

E.P No. 64/2019

19.11.2021 Petitioner in person and Mr. Muhammad Rasheed, DDA alongwith Sohail Ahmad Zaib, Assistant for the respondents present.

During the course of arguments, learned DDA states that judgment at credit of the petitioner has been implemented and copy of order bearing Endst. No. 7425-29/AE-II/PF/Maqsood Ahmad PST, dated 14.12.2020 has already been sent to the Registrar of this Tribunal which is available on file. According to the said order, while implementing the judgment dated 2.08.2017 in Service Appeal No. 1114/2016 and in supersession of office order issued under Endst. No. 6164-68 dated 27.05.2019, the absent period of the petitioner has been converted into leave with pay. It shows that judgment at credit of the petitioner has been implemented in letter & spirit. Therefore, the execution petition in hand is consigned to the record room without further pursuit.


Chairman


BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Diary No. _____

Dated 08-02-2019

Execution Pet No. 64/2019

IN

Service Appeal No.1114/2016

Maqsood Ahmed son of Manzoor Ahmed resident of Kunj Jadeed, Tehsil and District Abbottabad presently PST, GPS Muslim Town, Abbottabad.

...PETITIONER

VERSUS

- 1) Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar
- 2) Director, E&SE, KPK, Peshawar
- 3) DEO (Male), Abbottabad
- 4) SDEO (Male), Abbottabad

...JUDGMENT DEBTORS / RESPONDENTS

EXECUTION PETITION IN RESPECT OF SERVICE

APPEAL NO.1114/2016 DECIDED ON 24-08-2017.

Respectfully Sheweth;

1. That respondents issued an order dated 13-~~07~~-2016 whereby the appellant was awarded minor penalty of withholding of promotion for a period of 3 years and recovery of Rs.3,68,674/- for the salary which the appellant received during the period of his alleged absence.
2. That on 26-07-2016, appellant filed departmental appeal against the impugned order dated 13-07-2016 which was not responded by the respondents.
3. That feeling aggrieved, appellant filed the service appeal bearing No.1114/2016 on 26-10-2016.
4. That this Hon'ble Tribunal accepted the appeal and vide judgment and order dated 24.08.2017 held as under:

"Consequently, the impugned order to the extent of awarding minor penalty is set aside and recovery of amount which is also a

part of minor penalty is also set aside, the Department is however, at liberty to consider the issue of leave for the period in which the appellant has been shown absent under the relevant Rules other than the E&D Rules and if the Rules allow the recovery of amount for the period which has been converted into extra-ordinary leave then that can be made by the Department by issuing fresh order in this behalf. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room”.

(Attested copy of judgment & order dated 24.08.2017 is annexed herewith)

5. That the implementation and execution of the above mentioned judgment & order is being solicited before this Hon'ble Tribunal.
6. That further factual as well as legal points shall be raised at the time of arguments before this Hon'ble Tribunal.

PRAYER:

On acceptance of this execution petition, the judgment and order dated 24.08.2017 may kindly be executed in favour of decree holder/, appellant against the respondents as per Law.

[Signature]
...PETITIONER

Through:

[Signature]

MUHAMMAD AWAIS KHAN QAZI
(MUHAMMAD AWAIS KHAN QAZI) ADVOCATE
Advocate, Abbottabad
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0992-333524
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QAZI LAW FIRM
QAZI GUL FARAZ ADVOCATE (LATE)
Chamber # 81, Mayar Sher Pairo Lawyers Plaza,
District Courts, Abbottabad, Khyber Pakhtunkhwa.

Dated: 08/2/2019

AFFIDAVIT:

I, Maqsood Ahmed son of Manzoor Ahmed resident of Kunj Jadeed, Tehsil and District Abbottabad, presently PST, GPS Muslim Town, Abbottabad *petitioner*, do hereby solemnly affirm and declare on Oath that the contents of instant *execution petition* are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

DEPONENT
[Signature]
...PETITIONER

Dated: 08/2/2019

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD

ORDER

1. WHEREAS you Mr. Maqsood Ahmed, PST GPS Kumar Bandi (Circle Sherwan) Abbottabad was proceeded for having committed the following gross irregularities which constitute inefficiency, misconduct and corruption under Rule-3 Sub Rules (a), (b) & (c) of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011.
2. AND WHEREAS, minor penalty of withholding of promotion for a period of three years and recovery of Rs.300438/- (Three lac, four hundred & thirty eight only) @Rs.7000/-PM was imposed upon you regarding your willful absence from duty and dishonestly/fraudulently/unlawfully drawl of above amount as pay for the absent period vide this office Notification issued under Endst: No. 3728-32 dated 21-05-2013.
3. AND WHEREAS, you preferred service appeal in the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar against the said Notification.
4. AND WHEREAS, in pursuance to the judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar passed in Service Appeal No.1252/2013 announced on 16-02-2016, charge sheet, statement of allegation was served upon you and regular inquiry committee was constituted vide this office notifications issued under Endst: Nos.2557-63 dated 02-04-2016, 3168-75 dated 22-04-2016 to inquire the charges leveled against you. The inquiry committee provided you full opportunity of self defence, even to cross examines the evidence against you and submitted its finding/report vide No.378 dated 13-06-2016.
5. AND WHEREAS, as per findings and recommendation of inquiry report, you have illegally, fraudulently and unlawfully drawn Rs.368764/- as pay for the following absent period inflecting huge financial loss to the Govt: Treasury.

S.#	Absence Period.	Months/Days.	Gross Pay.	Pay Drawn.
1	05-11-2010 to 30-11-2010.	26 days.	22732/-	19701/-
2	01-12-2010 to 20-12-2010.	20 days.	23259/-	15005/-
3	23-12-2010 to 31-12-2010.	09 days.	23259/-	6753/-
4	01-01-2011 to 31-03-2011.	03 Months.	23259/-	69777/-
5	07-05-2011 to 09-05-2011.	03 days.	23259/-	2325/-
6	13-05-2011 to 30-06-2011.	01 Months & 18 days.	23259/-	36764/-
7	01-07-2011 to 30-09-2011.	03 Months.	27866/-	83598/-
8	01-10-2011 to 30-11-2011.	02 Months.	27866/-	55732/-
9	01-12-2011 to 22-02-2012.	02 Months & 22 days.	28366/-	79019/-
		Total Amount:-		Rs.368764/=

6. AND WHEREAS Show Cause Notice was served upon you through Sub Divisional Education Officer (Male) Abbottabad vide this office Memo: No.5142 dated 16-06-2016, wherein minor penalties were tentatively proposed under Rule-4(1) Sub Rule (a)(ii)&(iii) of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rule,2011 with recovery of unlawfully drawn amount of Rs.368764/- from Government treasury, wherein it is clearly mentioned at S.No.4 "that if no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you".
7. AND WHEREAS, you have received the said Show Cause Notice on 23-06-2016 and failed to reply the same within stipulated period. In response to your applications dated 26-06-2016 and 01-07-2016, you was further directed to avoid lame excuses and submit reply to Show Cause Notice upto 01-07-2016 vide this office Memo: No.5415-18 dated 27-06-2016, whereas you have further refused to receive the said letter as per report of ASDEO Circle Sherwan dated 01-07-2016 and the said letter was also sent on your home address through registered post.

8. WHEREAS you have failed to submit your reply of the show cause notice within stipulated period and deliberately delayed the inquiry proceedings, which is established evidence that you have committed gross misconduct, corruption, inefficiency, insubordination, professional dishonesty and financial loss to the Govt: Exchequer.

9. AND By reason of above, charges levelled against you, have been proved and you are found guilty of gross misconduct, corruption, inefficiency, insubordination, professional dishonesty and financial loss to the Govt: Exchequer under Rule-3 of the Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rule, 2011.

NOW THEREFORE, the Competent Authority in exercise of the power conferred upon him under Rule-4(1) Sub Rule (a)(ii)&(iii) of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rule, 2011 is pleased to impose minor penalty of **"WITHHOLDING OF PROMOTION FOR A PERIOD OF THREE YEARS AND RECOVERY OF Rs.368674/= (Rs. Three lac, sixty eight thousand six hundred seventy four) in installments @ Rs.10000/= PM"** upon Mr. Maqsood Ahmed, PST GPS Kumar Bandi (Circle Sherwan) Abbottabad and the absence period is converted as leave without pay.

DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD

Endst: No. 5612-18 /AE-II/PF Maqsood Ahmed PST

Dated 13/7/2016.

Copy for information & necessary action to the:-

1. Honorable Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to Execution petition No.49/2016 in service appeal No.1252/2013.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Accounts Officer Abbottabad.
4. PS to Secretary to Govt: of Khyber Pakhtunkhwa E&SED Peshawar.
5. Sub Divisional Education Officer (Male) Abbottabad with the remarks that relevant entry be recorded in his service book.
6. Mr. Maqsood Ahmed, PST Govt: Primary School Kumar Bandi (Circle Sherwan) Abbottabad.
7. Master File.

DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No, 1114/2016

Date of Institution... 26.10.2016
Date of decision... 24.08.2017



Maqsood Ahmad (PST) GPS Kamar Bandi, Circle Sherwan, Tehsil and District,
Abbottabad. ... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and
Secondary Education, Peshawar and 4 others. ... (Respondents)

MR. AZIZ KHAN TANOLI,
Advocate

For appellant.

MR. MUHAMMAD BILAL
Deputy District Attorney

For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD HAMID MUGHAL

CHAIRMAN
MEMBER

ATTESTED

EXAMINER

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the

counsel for the parties heard and record perused.

FACTS

2. This is an appeal against the impugned order dated 13.07.2016 whereby the appellant was awarded minor penalty of withholding of promotion for a period of 3 years and recovery of Rs. 368674/- for the salary which the appellant received during the period of his absence. Against this order, the appellant filed his departmental appeal on 26.7.2016 which was not responded to and hence the present appeal on 26.10.2016.

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ARGUMENTS

3. The learned counsel for the appellant argued that in the first round, this Tribunal had passed an order dated 16.02.2016 for conducting denovo enquiry expeditiously but not beyond the period of two months from the date of receipt of the judgment. That the department had not concluded the enquiry within the aforesaid period, hence in view of a judgment reported as 2007-PLC(C.S) 959 of the Federal Service Tribunal no enquiry could be conducted by the department. That in the enquiry the department has failed to prove the allegations of absence of the appellant. That no right of defence was afforded to the appellant by the enquiry officer. That despite application of the appellant some important witnesses have not been examined by the enquiry officer. That the confession of the appellant referred to in the enquiry report was not voluntary and under duress. That according to record of the school the appellant was on duty. That during the period in which the appellant has been shown absent, some inspections were conducted and register was duly signed by the Inspection Officer in which the appellant was marked as present. That no show cause notice was issued to the appellant.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

4. On the other hand, the learned Deputy District Attorney argued that the enquiry was initiated within two months but could not be completed and that non adherence to the period of two months would not entail any consequences as no consequence had been mentioned in the order of this Tribunal dated 16.02.2016. That in the reported judgment referred to by the learned counsel for the appellant, the circumstances were different as in the said very judgment the consequences of non adherence to the time schedule were mentioned. That the appellant had confessed his guilt on five occasions in written form as mentioned by himself in reply to the charge sheet. That the appellant was served with final show cause notice which is evident from his reply to the final show cause notice but in the said

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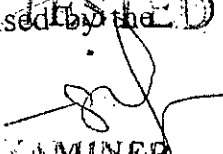
instead of refuting the allegations on facts, the appellant denied to reply the show cause notice on the ground that the time of two months, scheduled by this Tribunal had already ~~been~~^{was} expired and that some Execution Petition was filed and was pending before the Tribunal. That the appellant was given opportunity of defence but he could not produce any defence.

CONCLUSION

5. First of all this Tribunal would like to discuss non honoring the time schedule of two months. In reported judgment referred to by the learned counsel for the appellant, the circumstances were different as the time schedule was followed by the consequences of non adherence but in the present order no consequence has been given.

6. Secondly, this Tribunal on its own observed that in the impugned order, the period of absence has been converted into leave without pay. In the light of a judgment reported as 2006-SCMR-434, the authority converting the period of absence into any kind of leave, makes the charge as redundant and the whole disciplinary proceedings fell to ground as there remains no absence of the delinquent official. Since the whole proceedings have dashed to ground in the light of the afore stated judgment, there is no need of any further discussion on the enquiry proceedings viz-a-viz the objection raised by the learned counsel for the appellant.

7. Consequently, the impugned order to the extent of awarding minor penalty is set aside and recovery of amount which is also a part of minor penalty is also set aside, The department is however, at liberty to consider the issue of leave for the period in which the appellant has been shown absent

ATTESTED

 EXAMINER
 Kayher Pathankiwa
 Peshawar

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under the relevant rules other than the E&D Rules and if the rules allow the recovery of amount for the period which has been converted into extra-ordinary leave then that can be made by the department by issuing fresh order in this behalf. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

Sd ^{ml}
Niaz Muhammad Khan
chairman

Sd
Muhammad Hamid
Mughal
member
camp const Abbottabad

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

Date of Presentation of Application	12-9-2017
Number of Words	1800
Copying Fee	10
Urgent	2
Total	12
Name of Copyist	Samiullah
Date of Completion	12-9-2017
Date of Receipt	12-9-2017

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD

ORDER.

In pursuance to the Judgment of Honorable Khyber Pakhtunkhwa Service Tribunal Camp Court Abbottabad passed in Service Appeal No.1114/2016 dated 24.8.2017 and in supersession of this office order issued under Endst: No.6164-68 dated 27.05.2019, the absent period of Mr. Maqsood Ahmed, PST GPS Muslim Town Abbottabad as recorded in the order under reference is hereby converted into leave with pay.

22-
DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD

Endst: No. 7425-29 /AE-II/PF Maqsood Ahmed PST

Dated 14/12 /2020

Copy for information & necessary action to the:-

1. Honorable Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to Execution petition No.64/19 in service appeal No. 1114/2016 dated 24.8.2017.
 2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
 3. District Comptroller of Accounts Abbottabad.
- Sub Divisional Education Officer (Male) Abbottabad with the remarks that relevant entry be recorded in his service book and submit compliance report positively.
Mr. Maqsood Ahmed, PST Govt: Primary School Muslim Town Abbottabad.


DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD

The Honorable Service Tribunal Peshawar KPK



Execution P. 64/2019

in
Stamp No. 1114/2016

put up to the Monthly Chairman
with relevant papers
Magsood Ahmed
versus

Govt.
13/9/2021

Application for Soliciting as Near as possible
Early Date at Comp Court Abbottabad
for arguments / complementation order
Signed on Date 24/8/2019.

Respectfully Sheweth:-

- i) That the titled execution petition is pending disposal before this Honorable Tribunal.
- ii) That due to delay in title E/P have irreparable loss.
- iii) That valuable right of appellants involved.

It is therefore, requested in title E/P may be fixed in early date at next tour of bench in Abbottabad Comp Court, in the interest of justice.

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Date 10/10/2021

Magsood Ahmed
10/10/2021
APPellant