



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

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

No. 3201 /ST Dated 16/11 /2022

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

To:

The District Education officer (M)

Mansehra.

SUBJECT: JUDGMENT IN SERVICE APPEAL NO. 3846/2020, Mr. ABDUL MALIK VERSUS EDUCATION DEPARTMENT.

I am directed to forward herewith a certified copy of judgment dated 17.10.2022, passed by this Tribunal in the above mentioned appeal for strict compliance.

Encl. As above.

For Ekhwar
(WASEEM AKHTAR)
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL,
PESHAWAR.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 3846/2020

SCANNED
KPST
Peshawar

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS. FAREEHA PAUL ... MEMBER(E)

Abdul Malik, S/O Khan Gul, R/O Village Satbani, Tehsil Balakot, District
Mansehra, Ex-CT Teacher posted at GMS Sari Manoor, District Mansehra.
.... (Appellant)

Versus

1. Director Elementary & Secondary Education Peshawar.
2. District Education Officer (Male) Mansehra.

.... (Respondents)

Mr. Malik Ashfaq Ahmad Jillani
Advocate

...

For appellant

Mr. Muhammad Adeel Butt
Addl. Advocate General

...

For respondents

Date of Institution.....30.04.2020
Date of Hearing.....17.10.2022
Date of Decision.....17.10.2022

JUDGEMENT

KALIM ARSHID KHAN, CHAIRMAN: A Division Bench of this Tribunal had, in a similar matter, on 22.07.2022, delivered a judgment in different service appeals including Service Appeal No.5793/2022 titled "Khani Zaman Vs. Elementary & Secondary Education Peshawar" the operative part of the judgment is given as under:-

"A perusal of the record would show that a scrutiny committee was constituted for scrutinizing the documents of the appellants as well as others for determining of their eligibility for appointment in light of the Sacked Employees Act, 2012. The scrutiny committee recommended the appellants for their appointment and has mentioned in its report that the scrutiny committee checked the record of all the candidates one by one. A meeting of the District Selection Committee was then held under the Chairmanship of DEO (Male) Mansehra, wherein the appellants were recommended for appointment on their respective posts and thus their appointment Notifications were




issued by the competent Authority. The minutes of Departmental Selection Committee are available on record, wherein it is mentioned that the committee had made through deliberation and had perused the record minutely. The appellants were, however later on issued show cause notices on the ground that upon verification, fake and fabricated documents were found in their service record. Final show cause notices were then issued to the appellants without mentioning there in that regular inquiry was dispensed with. It appears that the main allegations against the appellants were that their names had been inserted in the respective termination orders by way of tempering. The question of tempering being factual in nature was required to have been ascertained through a regular inquiry but the same has not been done. The departmental Authority was required to have adduced evidence in support of the allegations against the appellants by providing Opportunity of cross-examination. Although it is mentioned in the impugned Notifications that proceedings were conducted under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 but the mandatory provisions of the same were not complied with. In these circumstances, conducting of de-novo inquiry in the matter is necessary for reaching a just and right conclusion.

In view of the above discussion, the appeal in hand as well as connected Service Appeal bearing No.5892/2020 titled "Ejaz Ahmad Vs. Secretary, Elementary and Secondary Education Department Peshawar and two others", Service Appeal bearing No. 8634/2020 titled "Rafaqat Ali Versus Secretary, Elementary and Secondary Education Department Peshawar and two others" and Service Appeal bearing No. 8635/2020 titled "Zardad Khan Versus Secretary, Elementary and Secondary Education Department Peshawar and two others" are allowed by setting-aside the impugned orders and the appellants are reinstated in service for the purpose of de-novo inquiry. The departmental Authority shall conduct de-novo inquiry strictly in accordance with the relevant law/rules within a period 90 days of receipt of copy of this judgment and the result be intimated to this Tribunal through Registrar. Needless to mention that the appellants shall be associated with the inquiry proceeding and fair be provided to them to defend themselves. Keeping in view peculiar facts and circumstances of the cases, the issue of salary and back benefits shall be subject to outcome of de-novo inquiry".

3. This appeal being similar in nature is also disposed off accordingly. Consign.

4. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of October, 2022.*



(FARREHA PAUL)
Member (E)


(KALIM ARHAD KHAN)
Chairman

Service Appeal No. 3846/2020

1. Mr. Malik Ashfaq Ahmad Jillani, Advocate for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present. Arguments heard and record perused.
2. Vide our detailed judgement containing 02 pages, we arrived at a conclusion that the appeal in hand is allowed by setting aside the impugned order and the appellant is reinstated in service for the purpose of de-novo inquiry. The departmental Authority shall conduct de-novo inquiry strictly in accordance with the relevant law/rules within a period 90 days of receipt of copy of this judgment and the result be intimated to this Tribunal through Registrar. Needless to mention that the appellants shall be associated with the inquiry proceedings and fair opportunity be provided to them to defend themselves. Keeping in view peculiar facts and circumstances of the cases, the issue of salary and back benefits shall be subject to outcome of de-novo inquiry". Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of October, 2022.*


(FAREEHA PAUL)
Member (E)


KALIM ARHAD KHAN)
Chairman

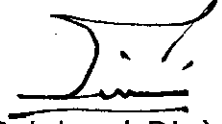
19.04.2022

Malik Ashfaq, Advocate, as proxy for learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Malik Ashfaq, proxy stated at the bar that learned counsel for the appellant has telephonically contacted him that as he is busy in some domestic engagement, therefore, adjournment may be granted. Adjourned. To come up for arguments on 14.06.2022 before the D.B at Camp Court Abbottabad.



(Rozina Rehman)
Member (J)
Camp Court Abbottabad



(Salah-ud-Din)
Member (J)
Camp Court Abbottabad

14.06.2022

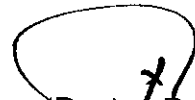
Junior to counsel for appellant present.

Noor Zaman Khan Khattak, learned District Attorney for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 15.08.2022 for arguments before D.B at Camp Court, Abbottabad.



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



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

20.05.2021


Due to cancellation of tour, Bench is not available. Therefore, case to come up for the same as before on 27.09.2021.


Reader

27.09.2021

Junior to counsel for the appellant and Mr. Muhammad Riaz Khan Paindakhel, Asstt AG alongwith Tauseef Alam, ADEO for the respondents present.


Respondents have furnished reply/comments. Placed on file. Case to come up for arguments on 17.01.2022 before the D.B at Camp Court, Abbottabad.

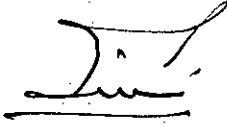

Chairman
Camp Court, A/Abad

17.01.2022

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

Appellant requested for adjournment on the ground that his counsel is unable to attend the Tribunal today due to death of his relative. Adjourned. To come up for arguments on 19.04.2022 before the D.B at Camp Court Abbottabad.


(Rozina Rehman)
Member (J)
Camp Court A/Abad


(Salah-ud-Din)
Member (J)
Camp Court A/Abad

19.01.2021

Due to COVID-19, the case is adjourned for the same on 18.02.2021 before D.B.

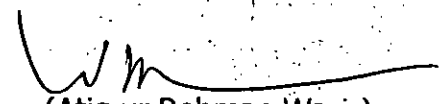

READER

18.02.2021

Counsel for the appellant present.

Noor Zaman Khattak learned District Attorney alongwith Muhammad Touseef ADO for respondents present.

Written reply/comments on behalf of respondents not submitted. Representative of respondents requested for time to submit reply/comments. Granted. To come up for reply/comments on 20.05.2021 before S.B at Camp Court, Abbottabad.


(Atiq ur Rehman Wazir)
Member (E)
Camp Court, A/Abad

16.11.2020

Mr. Malik Ashfaq Ahmed Jillani, Advocate, for appellant is present. The learned counsel for the appellant emphasized that on appointment by competent authority against the post of C.T he alongwith others were terminated from service however, subsequently, the Government of Khyber Pakhtunkhwa enacted Sacked Employees Act, 2012, according to which all sacked employees were reinstated into service however, his request in this regard was not entertained forcing him to agitate the matter before the Hon'ble Peshawar High Court through invocation of its constitutional jurisdiction in consequence appellant alongwith others were reinstated into service in pursuance thereof he assumed the charge at GHS Seri Mansoor but to his utter surprise he was served with a show-case notice which he appropriately replied. That without holding any regular or proper inquiry his reappointment order was withdrawn. He agitated his claim in the departmental appeal before the next higher authority but it remained un-responded.

The point so agitated at the bar needs consideration. The appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 19.01.2021 before S.B at Camp Court, Abbottabad.

Appellant Deposited
Security & Process Fee

30/12/20

(MUHAMMAD JAMAL KHAN)
MEMBER
CAMP COURT ABBOTTABAD

Form- A



FORM OF ORDER SHEET

Court of _____

Case No.-

3846

/2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	30/04/2020	<p>The appeal of Abdul Malik presented today by Mr. Abdul Saboor Khan Advocate, may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on at camp court, Abbottabad on <u>16-11-20</u>.</p> <p style="text-align: right;"> Chairman</p>