


13.06.2022

None present on behalf petitioner. Mr. Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr. Shuja Ali ADEO for the respondents present.

Respondents submitted reinstatement order dated 11.06.2022 vide which the petitioner has been reinstated conditionally as PST at GGPS Maira Tall Circle Abbottabad without back benefits, subject to the outcome of CPLA.

In view of the above, the instant petition stands disposed off. No order as to costs. File be consigned to the record room.

Announced.
13.06.2022

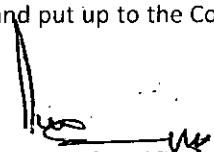


(Fareeha Paul)
Member (E)
Camp Court A/Abad

D

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 294/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	19.05.2022	<p>The execution petition of Mt. Ayesha Altaf received today by registered post may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	25-8-22	<p>This execution petition be put up before Single Bench at A.Abad on <u>13-6-22</u>. Original file be requisitioned. Notices to the parties be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>



OFFICE OF THE DISTRICT EDUCATION OFFICER
(FEMALE) ABBOTTABAD

REINSTATEMENT

Incompliance with Khyber Pakhtunkhwa Service Tribunal Peshawar Camp Court Abbottabad vide Judgment dated 25/01/2022 in Service Appeal No. 473 A/2019, Mst. Ayesha Altaf D/O Ex- PST is reinstated conditionally as PST BPS-12 at GGPS Maira Tall Circle Abbottabad without back benefits subject to the outcome CPLA with immediate effect.

TERMS & CONDITIONS.

1. No TA/DA is allowed.
2. Charge reports should be submitted to all concerned in duplicate.
3. She will be treated according to outcome of the CPLA. If the order passed by August Supreme Court against her, she will be terminated and will not be entitled for any pensionary benefits or any other back benefits.
4. She shall join her post within 15 Days after the issuance of this notification. In case of failure their appointment will expire automatically and no substitute appeal etc shall be entertained.
5. She will be governed by such rules and regulations as may be issued from time to time by the Govt.
6. District Account Officer Abbottabad should release her salary on the production of Duty Certificate duly signed by the SDEO Concerned and countersigned by the DEO(F) Abbottabad.

**DISTRICT EDUCATION OFFICER,
(FEMALE) ABBOTTABAD**

Endst: No. 4325-34 /Reinstatement

Dated. 11/6 /2022

Copy for information to the: -

1. Registrat Service Tribunal Peshawar.
2. Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. PS to Secretary Khyber Pakhtunkhwa E&SE Department Peshawar.
4. Deputy Commissioner Abbottabad.
5. District Monitoring Officer, EMA Abbottabad.
6. District Accounts Officer Abbottabad.
7. SDEO (Female) concerned.
8. Budget & Accounts Officer Local Office.
9. Officials Concerned.
10. Office Order File.

**DISTRICT EDUCATION OFFICER
(FEMALE) ABBOTTABAD**

BEFORE THE HONRABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR CAMP COURT ABBOTTABD.

EXECUTION PETITION NO 294 /2022

IN

SERVICE APPEAL NO 473-A/2019

**AYESHA ALTAF WIFE OF SHAHZADA MUHAMMAD FAISAL RESIDENT OF
MUKHTAR HOUSE, MUSA ZAI COLONEY, MIR PUR. TEHSIAL AND
DISTRICT ABBOTTABAD.**

PETITIONER

VS

**DIRECTOR OF ELEMENTARY & SECONDARY EDUCATION KPK PEHSAWR
& OTHERS**

RESPONDENTS

EXECUTION PETITION

INDEX REJOINDER

S. NO	DESCRIPTION-OF DCOUTMENT	ANNEXURE	PAGE-NO.
1.	Memo of Execution Petition alongwith certificate		1-2
2.	Copy of Impugned order dated 25-01-2022	"A"	3
3	Copy of judgment dated 25-01-2022	"B"	4-10
4	Photocopy of Application for implementation Tribunal order dated 25-01-2022	"C"	11


Ayesha Altaf (Ex-PST)
Petitioner in Person

0314-5023662

Dated: 05/2022.

I

BEFORE THE HONRABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR CAMP COURT ABBOTTABAD.



EXECUTION PETITION NO 294 /2022
IN
SERVICE APPEAL NO 473-A/2019

AYESHA ALTAF WIFE OF SHAHZADA MUHAMMAD FAISAL RESIDENT OF
MUKHTAR HOUSE, MUSA ZAI COLONEY, MIR PUR. TEHSIAL AND
DISTRICT ABBOTTABAD.....PETITIONER

VS

1. DIRECTOR ELEMENATARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA, PK PESHAWR.
2. DEPUTY DIRECTOR FEMALE, ELEMENTANRY AND SENCOEDNARY EDUCATION KHYBER PAKHTUNKHEA, PESHAWR.
3. DISTRICT EDCUATION OFFICER (FEMALE) ABBOTTABAD.
4. DEPUTY DISTICT EDUCATION OFFICER (FEMALE) ABBOTTABAD.
5. DISTRICT EDCUATION OFFICER (FEMALE) KOHISTAN).
6. ASSISTANT SUB-DIVISIONAL EDUCATION OFFICER ABBOTTABAD.

.....RESPONDENTS

**SUBJECT: APPLICATION FOR EXECUTION/IMPLIMENTAION OF
JUDGMENT DATED 25-01-2022, PASSED IN SERVICE APPEAL NO.
473-A/2019 BY HONORBLE SERVICE TRIBUNAL PESHAWAR, CAMP
COURT ABBOTTABAD.**

Respected Sheweth:

It is very humbly submitted as under.

1. That the Petitioner was appointed in education Department as PST vide appointment order No. 286-91 dated 02-12-2009, at District Kohisatn.
2. That after appointment Petitioner performed her duties with full devotion till the year 2013, Petitioner was adjusted/Transferred from District Kohistan to District Abbottabad vide order No.146 dated 27-01-2014.
3. That Petitioner was rapidly adjusted in different school in short time, lastly when the Petitioner was adjusted at GGPS Pattian Abbottabad, where the Petitioner applied for Medical leave.

4. That the services of the Petitioner were terminated vide Notification No.11649-54 dated 29-10-2015. (Photocopy of Notification is annexed as Annexure "A").
5. That Petitioner filed Departmental appeal against the impugned order, and Service Appeal No. 473-A/2019, before this Honorable Service Tribunal.
6. That Department appears before the Tribunal and submitted their reply. Honorable Service Tribunal accepted the Service appeal of the Petitioner dated 25-01-2022. (Copy of Judgment is annexed as Annexure "B").
7. That, Petitioner submitted an application along with verified copy of judgment on 25-01-2022 before the respondents but the respondents are fully denied to implement the said judgment and are raising the point for not implementation the said order that the Department has filed CPLA in the August Court Peshawar Registry against the judgment of KPK Service Tribunal, while August Court has neither issued any stay order nor suspended the judgment of this Honorable Tribunal. But according to the judgment of August Supreme Court, when the Hire Court will not suspend the lower court Judgment then the respondents are bound to implement the judgment of lower court. (Photocopy of application is annexed as Annexure "C").


It is therefore humbly prayed that respondents, once again may graciously be directed to implement the order dated 25-01-2022 with letter and spirit without creating any further hurdles.


Ayesha Altaf (Ex-PST)
Petitioner in Person

Dated: /05/2022.

CERTIFICATE:

Certified that the contents of instant Petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Tribunal.


DEPONENT
PETITIONER IN PERSON

Annexure "A"

3

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) AF

REMOVAL FROM SERVICE.

Whereas YOU Mst:Ayesha Altaf ,PST GGPS Hari Khater was proceeded following acts constituted inefficiency & misconduct under rule-3 sub rules (a), (b) and (c) of Khyber Pakhtunkhwa Govt: servants Efficiency & Discipline Rules 2011.

Whereas you have been keeping yourself absent from duty w.e.f 26-06-2014 up till now as reported by ASDEO circle Hajia Gali on 28/04/2015. Inquiry got conducted through Head mistress GGHS Sajikot (Havelian) & recommended to take disciplinary action under the rule ibid.

AND whereas according to rule 10 of Khyber Pakhtunkhwa Government servants (Efficiency & Discipline) Rules 2011 a final show cause Notice was served upon you vide No.1447 dated 25-08-2015 through daily news paper "Mahsib & Itthad Abbottabad dated 28/08/2015" where in you were directed to resume your duty and put forward your written defense if any as to why you may not be proceeded under E&D rules 2011 failing which an ex part decision shall be taken against you but you have neither resumed your duty nor submit any reply/response in this regard as yet.

Now THEREFORE In exercise of power conferred upon me under section 4(b)III of Khyber Pakhtunkhwa Govt: servants Efficiency and Discipline Rules 2011 I DEO(F) as competent authority do hereby impose major penalty "**Removal from Service**" upon Mst: Ayesha Altaf ,PST GGPS Hari Khater Circle Hajia Gali with effect from the date 26-06-2014.


(SAMINA ALTAF)
DISTRICT EDUCATION OFFICER
(FEMALE) ABBOTTABAD.

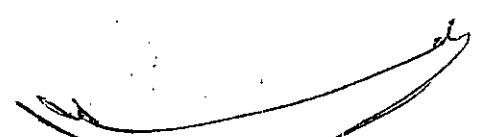
Endst:No. 11649-54 /EB-II P/F Mst: Asifa Shakoor,DM

dated 29/10/2015

Copy for information to the:-

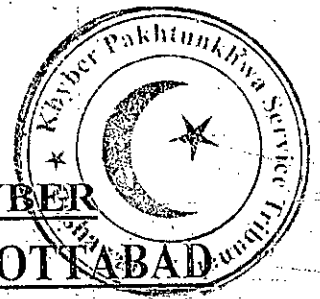
1. Director Elementary and secondary Education Khyber Pakhtunkhwa Peshawar.
2. District Account Officer Abbottabad.
3. SDEO (F) Abbottabad.
4. ASDEO Circle Hajia Gale.
5. Mst: Ayesha Altaf PST GGPS Hari Khater
6. Budget & Accounts Officer Local Office Abbottabad.


8/11/15


DISTRICT EDUCATION OFFICER
(FEMALE) ABBOTTABAD.

Amman 'B'

4



**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR CAMP AT ABBOTTABAD**

Appeal No. 473/2019

Ayesha Altaf wife of Shahzada Muhammad Faisal resident of Mukhtar House, Musa Zai Colony, Mirpur, Tehsil and District Abbottabad.

Khyber Pakhtunkhwa
Service Tribunal
...APPELLANT

VERSUS

Diary No. 380

Dated 25/3/2019

- 1) Director of Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 2) Deputy Director Female, Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3) District Education Officer (Female), Abbottabad.
- 4) Deputy District Education Officer, (Female), Abbottabad.
- 5) District Education Officer (Female), Kohistan.
- 6) Assistant Sub-Divisional Education Officer, Abbottabad.

...RESPONDENTS

Filed to-day

Registrar
25/3/2019

Re-submitted to-day
and filed.

Registrar
2/4/19

APPEAL U/S 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 AGAINST THE
OFFICE ORDER NO. 92/F.NO.136/(F).APPEAL
ABBOTTABAD, DATED 27.12.2018 VIDE WHICH
THE RESPONDENT NO.1 HAS REJECTED THE
DEPARTMENTAL APPEAL OF THE APPELLANT

ATTESTED

Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CAMP COURT ABBOTTABAD.

Service Appeal No:473/2019

Date of Institution 25.03.2019

Date of Decision 25.01.2022



Ayesha Altaf W/o Shahzada Muhammad Faisal R/o Mukhtar House, Musa Zai Colony, Mirpur, Tehsil and District Abbottabad. ... (Appellant)

VERSUS

Director of Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar and five others. ... (Respondents)

SARDAR SHAHZAD AKBAR,
Advocate

For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

For respondents

MIAN MUHAMMAD
MR. SALAH-UD-DIN

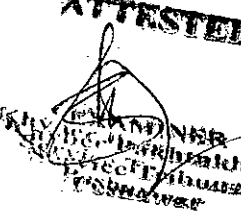
MEMBER(Executive)
MEMBER(Judicial)

JUDGEMENT

MIAN MUHAMMAD, MEMBER(E):- The instant service appeal has been instituted against appellate order dated 27.12.2018 vide which departmental appeal of the appellant against the impugned order of her removal from service dated 29.10.2015, was rejected. Both the orders have been challenged and are under scrutiny for adjudication before this Bench.

ATTESTED

02. Brief fact, as per memorandum of appeal, are that the appellant was serving as PST (BS-07) in the respondent-department (Kohistan) since 02.12.2009. She was last posted/adjusted at GGPS Pattian (Hajia Gali circle) Abbottabad vide transfer order dated 11.07.2014 when she applied for two years medical leave on 16.04.2015. She was however, departmentally proceeded against for willful absence and awarded major penalty of "removal from service" vide impugned order of

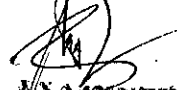


respondent No.3 dated 29.10.2015; w.e.f 26.06.2014. Her departmental appeal submitted against the impugned order was rejected on 27.12.2018 where-after she preferred the service appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

03. Notices were issued to official respondents to submit their reply/parawise comments alongwith relevant documents. They submitted the requisite reply/parawise comments in support of their stance and rejection of the assertions of appellant. They were represented through learned AAG. We have heard arguments of the learned counsel for appellant as well as learned AAG and thoroughly perused the case file with their assistance.

04. Learned counsel for the appellant started arguments with the point that the appellant has not been treated as per law, norms and rules. One sided proceedings were initiated against her for absence despite the fact that she had submitted application for two years medical leave on 16.04.2015 due to the reason that she had been suffering from rheumatoid arthritis (joints pain) and was taking medical treatment since April, 2014. However, instead of considering her application for medical leave, she was removed from service vide impugned order dated 29.10.2015 simply on the basis of one sided inquiry where no charge sheet had been served on her and no opportunity of personal hearing afforded to her. In support of his arguments on medical leave, he relied on PLJ 2017 Tr. C (Services) 100 and PLJ 2017 Tr. C (Services) 51. It was further contended that she submitted departmental appeal against the impugned order on which the appellant authority ordered to conduct enquiry. However, the appellate authority (respondent No.1) was misguided by the Competent Authority (respondent No.3) on the ground that recommendation of the inquiry was not up to the mark and could not take any step.

ATTESTED


 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Fact of the matter is that the inquiry officer came to the conclusion that proper inquiry procedure was not adopted and recommended to remand the case for proper procedure of inquiry. On the delay in submission of departmental appeal and question of limitation, learned counsel for the appellant argued that limitation actually starts from the date of communication of an order and in the instant case, fate of her departmental appeal was ascertained through whatsapp on 18.02.2019 because she had not been formally communicated anything in this respect. To strengthen his arguments, he relied on 2010.PTD; 989, 2016 SCMR 189 and PLJ 2017 Tr.C (Services) 214. At the end of his arguments, learned counsel for the appellant contended that the impugned order dated 29.10.2015 and 27.12.2018 have been issued unlawfully, illegally in exercise of misuse and abuse of authority, are ultra vires, void abinitio and unconstitutional may graciously be set aside and the appellant be reinstated in service with all back benefits.

05. Learned Assistant Advocate General on the other hand contended that the appellant was appointed as PST in Kohistan on 02.12.2009 which is Union Council based appointment. She was adjusted at GGPS Bar Yarjool Abbottabad vide order dated 19.10.2010. She was absent from duty w.e.f 26.06.2014. Her departmental appeal submitted in the department is undated due to which the question of limitation arises. As the appellant was absent from duty without sanction of leave by the competent authority therefore, she was proceeded against under the rules and has not been discriminated but treated as per law and rules. The service appeal being devoid of merit is liable to be dismissed.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

06. It is evident from record that the appellant was initially appointed as PST (BS-07) in District Kohistan on 02.12.2009. She was adjusted against the post of PST at GGPS Bar Yarjool Abbottabad vide adjustment order dated 19.10.2010. She

was under transfer to GGPS Lari Sydain Abbottabad vide order of respondent No.1 dated 31.07.2012 when she was posted against the vacant post of PST at GGPS Nari De Khatar Abbottabad vide adjustment order of respond No. 3 dated 28.06.2014. Just after 13 days, she was shown as under transfer to GGPS Hari DC Khatar and now posted at GGPS Pathian vide yet another adjustment order dated 11.07.2014 but interestingly she had been declared as absent since 26.06.2014 in the impugned order dated 29.10.2015. It was at the last station of her posting i.e GGPS Pathian that the appellant submitted an application to respondent No.3 on 16.04.2015 for two years medical leave on account of rheumatoid arthritis and medical leave applied for cannot be refused. Now the available course of action with the respondents was to have referred her to standing medical board for medical examination/medical opinion under Rule-13 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981.

07. So far the enquiry proceedings against the appellant are concerned the impugned order indicates in Para-2 that enquiry was conducted through Head Mistress GGHS Sajikot (Havellian) who recommended to take disciplinary action under the rules ibid. However, this inquiry seems to have been a preliminary/fact finding enquiry under Rule 10(3) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 where-after no formal enquiry in the prescribed manner was conducted under Rule-10 of the Rules ibid. Moreover, the show cause notice dated 04.12.2014 issued to the appellant does not mention to have provided copy of the inquiry report to the appellant as required under Rule-14(c) of the Rules ibid.

ATTESTED

08. The respondent-department (respondent No.1 as appellate authority) did only order inquiry against the appellant on 26.01.2018 when she submitted departmental


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

appeal against the impugned order dated 29.10.2015, on 27.08.2017 i.e after five months. But here too, no charge sheet/statement of allegations was framed and served on the appellant as per requirement of Rule-10 (b) of the Rules ibid. Even then, when the enquiry report was submitted by the enquiry officer and who identified/pointed out that proper procedure was not adopted before awarding her the penalty of removal from service, the appellate authority did not pass a speaking order and simply rejected her departmental appeal.

09. It is also pathetic to note that the respondents did not know the exact date of her absence as is evident from show cause notice dated 04.12.2014 and impugned order 29.10.2015. Show cause notice has shown her absence from duty w.e.f 20.08.2014 whereas the impugned order reflected absence period from 26.06.2014 which has a contradictory stance and a gap of about two months. Moreover, the show cause notice does not mention that formal inquiry being dispensed with under Rule-7 and it is issued under rule-5 of the Rules ibid.

10. It can therefore be safely concluded that no charge sheet/statement of allegation was ever framed and served on the appellant. No opportunity of personal hearing was afforded to the appellant as her fundamental right and requirement under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. So much so that the earlier enquires conducted against the appellant on 28.04.2015 and 26.01.2018 were nothing more than the nature of preliminary or fact finding enquires. The appellant has been condemned unheard and the ends of justice, legal norms and rules have not been met before awarding her the major penalty of removal from service thus rendering the entire exercise as a serious miscarriage of justice. Reliance is placed on 2000 SCMR 1743 AND 2007 PLC (CS)1272 in this respect.

ATTESTED



EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

10

11. As a sequel to discussion in the preceding paras, we have arrived at the conclusion that neither inquiry has been conducted in the prescribed manner nor the appellant provided fair opportunity of self defence before awarding the major penalty of removal from service. We are therefore constrained to allow the service appeal and reinstate the appellant in service, however the intervening period shall be treated as leave without pay under the principle of "no work no pay" Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

25.01.2022



(MIAN MUHAMMAD)
Member(Executive)
Camp Court Abbottabad.



(SALAH-UD-DIN)
Member(Judicial)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 25/01/22
Number of Words 2800
Copying Fee 30/-
Urgent _____
Total 30/-
Name of Copyist _____
Date of Completion of Copy 15/02/22
Date of Delivery of Copy 15/02/22

To

Amman

CC

Undersent No.

11

786

22-02-2022

The District Education Officer (Female)

Distt. Abbottabad.

Subject: Request for adjustment against PST Post under
Service Tribunal KPK appeal No. 473/19 decided 25.1.22

Honourable madam,

I have the honour to request your goodness
for adjustment and hope you kind honour
will consider my case sympathetically.

I was removed from service vide order
issued on 29.10.15.

I approached to Khyber Pakhtunkhwa
Service Tribunal vide appeal no 473/19.

The honourable tribunal accepted my
appeal vide order announced on 25.1.22.

I shall abide myself with the
rules and regulations in future
and serve to the best of my
abilities.

My domestic & financial problems
also need your sympathy.

Kindly adjust me against a PST
Post near Mirpur Abbottabad and
clalige.

Dated 21.2.22

Yours most obedient Servant
Ayesha Altaf B.Sc. P
Mirpur Abbottabad