گ
Peshawar
مقام

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1297/2019

Mohammad Qayum, Ex Chowkidar, GPS Bakhshali, Tehsil and District Mardan
.....Petitioner

Versus

The Secretary (E&SE) Department KPK, Peshawar & Others..... Respondent

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S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES	
1.	Para wise comments along with affidavit		01	04
2.	Letters	A & B	05	06
3	inquiry Report	C	07	16
4	Removal Order	D	17	--

Respondent



District Education Officer
(Male) Mard

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No: 1297/2019

Mohammad Qayyum, Ex Chowkidar, GPS Bakhshali, Tehsil and District Mardan
.....Petitioner

Versus

The Secretary (E&SE) Department KPK, Peshawar & Others..... Respondent

Para Wise Comments on Behalf of Respondents

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action as well as locus standi to file the instant Service appeal.
2. That the instant appeal is badly time barred.
3. That the appellant has not come to this Honorable Tribunal with clean hands.
4. That the appellant is estopped by his own conduct.
5. That the appellant has concealed the material facts from this Honorable Tribunal, hence the appeal is liable to be dismissed.
6. That the appellant has been treated as per law & rules.
7. The service appeal No 670/2014, has decided on dated 12-09-2017, with the direction to Conduct de-novo inquiry.
8. That the respondent compliance the judgment of this honorable Service Tribunal and has conducted De-novo inquiry.
9. That the respondent has issued a letter dated 15-02-2018, explanation regarding delay in the De-novo inquiry in the service appeal No 670/2014, and the Inquiry Officer requested kindly be given more time for re-gather/collect conclusive Evidence.

(Copies of Letters are as Annexure A & B)

10. That as per the inquiry report:
 - i. That the Head Teacher of the appellant, stated that Mohammad Qayyum appellant was a careless Govt Servant, he never perform his duty well. One day, he submitted application and the next day, he has flown to Saudi Arabia.
 - ii. That during the inquiry, the Head teacher stated that the relative of Muhammad Qayyum told him that the appellant has gone to Saudi Arabia.
 - iii. That the respondent has founded the appellant is at fault. As per rule the appellant had to wait till the leave was sanctioned.

iv. That the appellant was required to apply for Ex Pakistan Leave. The appellant to justify his absence produced fake documents, showing that his mother was hospitalized w.e.f 03-04-2012 to 28-06-2012, whereas, he was in Saudi Arabia during this period. **(Copy of inquiry Report is as Annexure C)**

11. That the respondent fulfill all codal formalities as well as conducted De-novo inquiry and the appellant has removed from Service on 10-04-2018.

(Copy of Removal Order as Annexure D)

FACT:

1. Para No 1 is correct to the extent of the employee of the respondent Department and the remaining para is incorrect, the appellant was not serving quite efficiently and was not upto the entire satisfaction of his superiors, hence needs no comments.
2. Para No 2 is incorrect baseless against facts, as per rule the appellant had to wait till the leave was sanctioned. The appellant has submitted an application and the next day, he has flown to Saudi Arabia. The appellant was required to apply for Ex Pakistan Leave, but the appellant to justify his absence produced fake documents, showing that his mother was hospitalized w.e.f 03-04-2012 to 28-06-2012, whereas, he was in Saudi Arabia during this period, hence denied.

(Copy of inquiry Report is as Annexure C)

3. Para No 3 pertains to record, hence needs no comments.
4. Para No 4 pertains to record, hence needs no comments.
5. Para No 5 pertains to record, hence needs no comments.
6. Para No 6 needs no comments, However detail reply of the grounds is as under:

GROUND:

- A. Para A is incorrect baseless against fact & law as the respondents acted in accordance with law, hence denied.
- B. Para B is incorrect, baseless against facts, as the appellant has been treated in accordance with law and rules, and the respondents have not violated Article -4 & 25 of the Constitution of Islamic Republic of Pakistan 1973, hence denied.
- C. Para C is incorrect, baseless, against facts, as the answering respondent being responsible government officer acted in accordance with law, and issued the removal Order according to law and rules, hence denied.
- D. Para D is incorrect, baseless, against facts, as the respondent fulfill all codal formalities as well as conducted De-novo inquiry and then the appellant has removed from Service on 10-04-2018, hence denied.

(Copy of Removal Order as Annexure D)

- E. Para E is incorrect, baseless, against facts, as the respondents acted in accordance with law and rules, hence denied.
- F. Para F is incorrect, baseless, against facts, as the respondent compliance the judgment of this honorable Service Tribunal, and has conducted De-novo inquiry, later on the respondent has issued a letter dated 15-02-2018, explanation regarding delay in the De-novo inquiry in the service appeal No 670/2014, and the Inquiry Officer requested kindly


be given more time for re-gather/collect conclusive Evidence and the Order dated 1004-2018 is tenable in the eye of law and is liable to be maintained, hence denied.


(Copies of Letters are as Annexure A & B)


- G. Para G is incorrect, thoroughly explained supra in the preliminary objections as the appellant is not entitled for re-instatement as well as all back benefits, hence denied.
- H. That the respondent seeks permission to raise additional grounds at the time of arguments.

It is therefore humbly prayed that in the light of above facts, the appeal may please be dismissed with cost.

Respondents No 1 & 3


Director (E & SE) Department
KPK, Peshawar


District Education Officer
(Male) Mardan


Secretary (E & SE) Department
KPK, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1297/2019

Mohammad Qayum, Ex Chowkidar, GPS Bakhshali, Tehsil and District Mardan
.....Petitioner

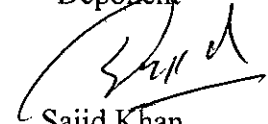
Versus

The Secretary (E&SE) Department KPK, Peshawar & Others..... Respondent

AFFIDAVIT

I, Mr Sajid Khan Litigation Officer Education Department Mardan do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted by respondents No 1 & 3 are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Deponent



Sajid Khan

16101-6005318-5

Annex A - 5

1

DISTRICT EDUCATION OFFICER
(MALE) MARDAN.

No. 1368 / Dated 15/11/2018.

To:

The principal,
GHSS No 1,
Mardan.

Subject: Explanation regarding delay in de novo enquiry, in service appeal No 670/2014 dated 12-09-2017 within the stipulated period.

I am directed to refer to the subject cited above that you have been nominated for De novo enquiry in the case of Muhammad Qayyum Ex-chowkidar GPS Bakhshali Mardan, by this office but your report is still awaited.

In this connection you are directed to explain that why did not submit your inquiry report up to date.

9
District Education Officer
(Male) Mardan.

15/11/18

Anex B (6) (5)

2

OFFICE OF THE PRINCIPAL
GOVT: SHAHEED ADNAN ARSHAD
HIGHER SECONDARY SCHOOL NO.1
MARDAN.

No. 57 Dated 27-02 /2018.



To

The District Education Officer
Male Mardan.

A 27-2-18

Subject:- OFFICE ORDER/ENQUIRY.

Memo,

Reference your Endst: No 8000-A dated 21-09-2017. It is stated that the file provided by SDEO (Male) Mardan on 26-02-2018 in connection with the leave case in respect of Mr. Muhammad Qayum chowkidar GPS Bakhshali is inconclusive and has raised So many questions. The undersigned needs to re gather conclusive evidence.

It is therefore requested that the undersigned may kindly be given a week time. So that accurate conclusion could be drawn.



07/02/18
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Principal
Govt: Shaheed Adnan Arshad,
Higher Secondary School No.1
Mardan.

~~Mardan~~ - (6)

Annex C 7

(15)



GOVT: SHAHEED ADNAN ARSHAD
HIGHER SECONDARY SCHOOL NO.1
MARDAN.

No. 65 Dated 03/03/2018.

To

The District Education Officer
(Male) Mardan.

Subject: - ENQUIRY REPORT

Enquiry Officer: - FARMANULLAH KHAN.
Principal GSAHSS No, 1 Mardan.

Place of Enquiry: - GPS Bakhshali.

Procedure: - INTERVIEW + RECORD EXAMINATION+QUESTIONARE

Proceeding:-

In compliance with the directives of the DEO (M) Mardan under Endst: No.8000-A dated 21-09-2017 the undersigned visited GPS Bakhshali on 04-10-2017.

The head teacher Mr. Abdul Wadood was present in the school. Mr. Muhammad Qayum Ex-Chowkidar was also directed to appear before the inquiry officer at GPS Bakhshali.

The head teacher was asked to produce the record of leave case/personal file i,r,o Mr,Muhammad Qayum but he said that he needs time to locate the file because he was not in charge of the school at the time when Mr. Muhammad Qayum applied for the leave. Repeated contact were made (Telephonic) with the head teacher but he failed to provide the relevant record. After about a month's time Mr. Abdul Wadood told the undersigned that the record of leave case in respect of Mr. Muhammad Qayum, Admission with drawl register and some other record of the school is missing.

During the visit of GPS Bakhshali the undersigned had summoned Mr. Muhammad Qayum. He told the undersigned that along with other domestic problems he had to look after his seriously sick mother for which he was in need of leave for long. For this reason he applied for leave w,e,f 15-11-2011 to 14-11-2013. When asked that had he left the duty place after the leave was sanctioned. He replied in negative saying that he had no time to wait for the leave to be

DACD - 102
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sanctioned. He produced a copy of the application submitted for leave (See Annexure--A) accompanied by the copies of documents showing that his mother had been hospitalized in Jinnah Post Graduate Medical Center Karachi w,e,f 03-04-2012 to 28-06-2012 (See annexure--B).

Soon after the visit of GPS Bakhshali the undersigned went to office of the SDEO primary Mardan to examine the relevant record. But the SDEO Mr. Abdul Haleem told the undersigned that he cannot produce the required record immediately because he took over charge as SDEO on 11-11-2016.

The undersigned kept searching for the record to examine whether the codal formalities had been fulfilled by the DEO office to remove Mr. Muhammad Qayum from service or not. In this connection the undersigned had a telephonic conversation with Mr. Farhad Bacha the then ADO circle Gujrat (Mardan). He admitted that Mr. Muhammad Qayum had submitted an application for leave recommended and forwarded by Mr. Khaista Gul the then head teacher GPS Bakhshali. During the conversation he disclosed that Mr. Muhammad Qayum had gone abroad immediately after submitting the application for long leave.

In pursuit of the relevant record the undersigned had a meeting with Mr. Khaista Gul the then head teacher GPS Bakhshali. He was served with a questionnaire. He told the undersigned that Mr. Muhammad Qayum was a careless Govt; servant he never performed his duty well. One day he submitted the application and the next day he flown to Saudi Arabia (The reply of Questionnaire is annexed as--C). He told the undersigned that the matter was brought into the notice of DDO.

Responding to which the DDO directed Mr. Muhammad Qayum to attend the o/o DDO in person with original CNIC vide letter No. 3469/C-IV leave file dated 08-12-2011 (See annexure--D). But by then Mr. Muhammad Qayum had flown to Saudi Arabia.

In light of the conversation with Mr. Farhad Bacha the then ADO circle Gujrat Mardan and Mr. Khaista Gul head teacher GPS Bakhshali the undersigned made a contact with the deputy director FIA Immigration Airport Peshawar to confirm that Mr. Muhammad Qayum had actually been to Saudi Arabia. The documents received from deputy director FIA revealed that Mr. Muhammad Qayum had been to Saudi Arabia w,e,f 19-01-2011 to 09-01-2014 (See Annexure-E).

The question of verification of the office record still remained un answered. The matter was brought into the notice of the DEO (M) Mardan. He strictly directed the SDEO primary to provide the record to the inquiry officer. The long awaited copy of the file of the leave case in respect of Mr. Muhammad Qayum was provided to the undersigned on 26-02-2018.



(9) (S) (B)

According to the file provided by SDEO Primary Mardan Mr. Muhammad Qayum Ex-Chowkidar submitted an application for leave with effect from 15-11-2011 to 14-11-2013 on 10-11-2011. He needed leave due to his domestic problems. The application was recommended and forwarded by the head teacher to the ADO circle Gujrat. The same was forwarded by ADO circle Gujrat to SDEO Primary Mardan.

FINDINGS.

On 08-12-2011. The SDEO Primary directed Mr. Muhammad Qayum through head teacher GPS Bakhshali to attend the office of SDEO in person with his original CNIC vide letter No.3469/C-IV leave file dated 08-12-2012.

On 02-06-2012 Mr. Bahadar Khan Marwat the then DEO (M) Mardan through AD Regional Information office published show cause notice in News paper daily Mashriq and Express asking Mr. Muhammad Qayum to appear before the DEO and give solid reason for his absence.

On 26-07-2012 the DEO (M) Mardan issued removal order of Mr. Muhammad Qayum without following the due process of sending Explanation, show cause, charge sheet upon his home address.

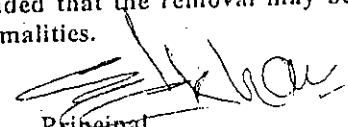
There is no other document in the file showing that correspondence was made with Mr. Muhammad Qayum which means that the record is inconclusive about fulfilling the codal formalities. The undersigned also found that Mr. Muhammad Qayum is at fault. As per rule he had to wait till the leave was sanctioned (See Annexure--F-). Beyond that he was not supposed to leave the station without prior permission of the competent authority (See Annexure-G).

Since he was going abroad therefore he was required to apply for Ex-Pakistan leave along with an affidavit that he would not indulge in any activity/work aimed at financial benefits. To justify his absence he produced fake documents showing that his mother was hospitalized w,e,f 03-04-2012 to 28-06-2012 where as he was in Saudi Arabia during this period.

RECOMMENDATION.

Keeping in view the record produced by Mr. Muhammad Qayum Chowkidar and SDEO Primary (as well as the leave rules) the undersigned has reached to the conclusion that Mr. Muhammad Qayum may be considered willfully absent from duty w,e,f 15-11-2011 to 09-01-2014. Therefore he is liable to be removed from service.

However the record shows that codal formalities have not been fulfilled by the office of the DEO (M) Mardan It is therefore recommended that the removal may be brought into existence only after fulfilling all the codal formalities.


Principal

Govt: Shaheed Adnan Arshad
Higher Secondary School No.1
Mardan.

Annexure - 1 (2) 10



OFFICE OF THE DEPUTY DIRECTOR
FEDERAL INVESTIGATION AGENCY
IMMIGRATION AIRPORT PESHAWAR
PH: 091-9213372

No. FIA/Immigration/2018/63

Dated: 20-02-2018

To,

The Principal
Govt. Shaheed Adnan Arshad
Higher Secondary School No. 1
Mardan

Subject: TRAVELING HISTORY IN RESPECT OF MR. MUHAMMAD QAYUM CHOWKIDAR.

Please refer to your office letter No. 50 dated 19-02-2018 on the subject noted above.

Enclosed please find herewith Travel History in the name of Mohammad Qayum s/o Mr. Zairaqt Mohammad holder of CNIC No.16101-1180386-1, provided by Assistant Director IBMS Peshawar Airport for kind perusal and further necessary action.

Encl: (As above)

DEPUTY DIRECTOR / FIA
IMMIGRATION BKIA PESHAWAR

~~Amir D-10~~ (11)

IBMS TRAVEL HISTORY REPORT



Name: MUHAMMAD QAYUM
Father/Husband Name: ZIARAT MUHAMMAD
Personal Number: 1610111803861
Birth Date: 05-OCT-79
Nationality: PK

Document Number	Event Date	Flight No	Entry Status	Name	Location Name
BE4153861	19-NOV-11	SV709	departing		Jinnah International Airport Karachi
BE4153861	09-JAN-14	QR608	arriving		Peshawar International Airport

سوالنامہ از حالت ستر عمل 10
بابت انکوائری متعلقہ محرقیوں کو کیڈر
GPS کشتالی ضلع مردان

Annexure

سوال نمبر ایک تیس سے چھ تہم میں تسينات ہيں ؟

جواب۔ ہيں 28 دسمبر 1974 سے چھ تہم ميں نرائن سرائيم سے رہا تھا
2014-12-5 کو رٹائرڈ ہوگيا ہوں۔

سوال نمبر 2 چي چي ايس کشتالي ميں آپ کي تسينات کب سے پي

جواب۔ 22 دسمبر 2004 سے 5 دسمبر 2014 تک

سوال نمبر 3 کيا آپ محرقیوں نامي کسي شخص کو جانتے ہيں ؟

جواب۔ چي ہيں

سوال نمبر 4۔ اگر جانتے ہيں تو کس حوالے سے ؟

جواب۔ وہ ميرے ساتھ ميٹرو کیڈر آ رہا تھا۔

سوال نمبر 5 حيری اطلاع کے مطابق محرقیوں آپ کي مالتی ميں چو کیڈر آ رہا آپ

آس کي ڈروٹی ميں کيسا بایا۔

جواب۔ سارا وقت غفلت ميں گزارا۔ ڈروٹی اجن طریقے سے

Khan

Retd PS HT
GPS Bakhshali
P.T.O

سوال نمبر 12 - کیا محمد قیوم نے آپ کو بھیٹی کی درخواست دی تھی

جواب - جی ہاں۔ مگر تاج بھیٹی کی درخواست دیکر میں نے سکول سے نو ڈیڑھ گھنٹہ دہرائے۔

سوال نمبر 13 - کیا محمد قیوم جو لکھنؤ کے رہنے والے ہیں، ہمراہ بیان حلفی جمع

کرائی تھی۔
جواب - نہیں۔

سوال نمبر 14 - جب محمد قیوم نے آپ کو دو سال کی بھیٹی کی درخواست دی تو کیا

آپ نے اسے بتایا تھا کہ بھیٹی کی منظوری کے بغیر آپ سکول نہیں چھوڑ سکتے؟

جواب - جی ہاں۔ میں اسے سختی سے تاکید کرتا تھا کہ آپ بھیٹی منظور کرنے کے بغیر نہیں جا سکتے۔

سوال نمبر 15 - آپ نے جو درخواست (Letter) SDEO پر اٹھری مردان

کو بھیجی ہے اس پر کیا کارروائی ہوئی؟
جواب - دفتر سے لیٹر ملا کہ وہ قیوم خود دفتر آئے۔ اور اپنا اعلان تہائی ماہ

ہمراہ لائے۔ جب ہم نے ان کے گھر سے پتہ کیا تو معلوم ہوا کہ وہ سکول کے قریب جا چکے ہیں۔

سوال نمبر 16 - پچھلے دو تین مہینوں سے میں ہسپتال میں کمر جی پی ایس کے تحت

سے محمد قیوم کو لپیٹ کر فائل فائڈ کرنا تھا لیکن بقول اس کے کوئی فائل وہاں موجود نہیں تھی۔ اب یہ فائل کہاں سے آئی۔
جواب - میں یہاں سے نہیں جانتا۔ وہاں سے آئی۔

Handwritten signature/initials

سرور جناب ایگزیکٹو ڈائریکٹر آفیسر انچارج سیکشن

Annexure - A

تعداد - درخواست برائے لائسنس

جناب عالی

گزر رہی ہے کہ مسائل کو ریزولو کرنا اور اس کے لئے سہولتیں فراہم کرنے میں بطور حوصلہ دار ایسی ڈیوٹی انجام دے رہا ہے۔ اس لئے اس کے لئے سہولتیں فراہم کرنے کے لئے درخواست ہے۔

ماحولیاتی خدمت میں التماس ہے کہ مسائل کو دو سالہ 2011-2013 تک دینے کے احکامات بعد فرما کر مشکور و تحنون فرمائیں۔

التماسی

M. Anwar

محمد قیوم جوگیدار جی بی ایس جناب عالی

Recommended and forwarded to ADD circle for
with provision of a suitable replacement

Handwritten signature
2011
S. Baksheli
(Mardas)

Recommended and forwarded to
D.O. for nodan for
M.A. Please

Handwritten signature
Asst. District Officer
(B&I) Mardas

Annexure ~~D~~

(7) (15)

OFFICE OF THE DEPUTY DISTRICT OFFICER (MALE) PRIMARY MARDAN.

No: 3468/10-IV Leave File.

Dated: 21/12/2011.

To,

The Head Teacher GBS,
Rakhshali Mardan.

SUBJECT:- LONG LEAVE. W. & G. 15-11-2011 to 14-11-2013

Re:

Ref. application no 187 dt. 3-12-2011

You are hereby directed to direct Mr. Mohammed Qayum
Chowkidar GBS, Rakhshali Mardan may be direct. to attend this office
on any working day alongwith original CNIC on the subject noted
above for further p/action.

~~DEPUTY DISTRICT OFFICER,
(MALE) PRIMARY MARDAN.~~
8/12/11

Encl: No: 1/-

Copy to the:-

- 1. ADO, circle Gujrat Mardan.

SR
DEPUTY DISTRICT OFFICER,
(MALE) PRIMARY MARDAN.

Muth-Wagar,
I keep in the record
and hand over one photo copy
to M. Qayum for information.
16/12/11

~~Annexure - 1~~

16

4

NOTIFICATIONS

3. It has also been decided that the Provincial Governments will continue to exercise the powers to grant leave, including leave ex-Pakistan, upto 120 days to the officers of All Pakistan Unified Cadre working under them. Applications for leave in excess of 120 days shall be referred to the Establishment Division.

4. This supersedes Establishment Division's O.M. No. 7/9/79-C.I, dated 4-6-1979 and No. 7/27/79-C.I, dated 15-4-1980.

5. The above instructions may be brought to the notice of all concerned for compliance.

[Authority. - Estab. Division's O.M. No. 10/22/83-R.2, dated 18-11-1985.]

Bar against leaving place of duty without waiting for sanction of leave

It has been observed that the civil servants applying for grant of leave, leave their offices/places of duty without waiting for actual sanction of the leave applied for. The attention of Ministries /Divisions is invited to F.R. 67 wherein it is clearly stated that leave cannot be claimed as of right. Thus an application for leave should not be anticipated as grant of leave. It should therefore, be brought home to the civil servants serving under the control of Ministries/Divisions that if they apply for grant of leave, they must wait for sanction of leave and should not leave the place of their duty before the leave applied for is actually granted by the competent authority. Non-compliance of these instructions might warrant action on account of mis-conduct under the relevant rules.

[Authority. - Estt. Division's O.M. No. 10/22/83-R. 2, dated 12-8-1985.]

Option for Encashment of L.P.R.

Reference Finance Division's O.M. No. F.1(19)R-3/83, dated 11-7-1984 (Annexure), it is stated that in case the leave of any kind including/Extra-ordinary leave without pay is taken during the

~~Annex~~ (76)
Annex D

(17)

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN

OFFICE ORDER

WHEREAS, Mr. Muhammad Qayum s/o Ziarat Muhammad, Ex-Chowkidar GPS Bakhshali Mardan r/o Gharib Abad Village Khairabad Mardan remained willful absent from duty with effect from 15-11-2011 till the date and through reliable sources you are reported to be abroad without any sanction of leave/permission of the Competent Authority.

AND WHEREAS, a departmental inquiry was constituted against you to find out the facts and figures.

And WHEREAS, you did not appear before the inquiry committee and failed to produce any defense in your support, and therefore the inquiry committee recommended you for removal from service.

And WHEREAS, a show cause notice was issued on your home address vide letter No. 3836-38 dated 27-03-2012 through Muhammad Naeem PST.

And WHEREAS, a show cause notice was published in 02 daily newspapers, which you did not respond.

AND WHEREAS You have submitted an application for one month time on 12-06-2012 but you did not attend this office upto 21-07-2012.

AND WHEREAS the competent authority being satisfied that the charges against you are proved, ordered your removal from service w.e.f 15-11-2011.

AND WHEREAS, in the compliance of judgment of Honorable Khyberpakhtunkhwa Service Tribunal Peshawar announced on 19-02-2017 in appeal No.670/2014 the responded department conducted De-novo inquiry.

AND WHEREAS, You Mr. Muhammad Qayum s/o Ziarat Muhammad, Ex-Chowkidar GPS Bakhshali Mardan remained willful absent from duty w.e.f 15-11-2011, the charges against you are proved.

AND WHEREAS, You Mr. Muhammad Qayum s/o Ziarat Muhammad found guilty of habitual absenting yourself from duties without prior approval of leave under rules-3(d) of the khyberPakhtunkhwa Govt servants E&D rules 2011.

Now in exercise of the power conferred under khyberPakhtunkhwa Govt servants E&D rules 2011 (4b-iii), the undersigned being Competent Authority is pleased to impose the major penalty of Removal from Service upon You, Mr. Muhammad Qayum Ex-Chowkidar GPS Bakhshali with immediate effect.

(Signature)

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

Endst No. 3018-19 /P/F Dated: 10-4-2018

copy forwarded for information and necessary action to the:-

1. Director E&SE Education KPK, Peshawar.
2. DAO Mardan
3. SDEO(M) Mardan with the remarks to made entry in his service book.
4. Mr. Muhammad Qayum s/o Ziarat Muhammad, Ex-Chowkidar GPS Bakhshali R/o Gharib Abad Khairabad.(Registry)

(Signature) 9/5
District Education Officer
(Male) Mardan
29/3/18

Successive Inquiries.

Appellant

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 831/2012

Date of Institution ... 11.07.2012

Date of Decision ... 29.08.2017

Zulfiqar Ali Shah Ex-H.C of Police, Chitral son of Sarfaraz Shah, R/O Kuju, Tehsil and District, Chitral. ... (Appellant)

VERSUS

1. The D.I.G of Police, Region-III at Saidu Sharif, Swat. (Respondents) and another.

MST. UZMA SYED
Advocate ... For appellant.

MR. MUHAMMAD ADEEL BUTT,,
Addl. Advocate General ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. AHMAD HASSAN ... MEMBER

JUDGMENT

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

FACTS

2. The appellant impugned his dismissal order dated 25.4.2012, against which he filed a departmental appeal on 06.05.2012 which was not responded to and hence the present appeal before this Tribunal on 11.07.2012. The proceedings against the appellant were initiated and concluded under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000.

The appellant was charged mainly on the ground of registration of a criminal case against him which ended in his conviction. After serving the conviction, the appellant approached this Tribunal in the first round and this Tribunal vide judgment dated 07.07.2009 reinstated the appellant in service with the direction to the department to conduct and conclude the enquiry within a period of two months after affording opportunity of defence and fulfilling the elements of due process. The department initiated disciplinary proceedings on 27.01.2010 which culminated into impugned order dated 25.4.2012. The department undertook 3 different enquiries against the appellant. The first two enquiries had recommended exoneration of the appellant but final enquiry report recommended imposition of major penalty upon him.

ARGUMENTS

3. The learned counsel for the appellant argued that since the criminal case did not involve the charge of corruption or moral turpitude, this Tribunal in its judgment dated 07.07.2009 ordered the department to follow the procedure given in Section-3-A(2)(b) of the said Ordinance. That the department without following the elements of due process, conducted three enquiries. The first two enquiries went in favour of the appellant whereas the third enquiry was conducted in order to punish the appellant. That the whole proceedings of the department show that the department was bent upon imposition of penalty on the appellant. That no reasons much less the plausible have been shown by the competent authority for his disagreement with the first two enquiries. That no charge sheet and statement of allegations were issued to the appellant on any of the occasions. That no right of defence was afforded to the appellant nor right of cross-examination was given to him. That the department concluded the enquiry

after almost three years in violation of the order of this Tribunal and in this respect the learned counsel for the appellant relied upon a judgment reported as 2017-PLC(C.S) Note-20. The learned counsel for the appellant also relied upon another judgment reported as 2004-SCMIR-316 in order to highlight on the successive enquiries conducted without assigning any valid reason cannot be made basis for the imposition of penalty to the delinquent.

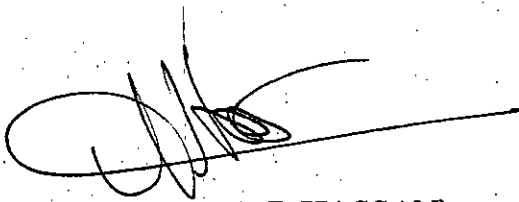
4, On the other hand, the learned Addl. Advocate General argued that the appellant was convicted by a court of law for a considerable period of 7 years R.I and this conviction was maintained by the august Supreme Court of Pakistan. That the department under the directions of this Tribunal has conducted the enquiry in accordance with letter and spirit of the Ordinance, 2000. That there was no occasion to enter into proof of factual controversy as the whole case is based on the judgment of a court of law. That it would be highly embarrassing for the department to continue with a servant who had undergone material conviction.

CONCLUSION.

5. The non honoring of the time period of two months in conclusion of enquiry is fatal to the outcome of the departmental proceedings in the light of the judgment pressed into service by the learned counsel for the appellant. The conduct of the successive enquiries by the department without any plausible reason is an added factor which marked the validity of the enquiry proceedings and specially when no reason has been shown by the authority. If the arguments of the learned AAG are taken into consideration that the department was only to conclude on the basis of judgment of the court of law then it was very easy for

the department to have concluded the same within a period of two months. But the department violated the time period just to get a report against the appellant.

6. In view of the above discussion, this appeal is accepted and the appellant is reinstated in service. The intervening period be converted into kind of the leave due. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER



(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED

29.08.2017