

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR.**

**SCANNED  
KPST  
Peshawar**

Service Appeal No. 94/2019

Date of Institution ... 10.01.2019

Date of Decision ... 15.09.2021

Malang Jan, SCT (BPS-16),  
GHS Sokai, Mardan.

... (Appellant)

**VERSUS**

The Secretary Education (E&SE) Khyber Pakhtunkhwa, Peshawar  
and three others.

... (Respondents)

-----  
Mr. TAIMUR ALI KHAN,  
Advocate

--- For appellant.

MR. RIAZ AHMED PAINDAKHEL,  
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN

---

MEMBER (JUDICIAL)


MR. ATIQ-UR-REHMAN WAZIR

---

MEMBER (EXECUTIVE)

**JUDGMENT:**

**SALAH-UD-DIN, MEMBER:-**

  
Precise facts of the case are that the appellant was charged in criminal case bearing FIR No. 345 dated 28.07.2014 registered at Police Station Toru District Mardan, who was suspended from service w.e.f 28.07.2014 vide order dated 25.08.2014 and was ultimately removed from service vide order dated 09.01.2015. The service appeal of the appellant was allowed by this Tribunal vide judgment dated 20.04.2018 by reinstating the appellant in service, however it was held that the department would be at liberty to conduct de-novo inquiry within a period of 90 days after receipt of copy of the judgment and the issue of back benefits shall be

subject to the final outcome of the de-novo inquiry. On conclusion of the de-novo inquiry, District Education Officer (male) Mardan vide the impugned order dated 03.09.2018 held that the appellant has already been re-instated/adjusted against his original post w.e.f 20.04.2018, however the period of his abscondence w.e.f 28.07.2014 to 12.07.2016 (715 days) is counted as leave without pay while the period w.e.f 13.07.2016 to 19.04.2018 (648 days) is leave on half pay. It was also ordered that the pay drawn with effect from 28.07.2014 to 31.08.2014 (35 days) may be recovered from the appellant and deposit it in the government treasury. The appellant challenged the order dated 03.09.2018 through filing of departmental appeal, which was rejected vide order dated 30.11.2018 bearing Endorsement No. 9700/PF SCT dated 12.12.2018, hence the instant service appeal.

2. Notice was issued to the respondents, who submitted their comment, wherein they refuted the contentions of the appellant.

3. Learned counsel for the appellant has contended that the appellant was charged in criminal case vide FIR No. 345 dated 28.07.2014 under section 302 PPC Police Station Tour District Mardan and was suspended from service w.e.f 28.07.2014, therefore, in view of CSR 194-A, the appellant was to be considered as suspended till his acquittal of the criminal charge leveled against him, however the appellant wrongly and illegally removed from service vide order dated 09.01.2015; that the appellant was acquitted in the criminal case vide order dated 07.03.2017 and went to the department for joining his duty, however it was due to his wrongful removal from service, that the appellant could not join duty; that in view of FR-53, a government servant, during the period of his suspension is entitled to full amount of salary and all other benefits and facilities provided to him under the contract of service, therefore, the impugned order dated 03.09.2018 needs necessary modification. Reliance was placed on 2016 YLR 233, 2010 SCMR 984 and 1988 SCMR 993.

4. On the other hand, learned Assistant Advocate General for the respondents has contended that the impugned order has been passed by the competent Authority, strictly in accordance with law, hence need no modification; that the appellant has been treated as per law and rules, however he filed the instant service appeal with malafide intention, therefore, the same is liable to be dismissed with costs. Reliance was placed on 2017 PLC (C.S) 177 and judgment dated 18.02.2020 passed by this Tribunal in Service Appeal bearing No. 803/2018.

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 after charging of the appellant in criminal case bearing FIR No. 345 dated 28.07.2014 registered at Police Station Toru District Mardan, he was suspended w.e.f 28.07.2014, vide order dated 25.08.2014 passed by District Education Officer (Male) Mardan. The appellant was suspended from service on the ground of his involvement in criminal case but he was later on removed from service on the ground of absence vide order dated 09.01.2015. The service appeal of the appellant against the order dated 09.01.2015 was accepted by this Tribunal vide judgment dated 20.04.2018 by reinstating the appellant in service, however it was also ordered that the department would be at liberty to conduct de-novo inquiry within a period of 90 days of the receipt of copy of the judgment and that the back benefits shall be subject to the final outcome of the de-novo inquiry. It was in light of the de-novo inquiry that the impugned order dated 03.09.2018 was passed. A perusal of the said order would show that it does not reflect that the appellant was found guilty of charge of absence as was leveled against him. The order dated 09.01.2015, whereby the appellant was removed from service has been set-aside by this Tribunal vide judgment dated 20.04.2018 by reinstating the appellant into service and the impugned order dated

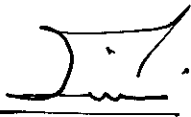


03.09.2018 would show that nothing is mentioned therein that the appellant was found guilty of the charge of absence as leveled against him. Similarly, the appellant has been acquitted in the criminal case, on the basis of which he was initially suspended from service. In these circumstances, the appellant is entitled to all back benefits particularly when nothing is available on the record that the appellant remained gainfully employed in any service during the period of his absence. Although the appellant has sought the relief of considering of the period from 13.07.2016 to 19.04.2018 as leave with full pay, however keeping in view the facts and circumstances of the case, the appellant is entitled to all back benefits. While deriving wisdom from judgment of august Supreme Court of Pakistan reported as 2010 SCMR 984, we are of the view that the Service Tribunal has got the powers to grant an effective or ancillary relief, even if, not prayed for.

7. In view of the above discussion, the appeal in hand is accepted by reinstating the appellant into service from the date of his dismissal and he is held entitled to all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
15.09.2021

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


  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)


ORDER  
15.09.2021

Appellant alongwith his counsel Mr. Taimur Ali Khan, Advocate, present. Mr. Sajid Khan, ADO (Litigation) alongwith Mr. Riaz Ahmed Pindakhel, 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 accepted by reinstating the appellant into service from the date of his dismissal and he is held entitled to all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
15.09.2021

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

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

09.12.2020

Due to COVID-19, case is adjourned to 01.03.2021 for the same as before.



Reader

01.03.2021

Due to COVID-19, the case is adjourned for the same on 01.06.2021.



READER

01.06.2021

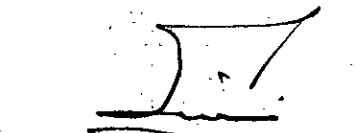
Nemo for the appellant. Mr. Sajid, ADO (Litigation) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Today's date was posted on Note Reader, therefore, notice for prosecution of the appeal be issued to appellant as well as his counsel and to come up for arguments before D.B on 15.09.2021.

*Handwritten notes:*  
Sajid  
22/6/21



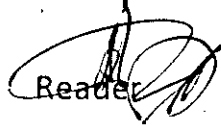
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

\_\_\_\_\_ .2020

Due to COVID19, the case is adjourned to  
12/8/2020 for the same as before.

  
Reader

12.08.2020


Due to summer vacations case to come up for the same on  
14.10.2020 before D.B.


  
Reader

14.10.2020

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

Former requests for adjournment that his counsel is  
busy before Hon'ble Peshawar High Court, Peshawar.  
Adjourned. To come up for arguments on 09.12.2020  
before D.B.

  
(Atiq-Ur-Rehman Wazir)  
Member

  
(Muhammad Jamal Khan)  
Member

13.12.2019

None for the appellant present. Addl: AG for respondents present. Due to general strike of the bar the case is adjourned. Case to come up for arguments on 12.02.2020 before D.B.

  
Member

  
Member

12.02.2020

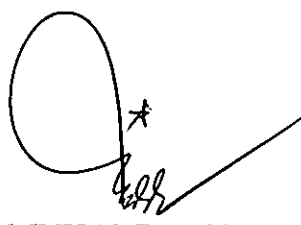
Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney alongwith Mr. Sajid Superintendent for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 18.03.2020 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

18.03.2020

Counsel for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. Sajid, Supdt for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 20.05.2020 before D.B.

  
(MAIN MUHAMMAD)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER



11.07.2019

Counsel for the appellant and Addl. AG alongwith Sajid ADEO for respondents No. 1 to 3 and Sajid Superintendent for respondent No. 4 present.


Representative of respondents No. 1 to 3 submitted Parawise comments while representative of respondent No. 4 still requests for adjournment. Last opportunity is granted to respondent No. 4 for submission of written reply on 04.09.2019 before S.B.

  
Chairman

04.09.2019

Counsel for the appellant and Mr. Usman Ghani District Attorney alongwith Muhammad Sajid, Superintendent for respondent No. 4 present.

Written reply on behalf of respondents No. 1 to 3 already placed on file. Representative of respondent No. 4 states the said respondent relies on the same. The appeal is assigned to D.B for arguments on 06.11.2019. The appellant may submit rejoinder, within a fortnight, if so advised.

Chairman 

06.11.2019

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney alongwith Shafiq Senior Clerk present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourn. To come up for arguments on 13.12.2019 before D.B.

  
Member

  
Member

08.04.2019 Counsel for the appellant and Addl. AG for the respondents present.

Learned AAG requests for time to procure the reply/comments from the respondents.

Adjourned to 09.05.2019 before S.B.

  
Chairman

09.05.2019 Appellant alongwith counsel and Mr. Usman Ghani, District Attorney alongwith Mr. Inayatullah, ADO for the respondents present. Written reply on behalf of respondents not submitted. Learned District Attorney requested for further adjournment. Adjourned to 17.06.2019 for written reply/comments before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER


17.06.2019 Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sajid Khan, ADO (Litigation) for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for adjournment. Adjourned to 11.07.2019 for written reply/comments before S.B.

  
(Muhammad Amin Khan Kundi)  
Member

04.03.2019

Counsel for the appellant Nazir-ur-Rahman present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving as Senior Certified Teacher in Education Department. He was involved in a criminal case under section 302 PPC vide FIR No. 345 PS Toru dated 28.07.2014. Due to involvement in criminal case major penalty of removal from service was imposed upon the appellant vide order dated 09.01.2015 on the allegation of absence. It was further contended that the appellant filed service appeal which was partially accepted vide order dated 20.04.2018 with the direction to respondent-department to conduct de-novo inquiry within a period of 90 days and the issue of back benefits will be subject to the outcome of de-novo inquiry. It was further contended the appellant was reinstated in service by the respondent-department for the purpose of de-novo inquiry. It was further contended that de-novo inquiry was conducted and after de-novo inquiry it was held by the competent authority vide order dated 03.09.2018 that the appellant was already reinstated against the original post in the same school, however, the absence period with effect from 28.07.2014 to 12.07.2016 (715) days was counted as without pay and the period with effect from 13.07.2016 to 19.04.2018 (647) days on half pay and pay drawn with effect from 28.07.2014 to 31.08.2014 (35 days) was ordered to be recovered from the appellant deposit in to Government Treasury. It was further contended that the appellant filed departmental appeal (undated) but the same was not decided hence, the present service appeal. It was further contended that since the appellant was reinstated in service therefore, the absence period and the intervening period was liable to be treated with pay/back benefits but the competent authority has illegally treated the said period as leave without pay and half pay.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days; thereafter, notice be issued to the respondents for written reply/comments for 08.04.2019 before S.B.

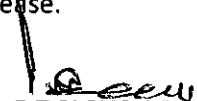


  
Appellant Deposited  
Security & Process Fee

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 94/2019


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	21/1/2019	<p>The appeal of Mr. Malang Jan resubmitted today by Mr. Taimur Ali Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>4-3-19</u>.</p> <p> CHAIRMAN</p> <p style="text-align: right;"></p>

The appeal of Mr. Malang Jan SCT GHS Sokai Mardan received today i.e. on 10.01.2019 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Copy of impugned order dated 3/9/2018 mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 67 /S.T,


Dt. 10 / 1 /2019.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Taimur Ali Khan Adv. Pesh.

Respected Sir,  
1- Copy of order dated 3/9/2018 is attached at page-17  
2- Removed  
3- Removed  
4- Removed

Resubmitted after compliance

  
21/01/2019.

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 94 /2019

Malang Jan

V/S

Education Deptt:

**INDEX**

S.No.	Documents	Annexure	P. No.
1.	Memo of Appeal	-----	01-04
2.	Copies of FIR and suspension order	A&B	05-06
3.	Copies of order dated 13.07.2016, order dated 17.10.2016 and order dated 07.03.2017	C,D&E	7-11
4.	Copy of order dated 09.01.2015	F	12
5.	Copy of judgment dated 20.04.2018	G	13-15
6.	Copies of order dated 17.05.2018 and order dated 03.09.2018	H&I	16-17
7.	Copies of departmental appeal and rejection order	J&K	18-21
8.	Vakalat Nama	-----	22

**APPELLANT**

THROUGH:

  
**(TAIMUR ALI KHAN)**  
**ADVOCATE HIGH COURT,**  
**&**

**ASAD MAHMOOD**  
**(ADVOCATE HIGH COURT)**

BEFORE THE KPK, SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 94 /2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 44

Dated 10-1-2019

Malang Jan, SCT (BPS-16),  
GHS Sokai, Mardan .

(APPELLANT)

VERSUS

1. The Secretary Education (E&SE) KPK, Peshawar.
2. The Director Education (E&SE) KPK, Peshawar.
3. The District Education Officer, (Male) Mardan.
4. The Secretary Finance, KPK, Peshawar.

(RESPONDENTS)

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APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974  
AGAINST THE ORDER DATED 30.11.2018  
COMMUNICATED TO THE APPELLANT ON 12.12.2018,  
WHEREBY THE DEPARTMENT APPEAL OF THE  
APPELLANT HAS BEEN REJECTED AGAINST THE  
ORDER DATED 03.09.2018, WHEREIN THE ABSCONDER  
PERIOD OF THE APPELLANT WITH EFFECT FROM  
28.07.2014 TO 12.07.2016 (715) DAYS WAS COUNTED AS  
WITHOUT PAY AND THE PERIOD WITH EFFECT FROM  
13.07.2016 TO 19.04.2018 (647) DAYS ON HALF PAY FOR  
NO GOOD GROUNDS.

Filed to-day  
Registrar  
10/1/2019

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE  
ORDER DATED 30.11.2018 MAY BE SET ASIDE AND THE  
RESPONDENTS MAY BE DIRECTED TO MODIFY THE  
ORDER DATED 03.09.2018 AND CONVERT THE PERIOD  
WITH EFFECT FROM 13.07.2016 TO 19.04.2018 (647) DAYS  
ON FULL PAY UNDER FR-54 AS HE HAS BEEN  
GRANTED BBA BY THE COMPETENT COURT OF LAW  
ON 13.07.2016 IN THE CRIMINAL CASE IN FIR NO. 345  
AND ALSO ACQUITTED IN THE SAME FIR ON 07.03.2017  
AND WANTED TO JOIN HIS DUTY AFTER GRANTING  
BBA AND REMAINED UNPAID EMPLOYEE DURING  
THAT PERIOD. ANY OTHER REMEDY, WHICH THIS

Re-submitted to-day  
and filed.

Registrar  
10/1/19

**AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.**

**RESPECTFULLY SHEWETH:**

**FACTS:**

1. That the appellant was working as SCT in the Education Department when falsely charged in criminal case vide FIR No.345 dated 28.07.2014 U/S 302 PPC PS Toru due to which the appellant was suspended by the department on 25.08.2014 w.e.from 28.07.2014. **(Copies of FIR and suspension order is attached as Annexure-A&B)**
2. That Bail Before Arrest was granted to the appellant by the Honourable Addl: Session Judge-I Mardan on 13.07.2016, which was later on confirmed by Honourable Addl: Session Judge-IV Mardan on 17.10.2016. It is pertinent to mentioned here that the appellant was also acquitted in the same case on 07.03.2017. **(Copies of order dated 13.07.2016, order dated 17.10.2016 and order dated 07.03.2017 are attached as Annexure-C,D&E)**
3. That the appellant after obtaining BBA went to join his duty, but he was informed by the department that he was removed from service on 09.01.2015 from the date of absence i.e 28.07.2014 on the date on which the criminal case was lodged against the appellant. The appellant filed departmental appeal against the removal order, which was not responded in the statutory period. **(Copy of order dated 09.01.2015 is attached as annexure-F)**
4. That the appellant then filed service appeal No.1171/2016 against the removal order in this Honourable Service Tribunal which was finally heard on 20.04.2018 and was accepted. The impugned order dated 09.01.2015 was set aside and the appellant was reinstated into service and the department was at liberty to conduct denovo inquiry within the period of ninety days. The issue of back benefits shall be subject to the final outcome of the denovo inquiry. **(copy of judgment dated 20.04.2018 is attached as Annexure-G)**
5. That appellant was reinstated on 17.05.2018 w.e f 20.04.2018 and denovo inquiry was conducted against the appellant and on the basis of denovo inquiry, the order was passed on 03.09.2018, where it was mentioned that the absconder period of the appellant with effect from 28.07.2014 to 12.07.2016 (715) days was counted as without pay and the period with effect from 13.07.2016 to 19.04.2018 (647) days was counted on half pay. **(Copies of order dated 17.05.2018 and order dated 03.09.2018 are attached as Annexure-H&I)**



6. Then the appellant filed departmental appeal on 01.10.2018 against the order dated 03.09.2018 which was rejected on 30.11.2018 communicated to the appellant on 12.12.2018 for no good grounds. **(Copies of departmental appeal and rejection order are attached as Annexure-J&K)**
7. That now the appellant comes to this august Service Tribunal for redressal of his grievance on the following grounds amongst others.

**GROUND:**

- A) That the rejection order dated 30.11.2018 and order dated 03.09.2018 to the extent of period with effect from 13.07.2016 to 19.04.2018 (647) days on half pay are against the law, FR-54, norms of justice and material on record, therefore not tenable and the order dated 30.11.2018 is liable to be set aside and the order dated 03.09.2018 is liable to be modified to extent of period with effect from 13.07.2016 to 19.04.2018 (647) days on full pay.
- B) That the appellant remained unpaid employee (not remained gainfully employed) for period with effect from 13.07.2016 to 19.04.2018 and per superior courts judgment and FR-54, he is entitled for full pay in the shape of conversion of that period on full pay.
- C) That the appellant was granted BBA by the Honourable Addl: Session Judge-I Mardan on 13.07.2016, which was later on confirmed by Honourable Addl: Session Judge-IV Mardan on 17.10.2016 and later on also acquitted in the criminal case and after granting BBA he went to join his duty, therefore he is also entitled for full pay for the period with effect from 13.07.2016 to 19.04.2018 under FR-54.
- D) That did not willfully remain absent from his duty, but was falsely charged in criminal case due to which he was compelled to remain absent from his duty and in that criminal case he has granted BBA and later on also acquitted in the same and the appellant after getting BBA went to join his duty again, but he was removed from service before his BBA and conclusion of criminal case pending against him and was not allowed to join his duty by the respondent department, which shows that the appellant wants to join his duty after granting BBA and wants to perform his duty, but he was not allowed, therefore the appellant should not be punished for the fault of the others and should not be deprived him from full pay for the period with effect from 13.07.2016 to 19.04.2018 under FR-54.
- E) That the appellant was involved in criminal case and as per CSR, A, the respondent department should have suspended the appellant till the decision of criminal case, but the appellant was removed from service by the respondent department without waiting to the decision.


of the criminal case pending against the appellant, which is violation of CSR 194-A.

- F) That the appellant was falsely charged in criminal case in which he was acquitted by the competent court of law and the department also reinstated him into service, but the period with effect from 13.07.2016 to 19.04.2018 was counted on half pay, which is against the norms of justice and violation of fundamental rights of the appellant enshrined in the Constitution of Pakistan.
- G) That the appellant was not treated according to law and rules and has been deprived from his legal right of full pay for period with effect from 13.07.2016 to 19.04.2018 under FR-54 as he was falsely charged in the criminal case in which he was acquitted by the competent court of law.
- H) That the appellant seeks permission to advance others 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.

  
APPELLANT

THROUGH:

  
(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT,  
&

(ASAD MAHMUD)  
ADVOCATE HIGH COURT,

BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

Service Appeal No: 94/2019

Malang Jan S/O Mukamil Shah Ex-SCT GHS Sokai Mardan (Petitioner)

Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others  
(Respondents)

INDEX

S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES	
1.	Para wise comments along with affidavit		01	03
2.	Copy of Suspension Order	"A"	04	--

Dated: \_\_\_\_\_

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No: 94/2019

Malang Jan S/O Mukamil Shah Ex-SCT GHS Sokai Mardan (Petitioner)

Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others  
(Respondents)

**Para Wise Comments on Behalf of Respondents No 1 to 3**

**Respectfully Sheweth,**

**PRELIMINARY OBJECTIONS:**

1. That the appellant has got no cause of action as well as locus standi to file the instant appeal.
2. That the instant appeal is incompetent in its present form, hence liable to be dismissed.
3. That the instant appeal is badly time barred.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to this Honourable Tribunal with clean hands.
6. That the appellant is estopped by his own conduct.
7. That the appellant has concealed the material facts from this Honourable tribunal hence liable to be dismissed.
8. That the instant appeal is based on malafide intention, hence liable to be dismissed.
9. That the instant appeal is against the prevailing law and rules.
10. That the appellant has been treated as per law & rules.
11. That the continue service of the appellant from 29/03/1990 to 28/07/2014 in the respondent department, and the total length of service of the appellant 26 years 09 months and 02days. The appellant has granted leave with full pay according to the length of his service i-e 26 years x 12 leaves = 312 days + 9days = 321days, and the appellant is entitled 321 days leaves with full pay. The respondents was converted the above mentioned leaves on half pay which is counted 642 days.

**FACT:**

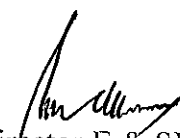
1. Para No 1 pertains to record, hence no comments.
2. Para No 2 pertains to record, hence no comments.
3. Para No 3 pertains to record, hence no comments.
4. Para No 4 pertains to record, hence no comments.
5. Para No 5 pertains to record, hence no comments.
6. Para No 6 pertains to record, however the appellant was appointed on 29/03/1990 as CT teacher in GHS, Sokai Mardan. The appellant was suspended on with effect from 28/07/2014 and the continue service of the appellant from 29/03/1990 to 28/07/2014 in the respondent department, and the total length of service of the appellant 26 years 09 months and 02days. The appellant has granted leave with full pay according to the length of his service i-e 26 years x 12 leaves = 312 days + 9days = 321days, and the appellant is entitled 321 days leaves with full pay. The respondents was converted the above mentioned leaves on half pay which is counted 642 days, hence needs no comments. ( Copy of suspension Order as Annexure A )

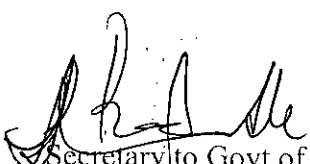
7. However detail reply of the grounds are as under

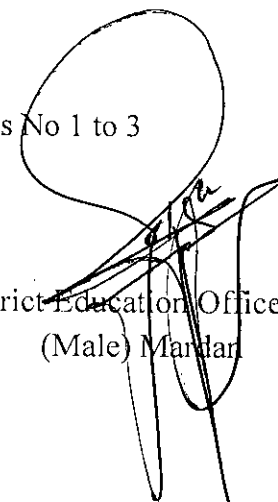
**GROUND:**

- A. Para No A is incorrect baseless against facts & law, the answering respondent acted in accordance with the law and follow the rules. The appellant has granted leave with full pay according to the length of his service, hence denied.
- B. Para No B pertains to record, however each and every case their own merits. Hence need no comments.
- C. Para No C pertains to record, is needs no comments.
- D. Para No D pertains to record, is needs no comments.
- E. Para No E is incorrect baseless against facts & law, the answering respondent acted in accordance with law, despite notices the appellant badly failed to explain his position and did not appear before the answering respondent.
- F. Para No F is incorrect baseless, as thoroughly explained supra in the preliminary objection, hence denied.
- G. Para No G is incorrect baseless against facts & law, the answering respondent acted in accordance with the law and follow the rules. The appellant has granted leave with full pay according to the length of his service, hence denied.
- H. That the respondents seek 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.

  
 Director E & SE  
 Peshawar

  
 Secretary to Govt of  
 Khyber Pakhtunkhwa E & SE Department  
 Peshawar

Respondents No 1 to 3  
  
 District Education Officer  
 (Male) Marlan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No: 94/2019

Malang Jan S/O Mukamil Shah Ex-SCT GHS Sokai Mardan (Petitioner)


Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others  
(Respondents)

AFFIDAVIT

I, Mr Sajid Khan Litigation Officer Education Department Mardan do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted on behalf of respondents are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal,

Deponent

  
Sajid Khan 11/7/2019  
16101-6005318-5

Annexure "A" (4)

(3)

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN.

SUSPENSION

As reported by the Head of Investigation Police Mardan vide No.4130/GB dated 11.8.2014 alongwith FIR No.345 dated 28.7.2014 U/S 302 PPC Police Station Toru against Mr.Malang Jan SCT GHS,Sokai Mardan .

Mr.Malang Jan SCT GHS,Sokai Mardan is hereby suspended from service w.e.f. 28.7.2014 due to involved in the above cited case.

(Hanifullah)

District Education Officer  
(Male) Mardan.

Endst:No. 8427-28 /E-V/PF Malang Jan SCT /Dated 25/8 /2014.

Copy for information & n/action to the:-

1. Headmaster, GHS,Sokai Mardan with the remarks to submit the detail report and stop the pay of the named teacher .
6. District Accounts Officer Mardan.
7. Gen:file.

AE.  
Pnt.

District Education Officer  
(Male) Mardan.

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 94/19

Malang Jan

VS

Secretary (E&SE) & others

.....  
**REJOINDER ON BEHALF OF APPELLANT**  
.....

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

(1-11) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

**FACTS:**

1. Admitted correct by the respondents as the service record of the appellant is present with the department.
2. Admitted correct by the respondents as the service record of the appellant is present with the department.
3. Admitted correct by the respondents as the service record of the appellant is present with the department.
4. Admitted correct by the respondents as the service record of the appellant is present with the department.
5. Admitted correct by the respondents as the service record of the appellant is present with the department.
6. Admitted correct by the respondents as the service record of the appellant is present with the department. Moreover the appellant is entitled to full pay w.e. from 13.07.2016 to 19.04.2018 under FR-54 as he has been granted BBA by the competent court of law on 13.07.2016 and wants to join his duty after granting BBA.



**GROUND:**

- A. Incorrect, while para-A of the appeal is correct.
- B. The appellant is ready to give affidavit in this respect that he remained unpaid employee for the period w.e.f 13.07.2016 to 19.04.2018.
- C. No comments.
- D. Incorrect. While para D of the appeal is correct.
- E. Not replied according to para-E of the appeal. Moreover, para-E of the appeal is correct.
- F. Incorrect, while Para-F of the appeal is correct.
- G. Incorrect, while para-G of the appeal is correct.
- H. Legal.

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

Through:

APPELLANT



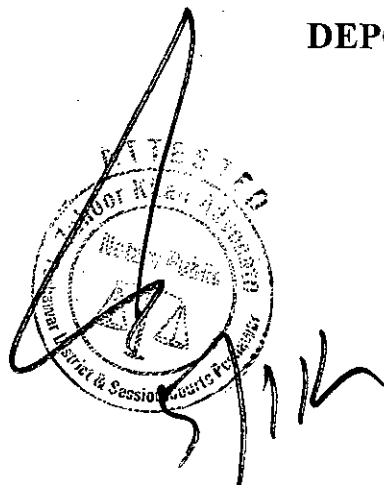
(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT.

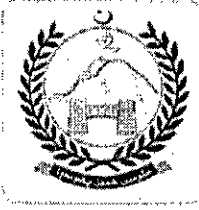
**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



DEPONENT





**KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

No. 20/0 /ST

Dated: 11/10 /2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262


To

The District Education Officer Male,  
Government of Khyber Pakhtunkhwa,  
Mardan.

Subject: JUDGMENT IN APPEAL NO. 94/2019, MR. MALANG JAN.

I am directed to forward herewith a certified copy of Judgement dated 15.09.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR

19/6/2021 Back Benifit Appeal dismissed



Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**Service Appeal No. 803/2018**

From: *AL*

Date of Institution ..... 07.06.2018  
 Date of Decision ..... 18.02.2020

Israr Ahmad Qari, Government High School No.2, Saleem Khan Tehsil & District Swabi.

Appellant

Versus

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Deputy Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) Swabi.
4. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

Respondents

18.02.2020

Mr. Muhammad Hamid Mughal-----Member(J)  
 Mr. Mian Muhammad-----Member(E)

**JUDGMENT**  
**MUHAMMAD HAMID MUGHAL, MEMBER:**

Appellant with counsel and Mr. Muhammad Jan learned Deputy District Attorney alongwith Fazal Khaliq ADO present.

2. The appellant (Qari), has filed the present service appeal against the order dated 10.05.2018 of the appellate authority (Director E&SE Khyber Pakhtunkhwa Peshawar) and the order dated 17.05.2018 of DEO (Male) Swabi on the ground that

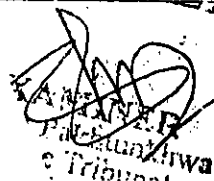
ATTESTED  
  
 Attester  
 Khyber Pakhtunkhwa

2-2020

though the appellant has been reinstated but without all back benefits.

3. Learned counsel for the appellant argued that the appellant was taken into custody by the police authorities and other agencies on the pretext of having links with banned outfits; that father of the appellant informed the Education Department regarding illegal confinement of the appellant; that the appellant was roped in false, concocted and factitious criminal cases by CTD; that vide order dated 25.03.2017, the appellant was removed from service while treating the absence period as unauthorized absence from duty without pay; that the departmental appeal filed by the appellant was accepted and vide order dated 10.05.2018 he was reinstated in service while treating the absence period w.e.f 05.08.2015 to 21.11.2017 as leave without pay; that consequently the DEO (Male) Swabi vide order dated 17.05.2018 reinstated the appellant in service while converting the period w.e.f 05.08.2015 to 09.05.2018 as extraordinary leave without pay. Learned counsel for the appellant argued that the appellate authority treated the absence period w.e.f 05.08.2015 to 21.11.2017 as leave without pay but on the other hand, DEO (Male) Swabi treated the absence period w.e.f 05.08.2015 to 09.05.2018 as extraordinary leave without pay; that the appellant did not remain willfully absent from duty rather he was in custody of agencies, hence he is entitled to all the back benefits upon his reinstatement.

CP  
18.2.2020  
**ATTESTED**

  
Deputy Commissioner  
Swabi District  
Tribunal

4. On the other hand learned DDA argued that the appellant has not come to this Tribunal with clean hands, that father of the appellant in his application dated 07.05.2015 addressed to the Headmaster admitted that his son had links with the local Taliban; that due to absence of the appellant, he was removed from service however the appellate authority took the lenient view and reinstated the appellant with immediate effect while treating the absence period as leave without pay; that the appellant did not perform any duty w.e.f 05.08.2015 to 09.05.2018; hence he is not entitled to the salary/monitory benefits of the absence and out of service period.

5. Arguments heard. File perused.

6. Vide order dated 25.02.2017 the appellant was awarded major punishment of removal from service on the ground of absence from duty. Departmental appeal filed by the appellant was accepted and in compliance with the order of the appellate authority, DEO (Male) Swabi reinstated the appellant in service. DEO (Male) Swabi while reinstating the appellant converted the period w.e.f 05.08.2015 to 09.05.2018 as extraordinary leave without pay. Admittedly the appellant did not perform duties w.e.f 05.08.2015 to 09.05.2018. It is not the case of the appellant that due to his involvement in criminal cases, he remained in the judicial lockup during his entire absence period. No documentary evidence is available on file in support of the plea that the appellant was in custody of

ATTESTED

EX. M. A. N. S.  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

18.2.2020

agencies during the period he remained absent from duty.

7. In nutshell the appellant has not been able to make out his case for the grant of back benefits of the absence period/out of service period. Consequently the present service appeal is dismissed. No order as to costs. File be consigned to the record room.

(Mian Muhammad)  
Member

(Muhammad Hamid Mughal)  
Member

ANNOUNCED  
18.02.2020

Certified to be true copy

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Copy: 18-02-2020  
Number of Words: 1600  
Copying Fee: 18-00  
Urgent: \_\_\_\_\_  
Total: 18-00  
Number of Copies: \_\_\_\_\_  
Date of Completion of Copy: 12-3-2020  
Date of Delivery of Copy: 12-3-2020

**"B"**

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

No.

Appeal No. 911 of 20 18

Muhammad Javed

Appellant/Petitioner

Secretary F&C, I.C.S.F. / K.P.K. Act

Versus

Respondent

Respondent No. 2

Notice to:

Director F&C, I.C.S.F.  
K.P.K. Act

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 8/2/18 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

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

Given under my hand and the seal of this Court, at Peshawar this 19th .....

Day of March 20 18

*[Handwritten signature]*

*[Handwritten signature]*  
Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

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

**"B"**

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

No.

Appeal No. 94 of 20 19

Mr. Moinung Jan

Appellant/Petitioner

Secretary Education (E.O.S.E.) K.P.K. etc

Versus

Respondent

Respondent No. \_\_\_\_\_

Notice to:

Secretary Education (E.O.S.E.)  
K.P.K. Peshawar

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 8-2-19 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

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

Given under my hand and the seal of this Court, at Peshawar this \_\_\_\_\_

Day of March 19 19 20 19

25/3

[Signature]  
Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

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



**“B”**

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

No.

Appeal No. 54 of 20 19

Mr. M. A. Khan Appellant/Petitioner  
Versus

Secretary, Peshawar District Respondent  
Respondent No. 3

Notice to: D. F. O (Male) Peshawar

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 3-4-2019 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

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

Given under my hand and the seal of this Court, at Peshawar this 13/4

Day of March, 20 19

[Signature]  
Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

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

**"B"**

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

No.

Appeal No. 961 of 20 18

M. M. Khan Appellant/Petitioner

Versus

Secretary, Finance, KPH Respondent

Respondent No. 4

Notice to:

Secretary Finance, KPH  
Peshawar

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 17/05/18 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

Copy of appeal is attached. Copy of appeal has already been sent to you vide this

office Notice No. .... dated .....

Given under my hand and the seal of this Court, at Peshawar this 17/05

Day of Monday, 20 18.

5513719

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

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

**"A"**

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

No.

94

19

APPEAL No..... of 20

Malang Jan

Appellant/Petitioner

Versus

The Secy Edu (EBSE) KP Pesh.

RESPONDENT(S)

Malang Jan, SCT (EPS-16)

Notice to Appellant/Petitioner

GHS Sokai Mardan.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on..... at.....

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

*[Handwritten mark]*

*[Handwritten signature]*

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

