22.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 28.04.2022 for the same as before.

Reader

28th April, 2022

Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Learned AAG produced copy of office order bearing endorsement No. 2282-85 dated 26.04.2022 whereby the period with effect from 19.11.2011 to 15.01.2016 has been treated as on duty. Learned counsel for the petitioner expressed his satisfaction and requested for withdrawal of the execution petition. As a token of admission of his submission he signed the margin of the order sheet. Dismissed as withdrawn. Consign.

3. Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 28^{thl} day of April, 2022.

(Fareeha Paul) Member (E)

20/1/802

Form- A FORM-OF ORDER SHEET

ourt of	 	
Execution Petition No	 349/2021	-

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26.11.2021	The execution petition submitted by Mr. Asfandyar through Mr. Muhammad Ayub Khan Shinwari Advocate may be entered in the relevant register and put up to the Court for proper order please.
		REGISTRAR
		This execution petition be put up before S. Bench on
2-		070122
· · · · · · · · · · · · · · · · · · ·		CHAVRMAN
	07.01.2022	Counsel for the petitioner present.
		Notices be issued to the respondents. Case to com up for implementation report on 22.02.2022 before S.B.
· .		
*		(Rozina Rehman) Member (J)
•		

Execution Petition No 349 /202
In Service Appeal No 1281/2020

Asfandyar Versus Secretary to Govt of KP (E & S) Edu Deptt & others

INDEX

S. No	Description of Document	Dated	Annex	Pg No
1.	Copy of application and affidavit			
2.	Copy of Judgment	16-09-2021	A	

Dated:

/2021

Appellant,

Through

Muhammad Ayub Kwan Shinwari

LL.B; LL.M

A D V O C A T E
Supreme Court of Pakistan

CHAMBER

7-A, Haroon Mansion, Khyber Bazar, Peshawar Cell: (Clerk) 03219068514

Execution Petition No 349 /2021 In Service Appeal No 1281/2020



Asfandyar, DM, GMS Tangi Payeen, Khadagzai, Dir Lower

.....Appellant

Versus

- 1. Secretary to Government of Khyber Pakhtunkhwa, (E & S) Edu, Peshawar
- 2. Director (E & S) Education, Khyber Pakhtunkhwa, Peshawar
- 3- District Education Officer (Male), Dir LowerRespondents

Application under Section 7(d) of Khyber Pakhtunkhwa Service Tribunal Act, 1974 for execution of Judgment and Order dated 16-09-2021.

Respectfully Sheweth,

The applicant submits as follows:

- 1. That the applicant filed the title Appeal before this Learned Tribunal, Which is allowed by this learned Tribunal vide Judgment and Order Dated 16-09-2021.
- 2. That the copy of the Judgment is not only delivered to the respondents by the Office of this learned Tribunal but also the applicant himself submitted the copy of the said Judgment by hand to the respondents with a request to implement the said Judgment and Order in its letter and spirits.
 - 3. That the respondents are deliberately not obeying and implementing the judgment of this learned Tribunal amounting to the naked contempt of court.

It is, therefore, prayed that on acceptance of this application the respondents may kindly be directed to implement the judgment and order dated 16-09-2021 passed by this learned Tribunal in its letter and spirits.

Applicant

Through

Muhammad Ayub Khim Shinwari Advocate Peshawar.

Execution Petition No _____/2021 In Service Appeal No 1281/2020

Asfandyar Versus - Secretary to Govt of KP (E & S) Edu Deptt & others

Affidavit

1, Asfandyar, DM, GMS Tangi Payeen, Khadagzai, Dir Lower do hereby solemnly affirm and declare on oath that the contents of the instant application are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this learned Tribunal.

Deponent

Service Appeal No

1281 / 2020

Asfandvar. DM, GMS Tangi Payeen, Khadagzai, Dir Lower

.Appellant

Versus

1. Secretary to Government of Khyber Pakhtunkhwa, (E & S) Edu, Peshawar

2. Director (E & S) Education, Khyber Pakhtunkhwa, Peshawar

3. District Education Officer (Male), Dir Lower

....Respondents

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against Order dated 22-01-2020

Prayer:

On acceptance of the instant Service Appeal, the impugned order dated 16-10-2019 and Order dated 22-01-2020 whereby the departmental appeal of the appellant is rejected may kindly be set aside and the appellant may kindly be granted pay, increments, arrears and other service back benefits

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

- 1. That the Appellant was appointed as Drawing Master in the respondent Department in the year 1989 and was performing his duties efficiently, honestly and to the entire satisfaction of his superiors, the Appellant was charged in a false and frivolous FIR No 1454 dated 12-10-2005 under section 302/234/34 P.P.C at Police Station Guch. (Copy of appointment order and F.I.R is filed herewith and annexed as Annex-A & B respectively)
 - 2. That the Appellant was arrested on 14-10-2010 by the local police in the above said case and after trial the Appellant was acquirted of the charged leveled against him vide Judgment and Order dated 18-11-2011 passed by learned Additional Session Judge, Chakdara, Dir Fayeen. (Copy of Judgment and Order is filed herewith and annexed as Annex-C)

TTESTED

edto-day

- 3. That after release the Appellant reported back to the respondent Department with a request to adjust/post him for performing his duties but he was informed that he is being terminated from service vide Endst No 6866-69 dated 14-04-2008 and the copy of the said order was handed over to him: (Copy of Endorsement is filed herewith and annexed as Annex-D)
- 4. That the Appellant feeling aggrieved of the aforesaid Order i.e., Endst No 6866-69 dated 14-04-2008, filed Department Appeal, which was dismissed vide Order dated 13-04-2012. Against the said order, the Appellant filed Service Appeal No 520/2012 before this Honorable Tribunal, wherein this Honorable Tribunal Judgment and Order dated 10-12-2015 was pleased to set aside the aforesaid order being voic and remit the case to respondent Department for proceeding de novo against the Appellant strictly in accordance with law and the appellant was reinstated in service accordingly for de novo enquiry, the intervening period will be decided in light of outcome of the fresh proceedings. (Copy of Judgment is filed herewith and annexed as Annex-E)
 - 5. That in pursuance of the aforesaid Judgment and Order dated 10-12-2015 in Service Appeal No 520/2012, the Appellant was reinstated in service, inquiry was conducted and his absence period with effect from 12-10-2005 to 17-10-2010 and with effect from 19-11-2011 to 15-01-2016 is converted into leave without pay as extraordinary leave and the period w.e.f 18-10-2010 to 18-11-2011 is treated on duty vide Order dated 29-07-2016.(Copy order is filed herewith and annexed as Annex-F)
 - 6. That feeling aggrieved of the aforesaid order, the appellant filed Service Appeal No 168/2017 before this learned Tribunal, wherein this learned Tribunal vide judgment dated 10-07-2019 was pleased to set aside the said order and the respondents were directed to properly implement the judgment dated 19-12-2015 passed in Service Appeal No 520/2012 in letter and spirit by conducting proper de-novo inquiry against the appellant and to conclude the same through speaking order. (Copy of judgment is filed herewith and annexed as Annex-G)
 - 7. That in pursuance of the aforesaid order of this learned Tribunal, the respondents without holding any inquiry, without issuing any charge sheet, statement of allegation, final show cause notice, have issued Office Order dated 16-10-2019, received by the appellant on 14-11-2019, whereby the appellant is held not entitled for any kind of pay, arreans increments, and other service back benefits. (Copy of office order is filed herewith and annexed as Annex-H)
 - 8. That feeling aggrieved of the aforesaid order, the appellant filed departmental appeal, which is rejected vide impugned order dated 22-01-2020, received by the appellant on 06-02-2020. (Copy of departmental appeal and order is filed herewith and annexed as Annex-I & J)

ATTESTED

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Hence the instant Service Appeal on the following amongst other grounds:

Grounds:

- a. That the impugned order is against the law, illegal, unlawful, without lawful authority and void ab-initio, thus liable to be set aside.
- b. That the impugned order is passed without holding any inquiry whatsoever, without issuing charge sheet, statement of allegation, final show cause notice and without giving any chance of hearing to the appellant.
- c. That the treatment met to the Appellant is against the principles of natural justice and the mandatory provisions of Khyber Pakhtunkhwa Civil Servant Act, 1973 and rules framed under it.
- d. That the impugned order is against F.R 54 and is not a speaking order, as no reasons are given.
- e. That the impugned Order is passed in utter disregard of the mandatory provisions of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.
- f. That the impugned order is against the principles of administrative law and dictums of this learned tribunal and August Supreme Court of Pakistan.
- g. That the Appellant craves permission of this Honorable Tribunal to rely on other grounds at the time of arguments and produce any additional document if required in support of his Appeal.

It is, therefore, prayed that on acceptance of the instant Service Appeal, the office order dated 16-10-2019 and the impugned order dated 22-01-2020 may kindly be set aside and for the period w.e.f 12-10-2005 to 17-10-2010 and w.e.f 19-11-2011 to 15-01-2016, the appellant may kindly be granted pay, increments, arrears and other service back benefits.

Any other relief, deemed fit and appropriate by this Honorable. Tribunal in the circumstances of the case, which has not been specifically prayed for, may graciously be granted.

Appellant,

Through

Cate of Presentation of Application 18-11-7

Number of Words

Copyling Cons

Date of Delivery of Copy

S/of Copy 18/4/7

Muhammad Ayub Khan Shinwari

Advocate Peshawar

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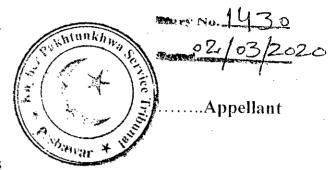
Khyber Review Broken

Peshawar

Service Appeal No 128/ / 2020

Service (Indicates

Asfandyar, DM, GMS Tangi Payeen, Khadagzai, Dir Lower



Versus

- 1. Secretary to Government of Khyber Pakhtunkhwa, (E & S) Edu, Peshawar
- 2. Director (E & S) Education, Khyber Pakhtunkhwa, Peshawar
- 3. District Education Officer (Male), Dir Lower

....Respondents

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against Order dated 22-01-2020

Prayer:

On acceptance of the instant Service Appeal, the impugned order dated 16-10-2019 and Order dated 22-01-2020 whereby the departmental appeal of the appellant is rejected may kindly be set aside and the appellant may kindly be granted pay, increments, arrears and other service back benefits

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

- 1. That the Appellant was appointed as Drawing Master in the respondent Department in the year 1989 and was performing his duties efficiently, honestly and to the entire satisfaction of his superiors, the Appellant was charged in a false and frivolous FIR No 1454 dated 12-10-2005 under section 302/234/34 P.P.C at Police Station Ouch.(Copy of appointment order and F.I.R is filed herewith and annexed as Annex-A & B respectively)
- 2. That the Appellant was arrested on 14-10-2010 by the local police in the above said case and after trial the Appellant was acquitted of the charged leveled against him vide Judgment and Order dated 18-11-2011 passed by learned Additional Session Judge, Chakdara, Dir Payeen. (Copy of Judgment and Order is filed herewith and annexed as Annex-C)

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHA

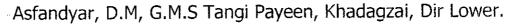
Service Appeal No.1281/2020

Date of Institution

02.03.2020

Date of Decision

16.09.2021



(Appellant)

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, (E&SE), Peshawar and two others.

(Respondents)

Muhammad Ayub Khan Shinwari,

Advocate

For Appellant.

Muhammad Adeel Butt, Additional Advocate General

For Respondents.

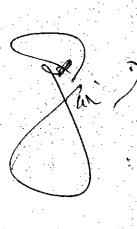
AHMAD SULTAN TAREEN ROZINA REHMAN

CHAIRMAN

... MEMBER (J)

JUDGMENT

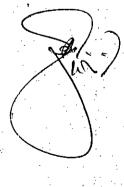
ROZINA REHMAN, MEMBER (J): Brief facts of the case are that appellant was appointed as Drawing Master. During service, he was charged in a murder case and was arrested by the local Police, however, he was acquitted by the competent court of Law. After release, he reported back to the Department for adjustment/posting but he was informed regarding his termination from service and a copy of the order was handed over to him. Feeling aggrieved, he filed departmental appeal which was dismissed, where-after, he filed service appeal and his case was remitted to the Department for denovo proceedings strictly in accordance with law. Appellant was



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reinstated in service and inquiry was conducted. His absence period was converted into leave without pay while some period was treated as on duty. Feeling aggrieved, he filed another service appeal before this forum and the respondents were directed to properly implement the judgment passed in earlier service appeal in letter and spirit, where-after, the respondents initiated inquiry proceeding but without issuing any charge sheet and statement of allegations and the appellant was held not entitled to any kind of pay, arrears, increments and other service back benefits. Feeling aggrieved, he filed departmental appeal which was rejected, hence, the present service appeal.

- 2. We have heard Muhammad Ayub Khan Shinwari Advocate and Muhammad Adeel Butt learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.
- 3. Learned counsel for appellant contended that the impugned orders are against law and facts as the order was passed without holding any inquiry and without issuing charge sheet, statement of allegations and final show cause notice. He contended that the appellant was condemned unheard as he was not given any chance of personal hearing.
- 4. Conversely learned A.A.G submitted that the Court order was implemented in letter and spirit and that proper order was passed after observing all the codal formalities in de-novo inquiry.





5. From the record it is evident that appellant was appointed as Drawing Master in the year 1989. He was charged in murder case vide F.I.R No.1454 dated 12.10.2005 registered at Police Station Ouch U/S 302 324/34 P.P.C. He was arrested on 14.10.2010 by the local Police and was acquitted by the competent court of Law on 18.11.2011, whereas, he was removed from service vide office order dated 14.04.2008. He filed Service Appeal No.520/2012 and vide order of this Tribunal dated 10.12.2015, impugned orders were set aside and case was remitted back to the Department for proceeding de-novo against the appellant. He was also reinstated in service. The intervening period was ordered to be decided in the light of outcome of fresh proceedings. De-novo inquiry was conducted and vide office order dated 29.07.2016 of the District Education Officer, absence period w.e.f 12.10.2005 to 17.10.2010 and 19.11.2011 to 15.01.2016 was converted into leave without pay as extraordinary leave while the period w.e.f 18.10.2010 to 18.11.2011 was treated as on duty. Again, he filed Service Appeal No.168/2017 and vide judgment of this Tribunal dated 10.07.2019, impugned order dated 29.07.2016 was set aside and Department was directed to implement the judgment in Service Appeal No.520/2012 in letter and spirit by conducting proper de-novo inquiry and vide order dated 16.10.2019 of the District Education Officer, consequent upon the recommendation of Inquiry Committee, appellant was held not entitled to any kind of pay, arrears, increments and other service back benefits and the office order dated 29.07.2016 was considered as correct and justified. Office order dated 29.07.2016 is hereby reproduced for ready reference:-

In.

"Reference letter from the Director (E&SE) Khyber Pakhtunkhwa Peshawar vide No.2019/F.No, P/F.Asfandiyar Khan Ex DM dated 27/06/2015, the absence period in respect of Mr. Asfandiyar Khan DM GMS Tangi Payeen Khadagzai w.e.f 12.10.2005 to 17/10/2010 and w.e.f 19/11/2011 to 15/01/2016 is hereby converted into leave without pay as extraordinary leave, and the period w.e.f 18/10/2010 to 18/11/2011 is treated as on duty."

6. As per this order, absence period w.e.f 12.10.2005 to 17.10.2010 and 19.11.2011 to 15.01.2016 was converted into leave without pay. As per record, F.I.R was registered against the appellant on 12.10.2005 and he was arrested on 17.10.2010. This is the period during which the appellant remained absconding, therefore, he was rightly held not entitled to any back benefits because he never contacted his Department during this period and he went into hiding. He was arrested on 14.10.2010 and was acquitted on 18.11.2011 and this period was treated as on duty while the period from 19.11.2011 to 15.01.2016 when he was reinstated, was again converted into leave without pay. He was not properly held entitled to the back benefits for the period w.e.f 18.10.2010 to 18.11.2011 when he was behind the bars. This period is converted into leave of the kind due, whereas, the period from 19.11.2011 to 15.01.2016 when he fought for his rights and finally succeeded in getting his reinstatement order is treated as on duty.

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7. In view of the above discussion, appeal in hand stands disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED. 16.09.2021

> (Ahmad Sultan Tareen) Chairman

(Rozina Rehman) Member (J)

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Khyber Falatun awa Service Tribunal Peshaver

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7.

باعت تربرانك

مقدمه مندرج عنوان بالا بین اپنی طرف به واسط پیروی و جواب دبی وکل کاروائی متعلقه این متعلقه این متعلقه این مقام کس مرسی کسلیخ همی المیسی برسی کس کس مرسی کس کس مقرر کر کیا قرار کیا جا تا ہے۔ کہ صاحب موصوف کو مقدمہ ک کل کاروائی کا کائل اختیار ہوگا۔ نیز و کس ماحب کوراضی نامہ کرنے واقع ر ثالث و فیصلہ پر صلف دیے جواب دبی اورا قبال دعوی اور موسی کی محمد یت بھرورت واست ہرتیم کی تصدیت فررایں پر دینے کا اختیار ہوگا۔ نیز صورت عدم بیروی یا ڈگری کی طرف یا این کی برامدگی اور منسونی نیز وائر کرنے کا اختیار ہوگا۔ نیز صورت عدم بیروی یا ڈگری کی طرف یا این کی برامدگی اور منسونی نیز وائر کرنے یا این گرائی و فیلر نائی و بیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ نیل و بیروی کی کی این کی برامدگی مقدمہ نیل و بیروی کا دوران مقدمہ بیل جوخر چہ ہم جانہ التوائے مقدمہ کے اور صاحب مقدمہ کی تاریخ بیشی مقام دورہ پر ہو یا حدے باہر ہوتو وکیل صاحب یا بند ہوں سبب سے و ہوگا۔ کوئی تاریخ بیشی مقام دورہ پر ہو یا حدے باہر ہوتو وکیل صاحب یا بند ہول

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Attested

الرقوم لحا در

مقام

Acepted Acepted

عدان سنيمنري ماري 2220,193 چي شڪري پارٽي آون: 3220,193 Mob: 0345-9223239

03449659719

کے کہ پیروی مذکورکریں ۔الہذاو کالت نامہ کھنڈیا کہ سندر ہے۔



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DIR LOWER AT TIMERGARA.

E- Mail: deomaledirlower@gmail.com. Tell: 0945-9250081-82

Office Order.

Consequent upon the decision of August Service Tribunal vide Execution petition No.394/2021 in Service Appeal No.1281/2020, partial modification /correction is made in the order vide this office No.12234-36 dated 29-7-2016, that the period w.e.f 19-11-2011 to 15-1-2016 is hereby treated as on duty.

Endst; No. 2282 - 85 / Dated. /04/2022

District Education Officer (M) Lower Dir

Copy of the above is forwarded to:-

- 1. The Registrar Services Tribunal Khyber Pakhtunkhwa.
- 2. The District Accounts Officer Dir Lower.
- 3. The Accountant Local Office.
- 4. Official concerned.

District Education Officer (M) Lower Dir

PAYROLL SYSTEM AMENDMENT FORM (PAYMENTS/DEDUCTION) FORM:PAY 03 DDO Page CODE. DA D.E.O (Male) Timergara Distt.Dir Lower. DDO Detailed Dept./ Code Function Code. National ID Card Number Name Code Amount Effective Date Asfandiyar khan (DM) 5801= Arrears of Pay & Allowances
w.e.f.19.11.2011 to
15.01.2016 on court
decision 19,11,2011 Govt: Middle Schools Dir (L). 15.01.2016 to 5002= (P) 5011= 5012= 5887= 5309= 5964= Total= 1083507 IV-Edu:Dir/ GP-Fund /css, 6 4 9 0 0 (D) B-Fund. 9 0 0 0 0 E.E.F. 4 6 0 4 (D) Total 7 8 5 0 4 (D) Rs: 1005003 Page Total

Audited/Checked By

Entered/Verified By

William Officer(M)

Prepared By

in web- 19.11-201 & 15-01-2016. in RIO Affandizar Derved. HRA/CA MA CLAA Adv3 Adols Total. 19-11-2011 6:30-11-2011, (12-dys) 12660. 1146. 1150.1000 1000. 6782/2 67 10104/- 143368/2 203472/2 1820 180/2 2160/2 120/2 2160/2 221367/ 16920/2 18792/-2009_1200/1200/_10575 61-12-2013 to 30-11-2=14 (1241) 14800 269456/2 18240/2 2160/2 1200/2 21600/2 247856/2 177600/- 18792/19924-1451/1200/ 2220 01-12-294 t. 30-6-2015 (@Zn) 6 1500 148137/2 160737/2 10640/2 1260/2 700/- 12600/-61-07.2015 h30-11-015 (541) 20035 7830/2 11424/2 7570/ 500/1625/2 153544/- 7600/ 900/- 800/- 900/-144574/2 150/ 100/2 2325/2 2094/2 32281/2 1524, 180/2 1800/2 30481/2 01-12-2015 to 31-12-015 (10) 20940/ 1566/2 2854 01-04-2016 & 15-01-2016 CH5-12438/1 726/2 484/2 1128/2 1073/2 14238/- 1520/2 (15-dis) 10132/ 758/2 1005003/2 743 531/272910/-76364/259126/237884/-69465/213127/2083507/264967/29000/-4604/278504/2

Distr Lover Dir

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