

**KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

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

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

No. \_\_\_\_\_/ST Dated \_\_\_\_/\_\_\_\_/2022


To:

The District Education Officer, Malakand.

**SUBJECT:-** JUDGMENT IN SERVICE APPEAL NO. 1559/2019, MST: SHAMIM ARA  
VERSUS DIRECTOR ELEMENTARY AND EDUCATION  
DEPARTMENT, KHYBER PAKHTUNKHWA, PESHAWAR ETC.

I am directed to forward herewith a certified copy of order dated 31.05.2022, passed by this Tribunal in the above mentioned *Service appeal* for compliance.

Encl. As above.

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

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

**Service Appeal No. 1559/2019**

**BEFORE:** KALIM ARSHAD KHAN --- CHAIRMAN  
MIAN MUHAMMAD --- MEMBER(E)

**Mst: Shamim Ara, PST (BS-12), GGPS Kass Kalli, Kopar,  
District Malakand.**

.....(**Appellant**)

**VERSUS**

1. **The Director (E&SE)** Department, Khyber Pakhtunkhwa, Peshawar.
2. **The District Education Officer,** District Malakand.
3. **The District Accounts Officer,** District Malakand.

..... (**Respondents**)

**Present:**

NOOR MUHAMMAD KHATTAK,  
Advocate --- For Appellant.

SYED NASEER UD DIN SHAH,  
Assistant Advocate General --- For respondents.

Date of Institution.....31.10.2019

Date of Hearing.....19.04.2022

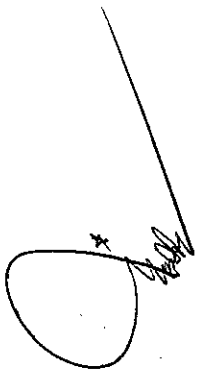
Date of Decision .....31.05.2022

**JUDGEMENT**

**MIAN MUHAMMAD, MEMBER(E):-** The service appeal has been instituted invoking jurisdiction of Service Tribunal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order of respondent No.2 dated 21.06.2019 whereby the intervening period w.e.f the date of removal from Service i.e. 12.11.2015 till 20.06.2019 was converted into extra ordinary leave without pay.

02. Brief facts giving rise to the service appeal in hand are that the appellant being PST (BS-12) has been an employee in the

respondent-department since 23.10.1988. She was proceeded against for absence from duty and awarded major penalty of removal from service on 11.12.2015. The penalty was challenged through Service Appeal No. 383/2016 and the Service Tribunal accepted her appeal vide its judgement dated 05.03.2019 whereby the appellant was reinstated into service allowing the respondents to undertake departmental proceedings against her but only in accordance with law and rules. The respondent-department conducted de-novo enquiry through an enquiry committee which submitted its report on 25.05.2019 and in the light of its findings, the absence period of appellant w.e.f 12.11.2015 to 20.06.2019 was converted into extraordinary leave without pay vide impugned order dated 21.06.2019. The appellant filed departmental appeal against the impugned order on 17.07.2019 which was not decided within the stipulated statutory period where-after she submitted the instant service appeal on 31.10.2019.



03. On admission of the appeal, notices were issued to the parties who submitted written replies/parawise comments on contents of the appeal. We have heard learned counsel for the appellant as well Assistant Advocate General and perused the case file with connected documents thoroughly.

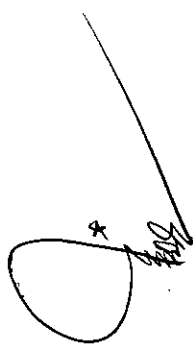
04. Learned counsel for the appellant while opening his arguments referred to the Service Tribunal judgement in the first round of litigation dated 05.03.2019 and vehemently contested that the respondents have not conducted the de-novo enquiry in accordance with law and rules. The enquiry procedure prescribed

under Rule-10 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been violated because neither the enquiry committee was notified nor charge sheet/statement of allegations issued to the appellant. Similarly, show cause notice and enquiry report were not issued to the appellant. The authority has not provided the appellant an opportunity of personal hearing before imposition of the penalty. He relied on 2000 SCMR 1743, 2007 SCMR 1860, 1999 SCMR 2272, 2003 PLC (C.S) 365 and 2008 SCMR 1369. He further contended that reinstatement of appellant into service entitled her that the intervening period between removal from service till reinstatement was required to have been treated with all back benefits. Treating the intervening period as leave without pay was not justified except if the appellant had accepted gainful employment or engaged in profitable business during that period, he concluded while relying on larger Bench's judgement of this Tribunal dated 07.07.2021 delivered in service appeal No. 318/2016 of Muhammad Saleem Head Constable No. 12 Police Line Dir Upper versus IGP etc.

05. Learned Assistant Advocate General on the other hand, negated and rebutted arguments of the learned counsel for the appellant and contended that impugned order dated 21.06.2019 has been issued by the authority in accordance with law, facts and norms of natural justice, available material on record and no violation of the prescribed law and rules was made. Since the appellant did not perform duty during the intervening period w.e.f 11.12.2015 till

20.06.2019 therefore she is not entitled for any back benefits, while relying on 2003 SCMR 228, he concluded his arguments.

06. Perusal of record reveals that two enquires had been conducted against the appellant for her absence from duty on various occasions during the period 2000-2012 and resultantly she was removed from service on 11.12.2015; the order, which was set aside by the Service Tribunal and reinstated the appellant into service vide judgement dated 05.03.2019 in service appeal No. 383/2016 with specific directions "the respondents may, however, undertake departmental proceedings against the appellant but only in accordance with law and rules. The de-novo proceedings, if taken, shall be concluded within a period of ninety days from the receipt of copy of instant judgement. The issue of back benefits in favour of appellant shall follow the result of de-novo proceedings".



07. It is evident from the record that in pursuance of the Service Tribunal judgement dated 05.03.2019, denovo enquiry was ordered on 10.05.2019 to be conducted by two members enquiry committee. The enquiry committee submitted its report and based on its findings, the appellant was awarded the penalty of converting her absence period w.e.f. 12.11.2015 to 20.06.2019 into extra ordinary leave without pay vide Para 9 of the impugned order dated 21.06.2019. However, the exact date of earlier impugned order is 11.12.2015 when she was removed from service instead of 12.11.2015 the fact which was pointed out to the learned counsel for appellant during course of arguments and who admitted it as erroneously mentioned in the appeal. Respondents submitted only

the report of the denovo enquiry comprising 03 pages and no connected documents like order of enquiry dated 10.05.2019, charge sheet/statement of allegations, Show Cause Notice, replies of the appellant etc despite having granted adjournments on two occasions after hearing of arguments of the parties on 19.04.2022. Moreover, denovo enquiry report is nothing but narration of details and facts of the earlier enquiries, utilized to draw its conclusion and recommendations. The Service Tribunal in its judgement dated 05.03.2019 clearly directed that the respondents "undertake departmental proceedings against the appellant but only in accordance with law and rules". The competent authority i.e. respondent No. 2 was, therefore, required to have followed Rule 10 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 by appointing enquiry officer or enquiry committee through a proper order. The enquiry committee was though constituted but order of enquiry dated 10.05.2019 as mentioned in the enquiry report was not provided/produced before the court. Similarly, the enquiry committee did not follow the laid down procedure under Rule 11 of the Rules *ibid*. On submission of the enquiry report, the competent authority also failed to have examined the enquiry report and relevant case material as prescribed under Rule 14 of the said Rules. From all these observations, it transpires that the respondents particularly No. 1 and 2, who are/were expected to have enough administrative and managerial experience to their credit coupled with effective tools and skills, did not take the case seriously rather handled it in a very casual manner which negatively reflects on their performance as Mid and senior

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level administrators. The senior level management at the higher echelon of hierarchy are, therefore, obligated to take cognizance of the situation and take appropriate steps not only to address the shortcomings identified above but also to turn the department into a vibrant and dynamic organization so as to manage its affairs at operational level at the district setup in a befitting manner in the public interest.

08. With these observations in view, we are constrained to allow this appeal and on setting aside the impugned order, remand the case back to the respondents with the directions to conduct the denovo enquiry strictly in the mode and manner prescribed and laid down in the law and rules within 60 days of the communication of this judgement under intimation to this Tribunal through its Registrar. Costs shall follow the event. Consign.

09. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 31<sup>st</sup> day of May, 2022.*



(KALIM ARSHAD KHAN)  
CHAIRMAN



(MIAN MUHAMMAD)  
MEMBER(E)

**ORDER**

31/05/2022

Mr. Noor Muhammad Khattak, Advocate for the appellant present. Syed Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

02. Vide our detailed judgement of today separately placed on file containing (06) pages, we are constrained to allow this appeal and on setting aside the impugned order, remand the case back to the respondents with the directions to conduct the denovo enquiry strictly in the mode and manner prescribed and laid down in the law and rules within 60 days of the communication of this judgement under intimation to this Tribunal through its Registrar. Costs shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 31<sup>st</sup> day of May, 2022.*



(KALIM ARSHAD KHAN)  
CHAIRMAN



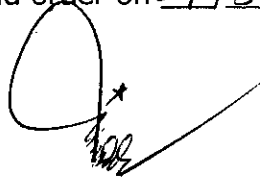
(MIAN MUHAMMAD)  
MEMBER(E)



29.04.2022

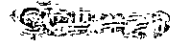
Learned counsel for the appellant present. Syed Naseer Ud Din Shah, Assistant Advocate General alongwith Mr. Naseem Ul Haq, B&AO for respondents present.

Attention of learned AAG is invited to previous order sheet dated 26.04.2022. A copy of order sheet dated 26.04.2022 is also handed over to the departmental representative with the direction to submit connected documents of the de-novo enquiry on or before the next date. To come up for submission of requisite documents and order on 27/5/2022 before the D.B.



(Mian Muhammad)  
Member(E)

on leave



27-5-2022

proper DB is not available to come up for the same as before on 31-05-2022

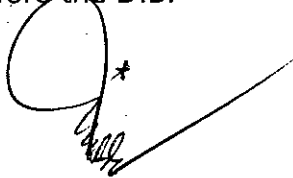
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Reader

26.04.2022 Counsel for the appellant present. Syed Naseer Ud Din Shah, Assistant Advocate General for respondents present.

Para-7 of the impugned order dated 21.06.2019 reveals that de-novo enquiry through enquiry committee comprising Mst. Safia Begum, Principal GGHSS Sakhakot and Mst. Shazia, ASDEO (F) Circle Zoormandi (Hero Shah) SDEO(F) office Dargai, was conducted subsequent to the judgement of Service Tribunal in service appeal No. 383/2016 of the present appellant dated 05.03.2019. However, copy of the de-novo enquiry has not been annexed with reply/parawise comments of the respondents. Rather copy of an earlier enquiry conducted by former DC Abbottabad (Cap(R) Khalid Mahmood) dated 15.04.2015 is attached with reply/parawise comments of respondents. Learned AAG was therefore directed to acquire the said de-novo enquiry alongwith connected documents on the previous date i.e 19.04.2022. To come up for submission of requisite documents and order on 29.04.2022 before the D.B.



(Mian Muhammad)  
Member(E)

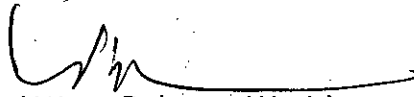


(Kalim Arshad Khan)  
Chairman

22.12.2021

Counsel for the appellant and Mr. Muhammad Rasheed, DDA for the respondents present.

Partial arguments heard. Certain points need further clarification. To come up for further arguments on 23.12.2022 before the D.B.


  
(Atiqur Rehman Wazir)  
Member(E)

  
Chairman

23.12.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for respondents present.

Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments before the D.B on 19.04.2022.

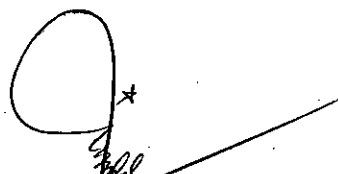
  
(Atiq-Ur-Rehman Wazir)  
Member (E)

  
Chairman

19<sup>th</sup> April, 2022

Mr. Noor Muhammad Khattak, Advocate for appellant and Syed Nasirud Din Shah, Assistant AG for the respondents present.

Arguments heard. The respondents may place on record the documents they desire for just decision of the Tribunal. To come up for order on 26.04.2022 before the D.B. m

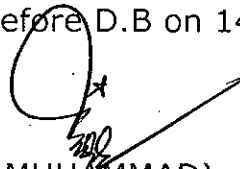
  
(Mian Muhammad)  
Member(E)

  
Chairman

25.05.2021

Mr. Afrasyab, junior counsel for the appellant present. Mr. Sher Azam, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present and submitted written reply on behalf of respondents 1 & 2 which is placed on file.

Junior counsel for appellant requests for adjournment on the ground that learned counsel for appellant is busy before the august Peshawar High Court. Adjourned. To come up for hearing before D.B on 14.09.2021.



(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

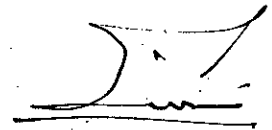
14.09.2021

Mr. Kamran Khan, junior of learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments before the D.B on 22.12.2021.



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



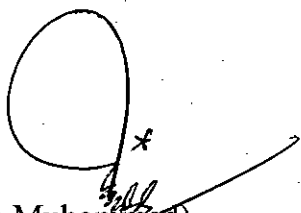
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

30.12.2020

Counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney alongwith Mr. Sher Azam, Assistant for respondents present.

Written reply on behalf of respondents not submitted. Representative of the respondents seeks time for submission of written reply/comments on the next date.

Adjourned to 23.02.2021 before S.B.

  
(Mian Muhammad)  
Member(E)

23.02.2021

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

Written reply on behalf of respondents not submitted despite last chance given in order sheet dated 16.09.2020, therefore, the appeal is posted before the D.B for 25.05.2021 for arguments.

  
(Muhammad Jamal Khan)  
Member

16.09.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned AAG requests for time to contact the respondents and submit written reply/comments on behalf of the respondents on next date of hearing. Last opportunity is granted for submission of written reply/comments of the respondents on 05.11.2020 before S.B.

  
Chairman

05.11.2020

Junior counsel for appellant is present. Mr. Kabirullah Khattak, Additional AG for the respondents is also present.

Written reply on behalf of respondents not submitted. Learned Additional AG requests for further time to contact the respondents and furnish written reply/comments on the next date of hearing. Adjourned to 30.12.2020 on which date written reply/comments shall be positively submitted before S.B.

  
(MUHAMMAD JAMAL KHAN)  
MEMBER

19.03.2020

Clerk to counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith M/S Sher Azam Khan, Assistant and Nowsherwan, Senior Auditor for the respondents present. Written reply on behalf of respondents not submitted. Representatives of the department seek adjournment to furnish written reply/comments. Adjourned to 28.04.2020 for written reply/comments before S.B.



(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

28.04.2020

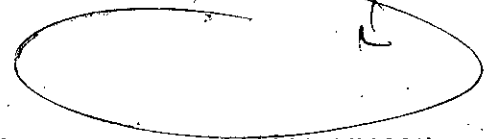
Due to COVID19, the case is adjourned to 21.07.2020 for the same as before.



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21.07.2020

Mr. Noor Muhammad Khattak, Advocate, for appellant is present. Vide previous order sheet dated 28.04.2020 the instant service appeal was adjourned due to COVID-19, today no one is present on behalf of the respondents therefore, notices be issued to the respondents for submission of written reply/comments for 16.09.2020 before S.B.



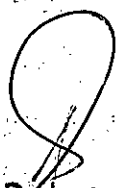
(MUHAMMAD JAMAL KHAN)  
MEMBER

03.02.2020

Counsel for the appellant Mst. Shamim Ara present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Education Department as Primary School Teacher. She was removed from service on the allegation of absence from duty. After availing the remedy of departmental appeal, the appellant filed service appeal which was partially accepted, the appellant was reinstated in service, however, the respondent-department was held at liberty to conduct de-novo inquiry vide judgment dated 05.03.2019. It was further contended that again de-novo inquiry was conducted but neither the appellant was issued any charge sheet, statement of allegation nor the appellant was associated in the departmental inquiry. It was further contended that after conducting de-novo inquiry, the appellant was reinstated in service vide order dated 21.06.2019 but her absence period with effect from 12.02.2015 to 20.06.2019 was treated as extra-ordinary leave without pay vide same order. It was further contended that since the departmental de-novo inquiry was not conducted in accordance with law and the appellant was not proved guilty, therefore, respondent-department was bound to reinstate her with back benefits, therefore, the impugned order regarding his absence period treated as extra-ordinary leave without pay is illegal and liable to be set-aside.

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, notices be issued to the respondents for written reply/comments for 19.03.2020 before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

  
Appellant Deposited  
Security & Process Fee

13/2






The appeal of Mst. Shamim Akhtar PST GGPS Kass kalli Kopar District Malaknad received today i.e. on 31.10.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures-A & B of the appeal are illegible which may be replaced by legible/better one.
- 2- Wakalat nama is unsigned/unattested.

No. 1918 /S.T,

Dt. 01-11 /2019.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

*Sir,*

*All objections have been removed,  
hence re-submitted today dated 18/11/2019.*

*18/11/2019*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

APPEAL NO. 1559 /2019

**SHAMIM ARA**

**V/S**

**EDUCATION DEPTT:**

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**APPELLANT**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

APPEAL NO. 1559 /2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1529

Dated 31-10-2019

Mst: Shamim <sup>Ara</sup> Akhtar, PST (BPS-12),  
GGPS Kass kalli, Kopar, District Malakand.....**APPELLANT**

**VERSUS**

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

.....**APPELLANT**

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 21.06.2019 WHEREBY THE INTERVIENING PERIOD w.e.f. THE DATE OF REMOVAL FROM SERVICE i.e. 12.11.2015 TILL 20.06.2019 HAS BEEN TREATED AS LEAVE WITHOUT PAY AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS**

**PRAYER:**

That on acceptance of this appeal the impugned order dated 21.06.2019 may very kindly be modify/ rectify to the extent of allowing back benefits to the appellant i.e. w.e.f. 12.05.2015 till 20.06.2019. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

**Brief facts giving rise to the present appeal are as under:-**

- 1- That appellant was initially appointed as PST (BPS-7 now BPS-12) vide order dated 23.10.1988. That after appointment the appellant submitted her charge report and started performing duty at the concerned station quite efficiently and upto the entire satisfaction of her superiors. Copy of the appointment order is attached as annexure.....**A.**
- 2- That since the date of 1<sup>st</sup> appointment order the appellant has served the respondent with all zeal and zest and during service no complaint was received to the high ups against the efficiency and honesty of the appellant.

12.11.2015  
Filed to-day  
Registrar  
31/10/19

Re-submitted to-day  
and filed.  
Registrar  
31/10/19

- 3- That during service the appellant was applied for extra ordinary leave for the period from 10.09.2011 till 09.03.2012. That after completion of the said leave the appellant was submitted her arrival and started performing her duty in the concerned school. Copy of the sanction is attached as annexure.....**B.**
- 4- That the appellant was declared as absent from duty which was a baseless allegation as throughout the whole service career the appellant had never absented from her lawful duties. That the appellant had performed her duties in the far flung and hard areas of District Malakand.
- 5- That astonishingly the appellant was removed from service vide order dated 11.12.2015 on the allegation of absentia which I have never been done during my service. That feeling aggrieved from the impugned order dated 11.12.2015 the appellant submitted Departmental appeal followed by service appeal No. 383/2016 which was decided in favor of the appellant vide judgment dated 05.03.2019. Copies of the removal order, departmental appeal, memo of appeal and judgment are attached as annexure..... **C, D, E & F.**
- 6- That after obtaining attested copy of the judgment dated 05.03.2019 the appellant submitted the same before the respondent No. 2. That the respondent No.2 conducted de-novo inquiry in the matter without associating the appellant and after the aforementioned inquiry the appellant was re-instated into service vide impugned order dated but with immediate effect and as such the intervening period w.e.f. 12.11.2015 till 20.06.2019 has been converted into extra ordinary leave without pay. Copy of the impugned order is attached as annexure.....**G.**
- 7- That appellant feeling aggrieved from the impugned order dated 21.06.2019 filed Departmental before the respondent No.1 but no reply has been received so far. Hence the appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure.....**H.**

**GROUND:**

- A- That the impugned order dated 21.06.2019 is against the law, facts, norms of natural justice and materials on the record, hence not tenable and liable to be modified to the extent of back benefits w.e.f 12.11.2015 till 20.06.2019.
- B- That 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 violated Article- 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

- C- That the respondents acted in arbitrary and malafide manner by treating the intervening period w.e.f. 12.11.2015 till 20.06.2019 as leave without pay, which is not tenable and liable to be modified.
- D- That the appellant was not associated in the alleged de-novo inquiry conducted by the respondent No.2 in the above mentioned matter and the same is against the law and prescribed rules.
- E- That no inquiry report has been delivered to the appellant before issuing the impugned order dated 21.06.2019.
- F- That no chance of personal hearing/ defense has been provided to the appellant before issuing the impugned order dated 21.06.2019 which mandatory as per judgment of Honorable Supreme Court.
- G- That the allegations of absentia leveled against the appellant has not been proved, therefore, the appellant is fully entitle for back benefits.
- H- That 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: 29.10.2019

**APPELLANT**



**SHAMIM ARA**

**THROUGH:**

**NOOR MOHAMMAD KHATTAK**

**&**



**MIR ZAMAN SAFI  
ADVOCATES**

Better copy Page - 4

**BEFORE THE DISTRICT EDUCATION OFFICER (F) MALAKAND AT BATKHELA**

**APPOINTMENT:**

The following PTC U/Trained candidates are hereby appointed as PTC Mistresses in the Basic pay scale No-(7) fixed usual allowances as admissible under the rules against the PTC post and schools mentioned against each in the interest of public interest with immediate effect from the date of their taking over charge on the terms and conditions given below:-

S. No.	Name & Father's name with residence	Qualification year of taking PTC Exam: 1987-88	Place of posting school	Remarks
1.	Shahnaz Begum D/O Bakht Zamin Village Kopar Malakand Mkd; Agency	One Sub; Failed Mot/U/Trained 1987-88	GGPS Sholawal Mkd: Agency	Against the N/C PTC Post
2.	Miraj Begum D/O Naik Jan Village Jula Gram, Mkd;	---do---	---do---	---do---
3.	Shamim Ara D/O Abdul Hassan Village Kopar Mkd: Agency	---do---	GGPS, Gumbat Agra	---do---

A-51

Date of appointment (23/10/1988)

OFFICE OF THE DISTRICT EDUCATION OFFICER (F) MALAKAND AT BATHKHELA

APPOINTMENT The following PTC U/Trained candidates are hereby appointed as PTC Mistresses in the Basic pay scale No-(7) Fixed usual allowances as admissible under the rules against the PTC Post and Schools mentioned against each in the interest of public service with effect from the date of their taking over charge on the terms and conditions given below:-

No.	Name & Father's name with residence	Qualification year of taking PTC Exam; 1987-88	Place of Posting School	Remarks.
1-	Shahnaz Begum D/O Bakht Zamin Village Kopar Mkd; Agency.	One Sub; Failed Mat; U/Trained 1987-88	GGPS, Sholawal Mkd; Agency	Against the N/C PTC post.
2-	Miraj Begum D/O Nalk Jan Village Jula Gram Mkd;	-----do-----	-----do-----	-----do-----
3-	Shamin Ara D/O Abdul Hashman Village Kopar Mkd; Agency.	-----do-----	GGPS, Gumbat Agra	-----do-----
4-	Saharun Bibi D/O Mirin Khan Village Kopar Mkd; Agency	-----do-----	-----do-----	-----do-----
5-	Neemat Begum D/O Bigrawar Khan Vill; Dargaga Mkd; Agency	Two Sub; Failed.	GGPS, Gran-Dara Mkd;	-----do-----
6-	Makia D/O Shah Sabib Village Khan Garhi	-----do-----	-----do-----	-----do-----
7-	Sabir Bibi D/O Fazale Manan Village Jula Gram Mkd;	-----do-----	GGPS, Piazdara Mkd; Agency	-----do-----
8-	Miori Zainab D/O Mahmood Shah Vill; S/Kot Mkd; Agency	Three Sub; Failed	GGPS, Gharib Abad Agra	Against the Vacant PTC Post.
9-	Hashmat Ara D/O Godermat Sarwar Vill; Ashkali S/Kot Mkd;	Failed.	GGPS, Piazdara	Against the N/C PTC post.
10-	Koorul Haram D/O Hussain Khan Village Palonaw (Hero Shah)	-----do-----	GGPS, Makhdawali	-----do-----
11-	Majira Bibi D/O Salfur Ichman Vill; Kharki Dargai Mkd;	-----do-----	GGPS, Mishta Banda	-----do-----
12-	Lubna Habib D/O Habib Khan Village Sorana (Malakand)	-----do-----	-----do-----	-----do-----
13-	Rashida Begum D/O Shifa Gul Village Jula Lisri (Hero Shah)	-----do-----	GGPS, Inzergai Mkd; Agency	-----do-----
14-	Bakht Sultana D/O Mir Afzal Village Hero Shah Mkd; Agency	-----do-----	-----do-----	-----do-----
15-	Hashmat D/O Hashmat Khan Village Kharki Dargai	-----do-----	GGPS, Ghound Agra Mkd; Agency.	Against the vac. PTC post.

ATTESTED

4

CONDITIONS  
 1. Service report should be submitted to all concerned.  
 2. TA/DA is allowed.  
 3. The appointments are purely temporary and liable to termination at any time without assigning any notice. In case of resignation, the candidate will have to submit one month notice (Prior) to the Deptt. for forfeit one months pay into the Govt. treasury in lieu thereof.  
 4. The Sub; Dy. Edu; Officer (F) Bathkela is required to check the original certificates of the candidates before handing-over charge to them.  
 5. The candidates are required to produce health & age certificate from the Agency Surgeon concerned.



BETTER COPY OF PAGE-5

**OFFICE OF THE EXECUTIVE DISTRICT OFFICER (E&SE)**  
**MALAKAND AT BATKHELA**

**LEAVE SANCTION:**

In exercise of powers conferred vide Rules-6 sub rules (1)(b) of the District Government rules of business 2001, as amended vide Government of Khyber Pakhtunkhwa local Government Election and Rural Development Department Notification No. SO(LC-1)3-196/EM/2005 dated 07.10.2005.

Sanction is hereby received to the grant of extra ordinary leave without pay for the period from 10.09.2011 to 09.03.2012 (Six months) in respect of Mst. Shamim Ara PST Govt: Girls Primary School Koper, Malakand Agency as due and admissible to her under the revised leave rules, 1981.

Note:- Necessary entry to this effect should be made in her service book and leave account accordingly.

(MUSHTAQ AHMAD)  
EXECUTIVE DISTT: OFFICER (E&SE)  
MALAKAND BATKHELA

Endst: No. 14698-14700/F. No. Leave/PST(F)

Dated 11.10.2011

Copy forwarded.

B-5

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (ERSS) MALAKAND AT BATHKETA.  
LEAVE SANCTION.

In exercise of powers conferred vide Rules-6 sub rules (1)(b) of the District Government rules of business 2001, as amended vide Government of Khyber Pakhtunkhwa Local Government Election and Rural Development department Notification No. 90(LG-1) 3-196/EM/2005 dated 07. 10. 2005.

Sanction is hereby accorded to the grant of extra ordinary leave without pay for the period from 10.09.2011 to 09.03.2012 ( Six months ) in respect of Mst. Shama Ara P.S.T. Govt. Girls Primary School Koper, Malakand Agency and admissible to her under the revised leave rules 1981.

Note:- Necessary entry to this effect should be made in her service book and leave account accordingly.

( MUSHAR AHMED )  
EXECUTIVE DISTRICT OFFICER (ERSS)  
MALAKAND AT BATHKETA.

Encl. No. 14698-14700 / P.No. Leave/EST(?) Dated 11/10/2011.

- 1. Copy forwarded for information and action to:  
The Deputy District Officer (Female) Malakand. The service book in original of the above named mistress is returned herewith in original for your office record.
- 2. The Agency Accounts officer, Malakand.
- 3. Mst. Shama Ara P.S.T. G.G.S.S. Koper, Malakand Agency.

EXECUTIVE DISTRICT OFFICER (ERSS)  
MALAKAND AT BATHKETA.

**ATTESTED**



**REGISTERED**



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT**

Dated Peshawar the, December 11, 2015.

**NOTIFICATION**

**NO.SO(S/F)E&SED/4-17/2015/Shamim Ara PST:** WHEREAS Ms. Shamim Ara PST (BS-12) GGPS Kopar, Malakand was proceeded against under the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the Show Cause Notice.

2. **AND WHEREAS** Elementary & Secondary Education Department Khyber Pakhtunkhwa, with the approval of Competent Authority, issued show cause notice to her on 22-05-2015.

3. **AND WHEREAS** the Competent Authority (Chief Secretary, Khyber Pakhtunkhwa) after having considered the charges and evidence on record, reply of the accused officer in response to the show cause notice and personal hearing granted to him by Chief Secretary Khyber Pakhtunkhwa on 27-11-2015, is of the view that the charges against the accused officer have been proved.

4. **NOW, THEREFORE**, in exercise of the powers conferred under section 14 of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011, the Competent Authority (Chief Secretary, Khyber Pakhtunkhwa) is pleased to impose, a major penalty of "**removal from service**" upon Ms. Shamim Ara PST (BS-12) GGPS Kopar, Malakand with immediate effect.

**ATTESTED**

SECRETARY

Endst. of even No & date

Copy to:

1. Director E&SE, Peshawar.
2. District Education Officer (F) Malakand.
3. District Accounts Officer, Malakand
4. PS to Chief Secretary Khyber Pakhtunkhwa.
5. PS to Secretary E&SED Khyber Pakhtunkhwa.
6. Ms. Shamim Ara PST (BS-12) GGPS Kopar, Malakand.

(LAL SAEED KHATTKA)  
SECTION OFFICER (S/F)

To,

The Chief Secretary,  
Khyber Pakhtunkhwa,  
Civil Secretariat Peshawar.

Subject: DEPARTMENTAL APPEAL/REPRESENTATION  
AGAINST IMPUGNED ORDER NO.SO(S/F)E&SED/4-  
17/2015 PESHAWAR DATED 11/12/2015. AN  
AWARDED MAJOR PENALTY TO THE APPELLANT,  
REMOVAL FROM SERVICE.

Respected Sir,

1. That the appellant was appointed as PST in BPS-12 at Govt Girl Primary School Agra Gumbat Malakand in the year of 23/10/1988 and performed her duty to the best of her ability and commitment.
2. That the appellant/applicant never absented, from her duty, throughout her career except with permission.
3. That the allegations, which is levelled against the appellant/applicant is totally baseless, wrong, illegal and no such enquiry had been conducted against the appellant.
4. That on the said period, the applicant obtained ex-pakistan leave permission, from 10/09/2011 to 09/03/2012, which is annexure "A".
5. That the allegation regarding the absence of the appellant is not correct, that there is no such report submitted by Head

**ATTESTED**

*[Handwritten signature]*

8

(10)

Mistress regarding the absence of the appellant and the appellant is very much performed her duty in G.G.P.S

*Koper*  
*S. H. M. J. J.* and received her salary.

6. That the appellant filed a complaint against one Rukhsana Rahim Sub-Divisional Officer, Dargai Malakand and the enquiry was conducted against that complaint, the appellant provide sufficient evidence against Rukhsana Rahim but she was exonerated from the charges and the appellant was removed from her service without any proper enquiry.
7. That being aggrieved from the said impugned order filed this departmental appeal/representation. Inter alia with the following grounds:

**GROUNDS:**

- A. That the impugned removal from service is illegal and unlawful and against the natural justice.
- B. That no such separate inquiry has been conducted and no opportunity has been given thus they condemned unheard which is violation of fundamental right, and against the Article 10-A of the constitution of Pakistan.
- C. That the appellant properly received/obtained leave without pay vide order dated 10/09/2011.
- D. That the appellant/applicant never absented, from her duty, throughout her career except with permission.

**ATTESTED**

*J*

9



- E. That the allegations, which is levelled against the appellant/applicant is totally baseless, wrong, illegal and no such enquiry had been conducted against the appellant.
- F. That on the said period, the applicant obtained ex-pakistan leave permission, from 10/09/2011 to 09/03/2012, which is already annexed.
- G. That the allegation regarding the absence of the appellant is not correct, that there is no such report submitted by Head Mistress regarding the absence of the appellant and the appellant is very much performed her duty in G.G.P.S <sup>Shamshin</sup> ~~Agri~~ <sup>KOPER</sup> ~~Agri~~ ~~Combat~~ Malakand and received her salary.
- H. That any other ground will be taken at the time of personal hearing with your kind permission.

It is, therefore, most humbly requested that on acceptance of this departmental representation the impugned removal from service Order may kindly be set-aside/cancel/withdrawn and reinstate the appellant with all back benefits.

**ATTESTED**

APPELLANT

*Shamshin A. Koper*  
MST. SHAMEEM ARA,  
(PST/BS-12),  
Government Girls Primary  
School Kapoor Malakand.

Date: \_\_\_/\_\_\_/2015



11

11

**Prayer in Appeal:**

*On acceptance of this service appeal, the respondent may be directed to reinstate the appellant from the dated of termination/ order No. so(s/f)e& sed/4-17/2015 Peshawar dated 11/12/2015 with all back benefits*

**Respectfully Sheweth:**

*Facts giving rise to the present petition are as under: -*

1. *That the appellant was appointed as PST in BPS-12 at Govt Girl Primary School Agra Gumbat Malakand in the year of 23/10/1988 and performed her duty to the best of her ability and commitment. (Copy of appointment latter attached is annex "A").*
2. *That the appellant never absented, from her duty, throughout her career except with permission.*
3. *That the allegations, which is levelled against the appellant is totally baseless, wrong, illegal and no such enquiry had been conducted against the appellant.*

**ATTESTED**

*[Handwritten signature]*





4. That during the said period, the applicant properly obtained ex-Pakistan leave, from 10/09/2011 to 09/03/2012, (Copy of permission latter attached as annexure "B").
  
5. That the allegation regarding the absence of the appellant is not correct, as there is no such report submitted by Head Mistress regarding the absence of the appellant and the appellant is very much performed her duty in G.G.P.S Agra Combat Malakand and received her salary.
  
6. That the appellant filed a complaint against one Rukhsana Rahim Sub-Divisional officer, Dargai Malakand and the enquiry was conducted against that complaint, but instead of taking any action on Respondent No. 5 the appellant was removed from her service without any proper enquiry.
  
7. That the appellant filed departmental appeal against order dated 11/12/2015 which was dismissed on 29/02/2016. (Copy of appeal and order attached as annex "B1")

**ATTESTED**

4

That being aggrieved from the said impugned orders dated 11/12/2015 and 29/02/2016, the

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applicant approach this Hon'ble tribunal on the following amongst other grounds.

**Grounds:-**

- A. That the impugned order of removal from service is illegal and unlawful and against the natural justice.
- B. That no such separate inquiry has been conducted and no opportunity of personal hearing has been given thus they condemned unheard which is violation of fundamental right, and against the Article 10-A of the constitution of Pakistan.
- C. That the appellant was terminated without any enquiry which is against the law and natural justice. (Copy of show cause notice and reply attached is annexure "C")
- D. That the appellant never absented, from her duty, throughout her career except with permission.

**ATTESTED**





- E. *That the allegations, which is levelled against the appellant is totally baseless, wrong, illegal and no such enquiry had been conducted against the appellant.*
- F. *That during the said period, the applicant properly obtained ex-Pakistan leave, from 10/09/2011 to 09/03/2012*
- G. *That the appellant properly received/obtained leave without pay vide order dated 10/09/2011.*
- H. *That three different enquiries was conducted against respondent No. 5 one was conducted by Saeed Khan principal GCMHS bat Khela (Chairman) Abdul Haq principal GCH Badraga member, on dated 15/04/2014 and the 2<sup>nd</sup> enquiry was conducted by Afzal Latif Secretary education which is in the possession of Secretary education and third enquiry was conducted by Khalid Mehmood (Retired Captain) on dated 21<sup>st</sup> September. (Copy of enquiry attached are annex "D")*

**ATTESTED**

(15)



I. That respondent No. 5 lodge a report/ FIR against the Husband and brother of the appellant as which the Hon'ble court inquiry them from the charges. (Copy of order attached are annex "E")

J. That any other ground will be taken at the time of personal hearing with your kind permission.

It is, therefore, humbly prayed that on acceptance of this appeal impugned orders dated 11/12/2015 removal from service, and order dated 29/02/2016 may kindly be set-aside/ cancel/ withdrawn and reinstate the appellant with all back benefits.

Dated:- 02/03/2016

Appellant

Through:-

ATTESTED

4

Rehman Ullah  
Shehryar Khan  
& M. Arif  
Advocates, High Court,  
Peshawar.

F-16

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT SWAT

Service Appeal No. 383/2016

Date of Institution... 10.03.2017

Date of decision... 05.03.2019



Mst. Shameem Ara W/O Javed Hussain R/O Village Standaro P/O Tehsil Dargai District Malakand. ... (Appellant)

Versus

1. The Chief Secretary, Government of Khyber Pakhtunkhwa Peshawar and 5 others. ... (Respondents)

MR. SHAZULLAH KHAN YOUSAFZAI,  
Advocate

... For appellant.

MIAN AMIR QADIR,  
District Attorney

... For respondents.

MR. HAMID FAROOQ DURRANI,  
MR. AHMAD HASSAN

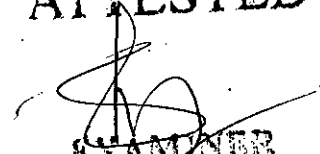
... CHAIRMAN  
... MEMBER

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN: -

Instant judgment is proposed to dispose of also Service Appeal No. 384/2016 (Mst. Bakhtmeena Vs. Chief Secretary Khyber Pakhtunkhwa), as both the appellants are aggrieved of orders dated 11.12.2015 passed by respondent No. 1, whereby, major penalty of removal from service was

**ATTESTED**

  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal.  
 Peshawar

(17)

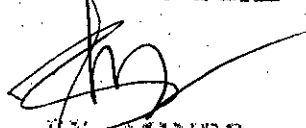
imposed upon them. They are also aggrieved of rejection of their departmental appeals vide order dated 29.02.2016.

2. We have heard learned counsel for the appellants and learned District Attorney on behalf of the respondents. We have also thoroughly perused the available record with the assistance of learned counsel for the parties.

3. The record suggests that a show cause notice was issued to the appellants by the respondent No. 1/Chief Secretary, Khyber Pakhtunkhwa, purportedly, in the capacity of competent authority. It was conspicuously noted in the show cause notices that during an enquiry against one Mst. Rukhsana Rahim SDEO(F) Dargai, the appellants were given opportunity of hearing and on going through the findings and recommendations of enquiry officer and the material on record, the appellants were found to be inefficient, guilty of misconduct and habitual absence. They were, therefore, required through the said notice to show cause as to why the penalty of removal from service should not be imposed upon them. The notice was duly replied by the appellants. Consequently, the impugned orders dated 11.12.2015 were passed.

4. The record is suggestive of the fact that at the relevant time both the appellants were employed as Primary School Teachers (BPS-12) and by virtue of their such position the respondent No. 1/Chief Secretary Khyber Pakhtunkhwa was not the competent authority to issue the show cause notice and pass the impugned order of their removal from service. It is also

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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gatherable from the record that enquiry proceedings were ordered against one Mst. Rukhsana Rahim SDEO (F) Dargai Malakand upon allegations set forth by both the appellants. During the said proceedings, the statements of appellants were also recorded by the enquiry officer besides one Mst Rasheeda Begum, the then Headmistress, GGHS Kopar Malakand. Apparently, during cross-examination of the appellants certain facts surfaced against them.

Besides the fore-noted enquiry report, learned District Attorney could not lay hands on any document reflecting the initiation or conclusion of enquiry against the appellants independent of the proceedings against Mst. Rukhsana Rahim. In the said view of the matter, we are constrained to hold that the impugned orders were not backed by proceedings in accordance with law. The said lapse on the part of the respondents placed the appellants in a position where they did not have any opportunity of defending their respective cause. It is not the case of respondents that regular enquiry was dispensed with, in specific terms, by the competent authority.

5. As observed here-in-before the appellants were both serving against BPS-12 at the relevant time and, as such, the Authority competent to proceed against them departmentally was the concerned Executive District Officer and not the Chief Secretary Khyber Pakhtunkhwa/respondent No. 1, therefore, the proceedings and orders impugned before us could safely be termed as coram-non-judice.

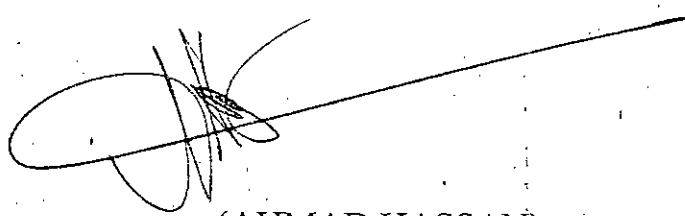
**ATTESTED**

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

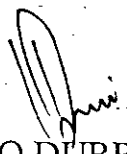
18/A

6. As a sequel to the above, we allow both the appeals and set aside the impugned orders of removal from service passed against the appellants on 11.12.2015. Resultantly, the appellants are reinstated into service. The respondents may, however, undertake departmental proceedings against the appellants but only in accordance with law and rules. The denovo proceedings, if taken, shall be concluded within a period of ninety days from the receipt of copy of instant judgment. The issue of back benefits in favour of appellants shall follow the result of denovo proceedings.

Parties are left to bear their respective costs. File be consigned to the record room.

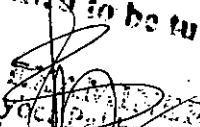


(AHMAD HASSAN)  
Member



(HAMID FAROOQ DURRANI)  
Chairman  
Camp Court, Swat

ANNOUNCED  
05.03.2019

**Certified to be true copy**  
  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation 30-10-18  
Number of Copies 1600  
Copying Fee 78  
Urgent 4  
Total 22  
Name of Clerk [Signature]  
Date of Completion of Copy 30-10-18  
Date of Delivery of Copy 30-10-18



G-19

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) MALAKAND AT BATKHELA.

NOTIFICATION/

**WHEARAS,** Mst. Shamim Ara was appointed against PST/PTC at GGPS Gumbat Agra Swat Ranizai vide DEO(F) Malakand at Batkhela under endst: No. 3556-70 dated 19.10.1988.

1. AND WHEARAS, She had left the country for KSA without permission in 2015.
2. AND WHEARAS, Show Cause notice were issued by Chief Secretary Khyber Pakhtunkhwa, vide No. SO(S/F)E&SE/4-17/2015/Shamim Ara PST dated Peshawar May 22, 2015.
3. AND WHEARAS, she was removed from services vide Government of Khyber Pakhtunkhwa, Elementary and Secondary Education Department vide Notification No. SO(S/F)E&SED/4-17/2015/Shamim Ara PST/ dated Peshawar the, December 11, 2015.
4. AND WHEARAS, she filled departmental appeal to the authorities which was rejected.
5. AND WHEARAS, she filled a service appeal No. 383/2016 dated 10.3.2017 for seeking reinstatement in the August Service Tribunal Khyber Pakhtunkhwa, Peshawar.
6. AND WHEARAS, the Honourable Service Tribunal Peshawar directed the respondent in its Judgment vide para-6 as a sequel to the above, we allow both the appeals and set aside the impugned orders of removal from service passed against the appellants on 11.12.2015. Resultantly, the appellants are reinstated into service. The respondents may, however, undertake departmental proceedings against the appellants but only in accordance with law and rules. The denovo proceedings, if taken, shall be concluded within a period of ninety days from the receipt of copy of instant judgment. The issue of back benefits in favour of appellants shall follow the result of denovo proceedings was announced on 05.3.2019.
7. AND WHEARAS, a denovo enquiry comprising of Mst. Safia Begum Principal GGHS Sakhakot and Mst. Shazia ASDEO(F) Circle Zoormandi (Hero Shah) SDEO(F) office Dargai was constituted vide this office No. 2883-87 dated 10.5.2019 to probe into the matter and further benefits.
8. AND WHEARAS, the enquiry officers recommended that the accused Mst. Shamim Ara Ex-PST is not fit to continue her job as a Government servant therefore, it is recommended that she may be granted compulsory retirement. ii. That the then SDEO Mst. Rukhsana Raheem is not competent and trustworthy to occupy and chair any public office due to her facilitating role over sighting the mal activities of the accused Mst. Shamim Ara and Headteachers. Therefore she may be adjusted in teaching cadre. That due to facilitating role of H/T Mst. Rahmania and Mst. Rasheeda of the said school, one increment from each may be stopped/taken back.
9. AND WHEARAS, her absence period w.e. from 12.11.2015 to 20.06.2019 is converted into extra ordinary leave without pay.

Now therefore in the exercise of the power conferred under Khyber Pakhtunkhwa, servants (E&D) rules-2011, the competent authority is please to honour the decision of the honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar and Mst. Shamim Ara W/O Javed Hussain Ex-PST GGPS Koper, Tehsil Dargai/Sama Ranizai village Stanadaro Kalli Koper & post office Koper District Malakand is hereby re-instated into the service with immediate effect and intervening period may be treated as leave without pay. Dargai

Moreover she is adjusted at GGPS Kass Kalli Koper under observance of the SDEO(F)/or the undersigned for the period of one year.

DISTRICT EDUCATION OFFICER (FEMALE)  
MALAKAND AT BATKHELA.

TESTED

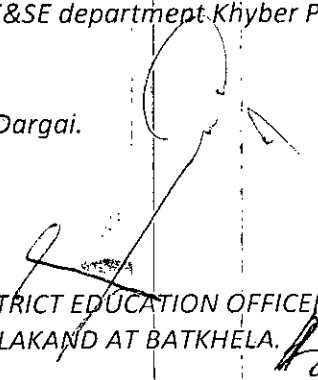
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Endst:No. 3729-38

Dated Batkhela the 21/6 /2019.

Copy forwarded to :-

1. The Registrar Service Tribunal Khyber Pakhtunkhwa, at Camp Court Swat.
2. The Additional Advocate General Service Tribunal Khyber Pakhtunkhwa, at Camp Court Swat.
3. The Section Officer (Litigation) E&SED Khyber Pakhtunkhwa, Peshawar.
4. The District Accounts Officer Malakand.
5. The Assistant Director (Lit-II) Directorate of E&SE department Khyber Pakhtunkhwa, Peshawar.
6. The SDEO(F) Dargai.
7. The ASDEO(F) Circle Zoormandi (Heroshah) Dargai.
8. The Teacher concerned.
9. Master file.

  
DISTRICT EDUCATION OFFICER (FEMALE)  
MALAKAND AT BATKHELA.

H-20

To

The Director (E&SE) Departmental,  
Khyber Pakhtunkhwa, Peshawar.

Subject: **DEPARTMENTAL APPEAL AGAINST THE NOTIFICATION  
DATED 21.06.2019**

R/Sir,

Reference to the above notification dated 21.06.2019 whereby the intervening period w.e. from the date of removal from service i.e. 12.11.2015 till 20.06.2019 has been treated as leave without pay. In this connection the applicant briefly states as under:

1. I was appointed as PST now in BPS-12 vide order dated 23.10.1988 after fulfilling all the codal formalities required for the post.
2. I have performed my duty quite, efficiently, whole heartedly and up to the best of my abilities and have never given anyone the chance of any complaint hence I have an unblemished service record of more than 25 years.
3. I was declared as absent from duty which was a baseless allegation as throughout the whole service carrier, I have never been absented myself from my official duties I have performed in the far flung & hard areas of District Malakand.
4. I was removed from service vide order dated 11.12.2015 against which I filed a Departmental Appeal which was rejected on 29.02.2016 whereupon, I filed service appeal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar for her re-instatement which was allowed in my favour vide judgment dated 05.03.2019 by directing the respondent Department to conduct de-novo inquiry.
5. The service Tribunal has accepted my service appeal as a whole and clear direction was issued to the respondent Department but it was wrongly been interpreted by the competent authority as well as the inquiry committee.

**TESTED**  
In the judgment delivered by the Service Tribunal I have been exonerated completely from the allegation of absence, therefore under the principle of natural justice I am entitle for the back benefits.

7. The inquiry was conducted but to the extent of absence period which was a past and close transaction and the same does not took any point regarding the back benefits or intervening period.

8. I have never been involved in any gainful job during the intervening period, therefore in light of the apex Court judgments I am fully entitle for the grant of back benefits.

It is, therefore, most kindly requested that the notification dated 21.06.2019 may be rectified/modified by allowing me back benefits for the intervening period i.e. w.e.f. 12.11.2015 to 20.6.2019 and oblige.

Dated: 17.7.2019

Thanking you in anticipation

Obediently yours,  
*Shamim Ara*  
Shamim Ara, PST,  
GGPS Kass kalli, Koper,  
Tehsil Dargai, District Malakand

**ATTESTED**

*g*

**VAKALATNAMA**

Before the KP Service Tribunal, Peshawar

OF 2019

Shamim Ara

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Education Department

(RESPONDENT)  
(DEFENDANT)

I/We Shamim Ara

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. \_\_\_/\_\_\_/2019

Shamim

CLIENT

Shamim

**ACCEPTED**

**NOOR MOHAMMAD KHATTAK**

**SHAHZULLAH YOUSAFZAI**

**&**

**MIR ZAMAN SAFI  
ADVOCATES**

OFFICE:

Flat No.3, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.

Mobile No.0345-9383141



**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTOONKHWA PESHAWAR**

**Service Appeal No: 1559/2019**

**Mst: Shamim Akhtar , PST (BPS-12) GGPS Kass Kalli Koper Tehsil Dragai District Malakand .**

..... (Appellant)

**VERSUS**

**1. The Director (E&SE) Department, Khyber Pakhtumkhwa, Peshawar.**

**2. The District Education Officer (F) District Malakand.**

**3. The District Account Officer, District Malakand.**

(Respondents)

**Para wise comments on behalf of respondents No 1 <sup>and 2.</sup>**

Respectfully Sheweth  
Preliminary Objections.

1. That the appeal is badly barred by time and under the rules is not maintainable.
2. That the appellant had concealed material facts from the Honorable Service Tribunal.
3. That the appellant had got no cause of action to file the instant appeal.
4. That the appellant has got no locus standi to ask for claim.
5. That the appellant is estopped by his own conduct to file the present appeal.
6. That the appeal is not maintainable in its present form and is not competent.
7. That the Honorable Tribunal has no jurisdiction to entertain the appeal.
8. That the instant appeal is bad for mis-joinder/ non joinder of necessary parties.

**FACTS.**

1. Pertains, to record. needs no comments.
2. Incorrect, The appellant marked absent by DDO(F) Dargai and ASDEO(F) Dargai during their surprised visits while the Head Teacher reported that the appellant produced fake OPD chits for maternity leave and has gone to abroad with his husband .Hence the appellant has not performed her duty with all zeal and zest .
3. Incorrect, the appellant has not applied for extra ordinary leave for the period from 10.09.2011 till 09.03.2012.
4. Incorrect, the appellant enjoyed willful absence from her duty w.e. from 12.11.2015 till 20.06.2019 while according to her service book entries she availed the leaves on the following dates/years. which shows her inefficiency for her lawful duties.

S.No	Nature of leave	From	To
1	Maternity Leave	04-10-2000	17-11-2000
2	Medical Leave	18-11-2000	02-01-2000
3	Extra-Ordinary Leave	03-03-2005	02-03-2008
4	Extra-Ordinary Leave	03-03-2008	03-02-2010
5	Extra-Ordinary Leave	10-09-2011	09-03-2012
6	Absent Period	15-05-2012	31-05-2012

- 5 Incorrect, the allegations against the appellant is totally correct and proper enquiry has been conducted against the appellant through Deputy Commissioner Abbot Abad Cap(R) Khalid Mehmood .(Detail enquiry annexed as annexure A)
- 6 Correct, on the judgment of Honorable Service Tribunal dated 05.03.2019 respondent No.2 re-instated the appellant but as she has not performed any duty for the period of 12.11.2015 till 20.06.2019 hence her absence period converted into extra ordinary leave without pay while according to the judgment of August Supreme Court SCMR 228(2003) It is settled law that when there is no work there is no pay.  
(Judgment of Supreme Court SCMR 228(2003) annexed as annexure B)
- 7 The appellant has got no cause of action to file the instant appeal.

**GROUND.**

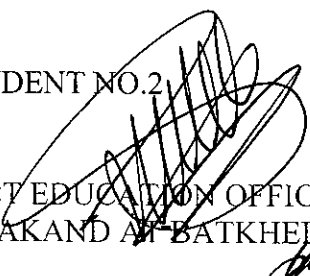
- A. Incorrect, the impugned orders dated 21.06.2019 issued by the respondent No.2 is according to law, facts and norms of natural justice and, available materials on the record showed that no violation has been made. but the appellant has not performed her duty w.e.from 12.11.2015 till 20.06.2019 hence she is not entitled for any back benefits.
- B Incorrect, the appellant has been treated in accordance with law by the Respondent Department, provided the opportunity of personal hearing and no violation has been committed against the constitution of Islamic Republic of Pakistan 1973 Article 4 and 25..
- C Not admitted, the appellant persistently remained absent for 3 year, 7 months and 8 days .hence it was her own faults and no arbitrary and malafide manner was adopted by the department with the appellant.
- D Incorrect, respondent No.2 provided the opportunity of personal hearing while already two enquiries were conducted for the above mention matter according to the law and prescribed rules.
- E Incorrect, all inquiries, orders and other materials delivered in the above mention matter time to time to the appellant.
- F As replied in para D.
- G Incorrect, all the allegations against the appellant is correct , proper enquiry has been conducted against her and according to the available materials she is not entitled for any back benefits.
- H The Respondents also seeks permission to raise additional grounds at the time of arguments.

In light of the above facts it is submitted to kindly dismiss the appeal in hand with cost.

RESPONDENT.1

  
DIRECTOR (E&SE) DEPARTMENT,  
KHYBER PAKHTUNKHWA PESHAWAR.

RESPONDENT NO.2

  
DISTRICT EDUCATION OFFICER  
(F) MALAKAND AT BATKHELA.



**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTOONKHWA PESHAWAR****Service Appeal No:1559/2019****Mst: Shamim Akhtar ; PST (BPS-12) GGPS Kass Kalli Koper Tehsil Dragai District Malakand .****AFFIDAVIT**

I, do hereby solemnly affirm and declare on oath that all the contents of the accompanying parawise comments are true and correct to the best of my knowledge and belief and all the coddle formalities were fulfilled.



*District Education Officer  
(F) Malakand at Batkhela.*



*Confidential*

OFFICE OF THE  
DEPUTY COMMISSIONER  
ABBOTTABAD

No. PS - Misc/84/14-35

Dated 15/04/2015

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To:

The Section Officer(S/F),  
Elementary & Secondary Education Department,  
Khyber Pakhtunkhwa,  
Peshawar.

Subject:

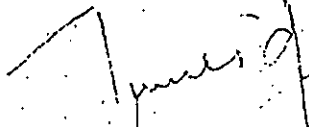
INQUIRY REPORT AGAINST MS. RUKHSANA RAHIM SDEO(E)

Reference:

Your letter No. SO(S/F) / E&SE / 4-17 / 2014 / Inquiry Report  
(Ms. Rukhsana Rahim), dated 22<sup>nd</sup> Sept, 2014.

The inquiry report has been revisited / re-examined and the report is re-submitted as desired for further necessary action.

2. Delay caused in submission of inquiry report is only because my hectic and busy schedule as Deputy Commissioner and the same is very much regretted.

  
CAPT(R) KHALID MEHMOOD  
Deputy Commissioner,  
Abbottabad

Endst. Of Even No. & Date.

Secretary, Establishment Department, Government of Khyber Pakhtunkhwa,  
Peshawar.

## INQUIRY REPORT

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### A. Background

An inquiry was ordered to probe into the allegations raised by Ms. Shamim PST GGPS, Kachi Kopar, Malakand and Ms. Bakht Mina PST GGPS, Mathra District Peshawar against Ms. Rukhsana Rahim, Sub-Divisional Education Officer (F) Dargai, Malakand.

2. The Competent Authority appointed the undersigned as Inquiry Officer to conduct inquiry in the subject case (Annex-A)

3. Charge Sheet (Annex-B) and statement of allegations (Annex-C) duly signed by the Competent Authority were served upon / sent to the accused Ms. Rukhsana Rahim, Sub-Divisional Education Officer (F) Dargai, Malakand on her mailing address.

4. The following charges were framed in the statement of allegations and charge sheet against the accused officer :-

- i. Ms. Rukhsana Rahim, Sub-Divisional Education Officer (Female) Dargai, Malakand demanded Rs. 50,000/- from Ms. Shamim Ara PST GGPS Kachi Kopar Malakand for sanction of Hajj leave and upon refusal from the said teacher, she was transferred and salary for Hajj leave is still withheld.
  - ii. Ms. Rukhsana Rahim, Sub-Divisional Education Officer (F) Dargai, Malakand Demanded Rs. 30,000/- from Ms. Shamim Ara PST GGPS Kachi Kopar Malakand for her promotion and upon refusal she was superseded.
  - iii. Ms. Rukhsana Rahim, Sub-Divisional Education Officer (F) Dargai Malakand recorded maternity leave instead of Hajj leave in service book of Ms. Shamim Ara PST GGPS, Kachi Kopar Malakand by producing fake maternity certificate.
  - iv. Ms. Rukhsana Rahim Sub-Divisional Education Officer (F) Dargai Malakand demanded Rs. 22000/- from Ms. Bakht Mina PST GGPS, Mathra Peshawar for cancellation of her transfer from GGPS, Kopar Malakand to GGPS, Rahbar Shah Malakand which was materialized after receiving the said amount as bribe.
- Ms. Rukhsana Rahim Sub-Divisional Education Officer (F) Dargai Malakand cut down more than 27, big trees at GGPS, Jarri and GGPS, Kopar, Malakand thus caused huge loss to Government.

5. In order to dig out facts so as to reach the conclusion, it was felt necessary to record statements of the complainants and the accused party. Similarly statements of the Head Mistress GGPS, Kopar, Ms. Rashida Begum were also recorded. Brief description of written statement and cross examination of the allegations are as under :-

A

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B. Statement of Ms. Rashida Begum, the then Head Mistress GGPS, Kopar Malakand

Ms. Rashida Begum (the then Head mistress GGPS, Kopar) in her written statement (Annex-D), submitted that Ms. Shamim PST GGPS, Kachi Kopar, Malakand and Ms. Bakht Mina PST GGPS, Kopar (now GGPS, Mathra Peshawar) are sisters-in-law. Both the PSTs were posted in GGPS, Kopar Malakand. As their husbands were in Dubai and Saudi Arabia, therefore, both of them used to go abroad to live with their husbands in frequent intervals. They on return, used to tear away the pages of Attendance Register to conceal their absence. She also claimed that she had reported the matter to high ups time and again but she was forced by Mr. Tufail, the then Deputy Secretary (E&SE) to facilitate both the complainants. She also said that their record is available in files.

C. Cross Examination Ms. Rashida Begum the then Head Mistress GGPS, Kopar Malakand.

Question: Could you produce record of the report you sent to high ups regarding absence from duty in respect of the two teachers?

Answer: I have not brought the relevant record with me.;

Question: Did you report the matter to the District Education Officer?

Answer: No, The matter was reported to the SDEO (F) being controlling officer.

Question: Can you produce the record in original?

Answer: The original record is in the office of SDEO(F).

D. Statement of Ms. Shamim Ara, PST GGPS, Kachi Kopar Malakand

In her written statement (Annex-E), Ms. Shamim PST GGPS, Kachi Kopar Malakand submitted that she was due to proceed on Hajj on 23.09.2013 for which she submitted leave application on 21.09.2013 which was forwarded by the Head Mistress of the school and received in the office of SDEO (F) Dargai Malakand. She telephonically informed the Headmistress to mark her absent w.c.f 17.09.2013 and reported the matter to her. She alleged that all this was done on refusal to pay Rs. 50,000/- to the accused i.e. Rukhsana Rahim Sub-Divisional Education Officer (F) Dargai Malakand for granting her leave. A copy of leave application for Hajj leave was provided which is at (Annex-F). She further submitted that while she was on Hajj leave her transfer was made on mutual basis, which was later on cancelled. She alleged that her salary has been stopped from October, 2013. She also stated that her name in the seniority was at S. No. 133 while other teachers have been promoted upto S. No. 476, and she has been left. She alleged that the accused Ms. Rukhsana Rahim Sub-Divisional Education Officer (F) Dargai Malakand had demanded Rs. 30,000/- as bribe. She also alleged that she had also been abused in front of students. She also alleged that the accused Ms. Rukhsana Rahim Sub-Divisional Education Officer (F)

WY

Question: Do you know that both offering and accepting of bribe is an act of misconduct under the Conduct Rules for which disciplinary action can also be taken against you?

Answer: Yes, but I was in deep trouble and was compelled by the accused SDEO (F) to do so.

Question: Do you have any eye-witness in support of your allegation?

Answer: No. Only the audio recording.

#### H. Statement of Mrs. Rukhsana Rahim, SDEO (F) Dargai, Malakand

Written statement of Ms. Rukhsana Rahim Sub-Divisional Education Officer (F) Dargai, Malakand obtained on 19.08.2014 (Annex-L). She denied all the allegations leveled against her in the charge sheet statement of allegations. She said that husbands of both the complainant teachers are abroad in Dubai and Saudi Arabia for employment. Both the teachers used to visit abroad and live with their husbands abroad without prior permission / applications. When their absence and lack of interest was reported they started complaining & blaming the seniors.

She said that she never demanded a single rupee from Ms. Shamim, PST GPS Kopar. About 40 - 50 teachers & Class-IV employees proceed on Hajj leave, no one would verify the stance of Ms. Shamim. She has been doing all these tricks since 2005. She has availed all her leave. She used to visit abroad on different pretext to live with her husband. Record of flights is available at (Annex-M). On return, she took away the relevant pages of Attendance Register and replaced / tempered the same. Any officers, who tried to report this to the high ups were punished in shape of transfer.

Ms. Shamim applied for Hajj leave on fake Hajj mail / documents, then fake maternity / medical certificate (Annex- N & O) which were foiled by me, this resulted into complaint against me.

As per rules, when a government servant is on long leave, he / she is not considered for promotion. Head Mistress of GPS Kopar was asked to provide 5 years results / ACRs of Ms. Shamim PST, she reported that she was constantly absent and not attending classes, how could she provide the result (Annex-P).

Mst. Sakht Mina PST also used to visit abroad to live with her husband. I often found her absent from duty and report to EDO (Annex-Q). I had no power to order / cancel transfer, hence question of taking / demanding bribe never arises.

Head teacher of GPS Jarri informed that some old trees are dangerous and can fall anytime. Two of the trees fell, damaging 20 feet of boundary of the school. These trees

were auctioned after obtaining permission from District Officer. Some of the amount was spent on repair of boundary wall while the rest deposited in Government Treasury. Details at (Annex-R).

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J. Cross Examination (Ms. Rukhsana Rahim SDEO(F) Dargai Malakand.

Question: Did you demand Rs. 50,000/- from Ms. Shamim for cancellation of her transfer?

Answer: No. I am not competent for making posting/ transfer, the question of demand of bribe does not arise.

Question: Did you propose any legal action against Ms. Shamim and Ms. Bakht Mina?

Answer: Yes. Report of Head Mistress, GGPS, Kopar was forwarded to EDO Malakand at Batkhela through Deputy District Education Officer (F) Dargai, Malakand (Annex-Q & S).

Question: Did you receive application from Ms. Shamim PST?

Answer: Yes. Initially Ms. Shamim submitted application for maternity leave which on verification from concerned hospital was found fake. Knowing this Ms. Shamim submitted another application for Hajj leave on 22.09.2013 alongwith a copy of hajj mail which shows that the name and date have been tempered (Annex-N & O).

Question: Have you suggested any action against Ms. Shamim?

Answer: Yes. I stopped her pay from October, 2013, on the direction of DEO (F) Malakand. I had forwarded the case to the DEO (F) Malakand for action and initially her pay was stopped under direction of DEO (F) Malakand. I do not know why further action was not taken, perhaps due to the presence of influentials.

Question: Have you withheld the salary of Ms. Shamim?

Answer: Yes because she remained willfully absent. Pay of Ms. Shamim Ara was stopped on the directions of the competent authority.

Question: Have you recorded maternity leave instead of Hajj leave through fake maternity certificate?

Answer: No. Leave has neither been recorded as maternity leave nor Hajj leave because the documents, provided with the applications, were fake and no entry can be made on fake documents/certificates.

Question: Have you received bribe of Rs. 22,000/- from Ms. Bakht Mina?

Answer: No. It is absolutely false allegation. I am not competent for posting / transfer.

Question: Have you transferred Ms. Bakht Mina and cancelled the same after receiving bribe of Rs. 22,000/- from her?

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Answer: I have already made it clear that postings / transfers are beyond my competency.

Question: Have you cut down more than 27 big trees from GGPS, Jarri and GGPS, Kopar Malakand?

Answer: No. the actual story is that a few trees in these schools were very old and the same were reported by the Head-Mistress, GGPS Jarri to the DDEO(F) Dargai. I reported the matter to DEO(F) Malakand who constituted Auction Committee (Annex-XVII). Auction was made in transparent way. Rupees 20,000 were collected from auction. Rupees 5,000 were spent on repair of boundary wall while remaining Rs. 15,000 were deposited in Treasury through Bank challan (Annex-R).

Question: The auction was made some what in September, 2013 while money was deposited in bank in June 2014 after laps of 08 months why?

Answer: It was planned to spend all the money collected from the auction on repair of the boundary wall and electrification of school but after raising false allegations of misappropriation, Rs. 15,000/- were deposited in Treasury through Bank challan.

Question: Rupees 20000/- were collected in auction while only Rs. 15000/- have been deposited, where is the remaining amount of Rs. 5000/- ?

Answer: Rupees 5000/- have been spent on repair of boundary wall of GGPS, Jarri, already explained.

Question: Can you provide any proof regarding expenditure on repair boundary wall?

Answer: Yes. Necessary receipts are on record besides site verification.

#### Findings

After going through the statements of the complainants, witness and the accused, the following facts came to light:

- i. During checking of Attendance Register of GGPS, Kachi Kopar, Malakand, it transpired that the pages of Attendance Register have been tempered, torn away and replaced with other fake / tempered pages. Copies at Annex-T.
- ii. Service book of the Ms. Sharnim Ara was checked and the entries of leave found as under:-

S#	Nature of Leave	From	To
1	Maternity Leave	04-10-2000	17-11-2000
2	Medical Leave	18-11-2000	02-01-2001
3	EOL	03-03-2005	02-03-2008

(6)

S#	Nature of Leave	From	To
4	EOL	03-03-2008	03-02-3010
5	EOL	10-09-2011	09-03-2012
6	Absence Period	15-05-2012	31-05-2012

(Copies of entries in Service Book at Annex-U)

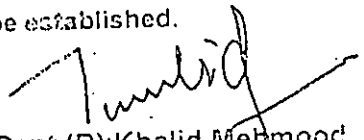
- iii. During the time of promotion, Ms. Shamim Ara PST was on leave and further remained absent, so she did not provide her documents to the SDEO (F) Dargai for onward submission. Copies at Annex-F.
- iv. Ms. Rukhsana Rahim SDEO(F) Dargai directed Ms. Rahmania, Head Mistress, GGPS Kachi Kopar to leave blank her Attendance Register until the sanction of her leave, as Ms. Shamim Ara had produced fake documents for leave. Besides, she had been visiting abroad without prior NOC / permission. Record of flights is available at Annex-M.
- v. The transfer of Ms. Shamim Ara was not a mutual transfer rather she was transferred by the DEO (F) Malakand to Batkhela on administrative grounds. The mutual transfer recorded in transfer order was clerical mistake. Moreover Ms. Shamim Ara PST GGPS, Kachi Kopar, availed maternity leave twice in a year, recorded in the school's Attendance Register which is clear malpractice on her part. Ms. Bakht Mina PST co-planner of Ms. Shamim Ara PST remained absent w.e.f 01.01.2012 to 31.05.2012, and she cut the name of Sultan Raz (Caller) and wrote her name and marked herself present, and then shown herself on maternity leave w.e.f 01.02.2012 to 31.05.2012 (4 months) without any documentary proof. The complainant teachers seem to be habitual leave hunters on one pretext or the other.
- vi. The old trees were auctioned through a proper procedure. Comparative statement was prepared and a sum of Rs. 20,000/- was collected from the auction. As the boundary wall of GGPS Jhari was in dilapidated condition and required immediate repair to avoid any possible unpleasant incident, an amount of Rs. 5,000 was spent on its repair. Which may be termed as unauthorized expenditure but the same was quite necessary. The remaining Rs. 15,000 were kept for electrification in the School but could not utilized and deposited into Govt. Treasury on 03-06-2014 and the electrification work was carried out through local collection. There seems no misappropriation / embezzlement rather an unintentional irregularity that too is in good faith.
- vii. It was already clarified that posting / transfers were not in the competency of SDEO(F) how could Ms. Bakht Mina pay her



Rs. 22,000 as bribe. Though audio recording is available but no substantial / court worthy evidence is available.

Conclusion

The complaint of the teachers where upon the inquiry has been initiated seen in a reaction of the departmental action against them taken by the accused i.e. SDEO(F) Dargai Malakand. So no prima facie worthy of taking further action against the accused is. Rukhsana Rahim SDEO (F) Dargai Malakand could be established.

  
Capt (R) Khalid Mehmood  
PAS BS-18 / Deputy Commissioner  
Inquiry Officer

2003 S C M R 228

[Supreme Court of Pakistan]

Present: Syed Deedar Hussain Shah and Tanvir Ahmed Khan, JJ

Syed NIAZ HUSSAIN SHAH BUKHARI, TECHNICIAN (PROCESS)---Petitioner

versus

OIL AND GAS DEVELOPMENT CORPORATION LIMITED through Chairman, OGDC  
Head Office, Islamabad---Respondent

Civil Petition For. Leave to Appeal No-51 of 2002, decided on 11th September, 2002.

(On appeal from judgment dated 2-11-2001 passed by the Federal service Tribunal, Islamabad, in Appeal No. 1076(R)CE of 2000)

(a) Civil service-

---Pay, entitlement to---When there is no work, there is in no pay.

(b) Civil service-

--- Salary, refund of---Civil servant after obtaining stay order against his transfer was allowed to continue his duties at original place, where he was paid salary for about three years. ---Authority deducted from salary of civil servant the amount paid to him as salary for the period when he remained absent from duty---Service Tribunal dismissed appeal of civil servant-- Validity---Civil servant had not performed his duties either at original place or at transferred place. thus, was not entitled to salary---Period for which refund of salary was effected from civil servant was the period for which, he had not worked---When there was no work, there was no pay---Recovery had rightly been effected from civil servant---Impugned judgment was not open to exception as there was no jurisdictional error or misconstruction of facts and law---No substantial question of law of public importance as envisaged under Art. 212(3) of the Constitution was made out---Supreme Court dismissed petition for leave to appeal in circumstances---Constitution of Pakistan (1973), Art. 212(3).

Sadiq Muhammad Warraich, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record (absent) for Petitioner.

Sardar Muhammad Aslam, Dy. A.G. and M.S. Khattak, Advocateai-Record for Respondent.

Date of hearing: 11th September, 2002.

**JUDGMENT**

**SYED DEEDAR HUSSAIN SHAH, J.**---Petitioner seeks leave to appeal against that judgment of

the Federal Service Tribunal, Islamabad (hereinafter referred to as the Tribunal) passed in Appeal No 1076(R)CE of 2000 dated 2-11-2001, whereby appeal filed by the petitioner was dismissed.

2. Briefly stated that facts of the case are that on 4-7-1994, the petitioner was transferred from Missa Kiswal to Peer Koh. He felt that transfer order so issued was mala fide and he was punished being the Union Official of the respondent/Corporation, therefore, he approached the NIRC for restraining the order under Regulation 32 of NIRC Procedure and Functions and Regulations, 1974 and a stay order against his transfer to Peer Koh was granted and he was allowed to continue and perform his duties at Missa Kiswal and also paid his salary that after about 3 years the respondent started deductions from the salary of the petitioner i.e. the amount which had been paid to him as salary, during the period he worked at Missa Kiswal on the strength of the stay order of NIRC.

3. Feeling aggrieved, the petitioner approached the Tribunal by way of appeal, which was dismissed. Hence, this petition.

4. We have heard Ch. Sadiq Mohammad Warriach, learned counsel for the petitioner, who, inter alia contended that that petitioner's absence from duty from 2-7-1994 to 8-8-1994 and 5-10-1994 to 10-9-1996 was wrongly treated as Extra Ordinary Leave (EOL) and the Office Memorandum dated 13-2-1999 issued by the respondent Head Office may be cancelled; that the Tribunal had not exercised its jurisdiction fairly and the recovery/deduction of the amount already drawn by the petitioner from the respondent is unwarranted.

5. Sardar Muhammad Aslam, learned Dy.A.G. vehemently controverted the contention of the learned counsel for the petitioner and pointed out that no doubt NIRC issued an injunction to the petitioner but the same was re-called by the Tribunal on 18-8-1996. He has also referred to the appeal of the petitioner which is at page 57 of the paper book, in which he has stated as under:

"I had reported for duty at Pirkoh Gas Field. Therefore, regularizing the period of stay, ordered by the Court as E.O.L is injustice with me."

On his application office submitted summary to the Chief Personnel Officer of the respondent/Corporation, which reads as under:

"(70) Reference para-180 N. it is submitted that as per message No.MK.1331 dated 26-11-1999 (PR244/Cor.) O.M.(F), Missa Kiswal, Mr. Niaz Hussain Shah was relieved from Missa Kiswal Oil Field, for Pirkoh Gas Field. He neither reported at Pirkoh nor at Missa Kiswal Oil Field, after getting stay order from NIRC. O.K(F), Missa Kiswal Oil Field, did not confirm whether he performed any official duty during his stay (off & on) at Missa Kiswal. Mr. Niaz Hussain neither claimed any field benefit like messing/D.A. and Rota facilities nor paid by the Location Incharge due to his non-performance of any duty.

"(71) In view of above, if approved by Manager (Personnel), his request may be regretted in the light of earlier decision as per para. 141-A, please."

The perusal of the above document shows that the petitioner did not perform his usual duties and was not entitled to salary as claimed by him.

6. Sardar Muhammad Aslam, learned Dy.A.G. further pointed out that recovery was already been

effected from the petitioner and that Office Memorandum referred to hereinabove was entirely in accordance with the O.G.D.C. Service Regulations, 1974. It was also pointed out by him that the petitioner in due course of service has already been promoted, to his Managerial post. ,

7. We have considered the arguments of the learned counsel for the parties and have carefully examined the record, which shows that the period for which recovery of refund of the salary was effected from the petitioner was the period for which he did not work. By now, it is settled law that when there is no work there is no pay. The petitioner did not perform his duties as mentioned hereinabove and recovery was rightly effected from him; thereafter, he was promoted to the post of Manager. The impugned judgment is entirely based on proper appreciation of the material available with the Tribunal. We further find that there is no jurisdictional error or misconstruction of facts and law. The impugned judgment is not open to exception.

8. Moreover, a substantial question of law of public importance, as envisaged under Article 212(3) of the Constitution, is not made out.

9. For the facts, circumstances and reasons stated hereinabove, we are of the considered opinion that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

S.A.K./N-100/S

**Petition dismissed.**

Regd.

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) MALAKAND AT BATKHELA.

NOTIFICATION/

**WHEARAS,** Mst. Shamim Ara was appointed against PST/PTC at GGPS Gumbat Agra Swat Ranizai vide DEO(F) Malakand at Batkhela under endst: No. 3556-70 dated 19.10.1988.

1. AND WHEARAS, She had left the country for KSA without permission in 2015.
2. AND WHEARAS, Show Cause notice were issued by Chief Secretary Khyber Pakhtunkhwa, vide No. SO(S/F)E&SE/4-17/2015/Shamim Ara PST dated Peshawar May 22, 2015.
3. AND WHEARAS, she was removed from services vide Government of Khyber Pakhtunkhwa, Elementary and Secondary Education Department vide Notification No. SO(S/F)E&SED/4-17/2015/Shamim Ara PST/ dated Peshawar the, December 11, 2015.
4. AND WHEARAS, she filled departmental appeal to the authorities which was rejected.
5. AND WHEARAS, she filled a service appeal No. 383/2016 dated 10.3.2017 for seeking reinstatement in the August Service Tribunal Khyber Pakhtunkhwa, Peshawar.
6. AND WHEARAS, the Honourable Service Tribunal Peshawar directed the respondent in its Judgment vide para-6 as a sequel to the above, we allow both the appeals and set aside the impugned orders of removal from service passed against the appellants on 11.12.2015. Resultantly, the appellants are reinstated into service. The respondents may, however, undertake departmental proceedings against the appellants but only in accordance with law and rules. The denovo proceedings, if taken, shall be concluded within a period of ninety days from the receipt of copy of instant judgment. The issue of back benefits in favour of appellants shall follow the result of denovo proceedings was announced on 05.3.2019.
7. AND WHEARAS, a denovo enquiry comprising of Mst. Safia Begum Principal GGHS Sakhakot and Mst. Shazia ASDEO(F) Circle Zormandi (Hero Shah) SDEO(F) office Dargai was constituted vide this office No. 2883-87 dated 10.5.2019 to probe into the matter and further benefits.
8. AND WHEARAS, the enquiry officers recommended that the accused Mst. Shamim Ara Ex-PST is not fit to continue her job as a Government servant therefore, it is recommended that she may be granted compulsory retirement. ii. That the then SDEO Mst. Rukhsana Raheem is not competent and trustworthy to occupy and chair any public office due to her facilitating role over sighting the mal activities of the accused Mst. Shamim Ara and Headteachers. Therefore she may be adjusted in teaching cadre. That due to facilitating role of H/T Mst. Rahmania and Mst. Rasheeda of the said school, one increment from each may be str pped/taken back.
9. AND WHEARAS, her absence period w.e. from 12.11.2015 to 20.06.2019 is converted into extra ordinary leave without pay.

Now therefore in the exercise of the power conferred under Khyber Pakhtunkhwa, servants (E&D) rules-2011, the competent authority is please to honour the decision of the honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar and Mst. Shamim Ara W/O Javed Hussain Ex-PST GGPS Koper, Tehsil Dargai/Sama Ranizai village Stanadaro Kalli Koper & post office Koper District Malakand is hereby re-instated into the service with immediate effect and intervening period may be treated as leave without pay. *Dargai*  
Moreover she is adjusted at GGPS Kass Kalli Koper under observance of the SDEO(F)/or the undersigned for the period of one year.

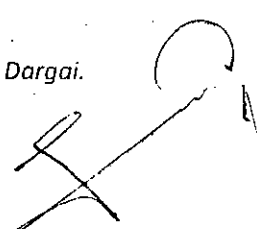

DISTRICT EDUCATION OFFICER (FEMALE)  
MALAKAND AT BATKHELA. *h*

Endst.No. 3729-38

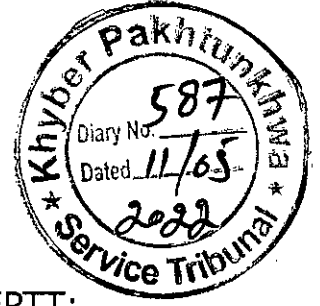
Dated Batkhela the 21/6 /2019.

Copy forwarded to :-

1. The Registrar Service Tribunal Khyber Pakhtunkhwa, at Camp Court Swat.
2. The Additional Advocate General Service Tribunal Khyber Pakhtunkhwa, at Camp Court Swat.
3. The Section Officer (Litigation) E&SED Khyber Pakhtunkhwa, Peshawar.
4. The District Accounts Officer Malakand.
5. The Assistant Director (Lit-!!) Directorate of E&SE department Khyber Pakhtunkhwa, Peshawar.
6. The SDEO(F) Dargai.
7. The ASDEO(F) Circle Zoormandi (Heroshah) Dargai.
8. The Teacher concerned.
9. Master file.

  
DISTRICT EDUCATION OFFICER (FEMALE)  
MALAKAND AT BATKHELA. 

**BEFORE THE CHAIRMAN KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**



Put up to the court with  
relevant appeal

CM No. \_\_\_\_\_/2022

In

Appeal No.1559/2019

SHAMIM ARA

VS

EDUCATION DEPTT:

**APPLICATION FOR CORRECTION IN THE PRAYER  
OF THE ABOVE MENTIONED APPEAL TO THE  
EXTENT OF INTERVENING PERIOD WHICH HAS  
INADVERTANTLY BEEN MENTIONED AS 12-05-2015  
TO 20-06-2019 INSTEAD OF 12-11-2015 TO 20-  
06-2019**

**R/SHEWETH:**

- 1- That the above titled service appeal is pending adjudication before this August Tribunal in which ~~26-4-22~~ date is fixed for hearing.
- 2- That applicant filed the ibid appeal for her back benefits of the intervening period i.e. from the date of removal till the date of re-instatement.
- 3- That the actual intervening period of the Appellant is w.e.f 12-11-2015 till 20-06-2019 but inadvertently the same is mentioned in the prayer of the ibid appeal as 12-05-2015 to 20.6.2019 which needs correction.

Therefore, it is humbly prayed that on acceptance of the instant application the correct date of intervening Period i.e 12-11-2015 to 20-06-2019 may kindly be incorporated in the prayer of the ibid appeal.

APPLICANT

**SHAMIM ARA**

Through:

**NOOR MOHAMMAD KHATTAK**  
ADVOCATE SUPREME COURT

**BEFORE THE CHAIRMAN KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

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