

Service Tribunal
Khyber Pakhtunkhwa
Petition No. 2816
6/1/23

BEFORE THE SERVICE TRIBUNAL K.P.K.
PESHAWAR

Muhammad Noor SPST, GPS Kot Pallas
Kohistan.....**Petitioner**

Versus

Government of Khyber Pakhtunkhwa
through Chief Secretary Civil Secretariat
Peshawar etc.....**Respondents**

SERVICE APPEAL NO. 16410/2020

APPLICATION FOR IMPLEMENTATION OF
ORDER OF THIS HONOURABLE
TRIBUNAL DATED 25.01.2022 AND ALSO
INITIATING CONTEMPT OF COURT
PROCEEDINGS AGAINST THE
RESPONDENTS.

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Dated 06/01/2023


Muhammad Noor
(Petitioner)

(1)

BEFORE THE SERVICE TRIBUNAL K.P.K.
PESHAWAR

Muhammad Noor SPST, GPS Kot Pallas
Kohistan.....**Petitioner**

Versus

- 1) Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
- 2) Director Elementary & Secondary Education Department, KPK near No. 1 School at Peshawar.
- 3) District Education Officer (Male) Kolai Palas, Kohistan.
- 4) Enquiry Officer/SDEO (Male) Circle Palas Kohistan.....**Respondents**

REVIEW PETITION IN
SERVICE APPEAL NO. 16410/2020

REVIEW PETITION AGAINST THE
JUDGMENT AND ORDER 13.12.2022
PASSED BY THIS HONOURABLE
TRIBUNAL TO THE EFFECT THAT THE
RESPONDENTS MAY KINDLY BE
DIRECTED TO ISSUE TRANSFER ORDER IN
GOVERNMENT PRIMARY SCHOOL NAJAM
KOT (NATIVE VILLAGE COUNCIL).

Respectfully Sheweth!

- 1) That, the petitioner has filed a service appeal No. 522 of 2022 before this Honourable Tribunal.

(Copy of the appeal is attached herewith as Annexure "A").

- 2) That, the respondents were summoned who appeared before this Honourable Tribunal and submitted their written comments and after hearing the

(2)

arguments from both the sides this Honourable Tribunal decided the appeal in favour of petitioner.

(Copy of the judgment is attached herewith as Annexure "B").

- 3) That, the petitioner is belongs to Najam Kot Union Council Bar Sharyal District Kollai Palas Kohistan.
- 4) That, Kohistan is a far-flung hilly track and the petitioner has been posted in Govt. Primary School Ghazi Abad (Union Council Shalkhan Abad) in which the petitioner is daily visiting to school from his home to school about 25 KMs from one side by foot and this is a snow fall area and due to snow fall the footing paths also blocked, due to which the petitioner is suffering badly.
- 5) That, the petitioner has prayed in his appeal that he may be posted to his nearest home station and if the petitioner is posted to far-flung area the petitioner will suffer mental as well as physical torture.
- 6) That, the children of the petitioner are teenager and studying near the native home town and the petitioner is the only man who is literate person who taught his children as well as children of the locality and after the closing hours of the duty when petitioner came to his native village/town most of the

time spent in visiting by foot to his school and return to his house.

- 7) That, it is also notified by the Govt. that a civil Government servant should be posted to his nearest home station and the petitioner is also eligible to be posted to his nearest home station.
- 8) That, during the course of arguments the petitioner requested to this Honourable Tribunal that after acceptance of the appeal the petitioner requested that he may be posted to his nearest home station.
- 9) That, it is further submitted that petitioner also prayed in his appeal that the petitioner may kindly be reinstated into service with all back benefits, but while passing the order these material facts have not been discussed by this Honourable Tribunal due to which the petitioner has sustained irreparable monetary loss.

It is, therefore, most humbly prayed and requested that on acceptance of the instant review petition the respondents may kindly be directed to post the petitioner in his native Village Council or where the petitioner was removed from his service and later on the petitioner filed departmental appeal before the next higher authority i.e. Director

(4)

Elementary & Secondary Education KPK Peshawar who passed an order that petitioner would be compulsory retired from service, it is further prayed and requested that the leave without pay period may also be ordered to be treated as leave with full average pay.

Dated 06/01/2023



Muhammad Noor
(Petitioner)

AFFIDAVIT

I, MUHAMMAD NOOR, SPST, GPS KOT PALLAS DISTRICT KOHISTAN DO HEREBY SOLEMNLY AFFIRM AND DECLARE ON OATH THAT THE CONTENTS OF FORE-GOING APPLICATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND NOTHING HAS BEEN CONCEALED OR SUPPRESSED FROM THIS HONOURABLE TRIBUNAL



MUHAMMAD NOOR
(DEPONENT)



06/01/23

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Annexure "A"

BEFORE THE SERVICE TRIBUNAL K.P.K.
PESHAWAR

Muhammad Noor SPST, GPS Kot Pallas
Kohistan.....Petitioner

Versus

- 1) Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
- 2) Director Elementary & Secondary Education Department, KPK near No. 1 School at Peshawar.
- 3) District Education Officer (Male) Kolai Palas, Kohistan.
- 4) Enquiry Officer/SDEO (Male) Circle Palas Kohistan.....Respondents

SERVICE APPEAL NO. 16410/2020

APPLICATION FOR IMPLEMENTATION OF ORDER OF THIS HONOURABLE TRIBUNAL DATED 25.01.2022 AND ALSO INITIATING CONTEMPT OF COURT PROCEEDINGS AGAINST THE RESPONDENTS.

Respectfully Sheweth!

- 1) That, the above titled appeal was filed before this Honourable Tribunal which was decided on 25.01.2022.

(Copy of the judgment is attached herewith as Annexure "A").

- 2) That, on acceptance of the appeal the impugned order dated 25.11.2020 was set aside and the penalty of compulsory retirement was converted into stoppage of increments for three years and the petitioner was re-instated into service.



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- 3) That, the petitioner has submitted an application to respondent No. 3 for reinstatement into service on 11.05.2022 but no action has been taken so far.

(Copy of the application is attached herewith as Annexure "B").

- 4) That, later-on when no action was taken the petitioner has submitted another application on the subject matter to respondent No. 2 on 16.08.2022, but in vain.

(Copy of the application is attached herewith as Annexure "C").

- 5) That, the petitioner is the only bread winner of his family and belongs to a backward area of Kohistan and there is no other source of income to feed his family.

- 6) That, the kids of the petitioners are facing very financial hardships and have not been admitted in the school.

- 7) That, time and again the petitioner requested to respondents for the implementation of the order of this Honourable Tribunal but no action has been taken.

- 8) That, the acts of the respondents falls within the meaning of contempt of court.

It is, therefore, most humbly prayed and requested that on acceptance of the instant application the respondents may kindly be

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directed to implement the order of this Honourable Court and be proceeded contempt of court proceedings and further requested that respondents be directed to reinstate the petitioner into service with all back benefits.

Dated 6 /09/2022


Muhammad Noor
(Petitioner)

AFFIDAVIT

I, MUHAMMAD NOOR, SPST, GPS KOT PALLAS DISTRICT KOHISTAN DO HEREBY SOLEMNLY AFFIRM AND DECLARE ON OATH THAT THE CONTENTS OF FORE-GOING APPLICATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND NOTHING HAS BEEN CONCEALED OR SUPPRESSED FROM THIS HONOURABLE TRIBUNAL


MUHAMMAD NOOR
(DEPONENT)

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(8)

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BEFORE THE SERVICE TRIBUNAL K.P.K. PESHAWAR.

S. Appeal No. of 2020.

16/11/20

1. Muhammad Noor SPST GPS Kot Pallas Kohistan.

Appellant

Diary No. 16288

VERSUS

Dated 08/12/20

1. Govt of K.P.K Through Chief Secretary Civil Secretariat Peshawar.

2. Director Elementary and Secondary Education Department K.P.K Near No. 1 School at , Peshawar.

3. District Education Officer male Kolai Pallas Kohistan.

4. Enquiry officer / S.D.E.O Male Circle Pallas, Kohistan.

Respondents.

Appeal under section -4 of the N.W.F.P. Service tribunal Act 1974 against the order dated 25.11.2020, through which appellant Major penalty removal from Govt service convert into compulsory retirement from the Govt service with immediate effect.

Prayer:

On acceptance of this appeal the order dated 25.11.20 of the respondent no.2 may please be set aside and may please restore the service of the appellant with all back benefit.

RESPECTFULLY SUBMITTED,

Filed to - day
Registrar
17/12/20

1. That appellant was appointed as PST Teacher in education department on 12.8.1992. Copy of the appointment order as annexure A.

Resubmitted to - day
and filed.

Registrar
17/12/20

Signature
Registrar

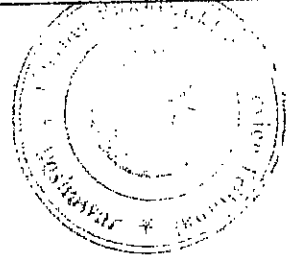
(9)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 16410/2020

Date of Institution ... 08.12.2020

Date of Decision ... 25.01.2022



Muhammad Noor SPST GPS Kot Pallas Kohistan.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary Civil Secretariat Peshawar and others. ... (Respondents)

Mr. Nawab Ali Noor
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN ...
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are

that the appellant, while serving as a Teacher in Education Department, was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 27-06-2019. Feeling aggrieved, the appellant filed departmental appeal, which was accepted and penalty of dismissal was converted into compulsory retirement from service vide order dated 25-11-2020, hence the instant service appeal with prayers that the impugned orders dated 25-11-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned order is against law, facts and norms of natural justice, therefore not tenable and liable

ATTESTED

Official Name

to be set aside; that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that no proper inquiry was conducted nor the appellant was afforded opportunity to defend his cause; that the appellant was found absent for only one day and imposition of major penalty on one day absence is harsh, which does not commensurate with gravity of the guilt.

03. Respondents were repeatedly ordered to submit its written comments but inspite of repeated chances, the respondents failed to submit written comments; hence, their right of defense was struck off. Record would suggest that the appellant was dismissed from service on account of willful absence but was not proceeded against as per law, as in case of willful absence the respondents were required to proceed him under Rule-9 of E&D Rules, 2011, which however was not done in case of the appellant. No regular inquiry was conducted in his case and the appellant was kept deprived of the opportunity of defense and the appellant was dismissed from service only on a show cause notice, which is not enough for imposition of major punishment. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

04. Upon submission of departmental appeal, the penalty of dismissal from service was converted into compulsory retirement due to the reason that the appellant was not proceeded against as per provisions of law. It was also interesting to note that the inquiry officer in his so called inquiry has recommended that the appellant may be afforded opportunity of personal hearing

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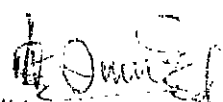
MEMBER
 TRIBUNAL
 PUNJAB
 10/10/2011

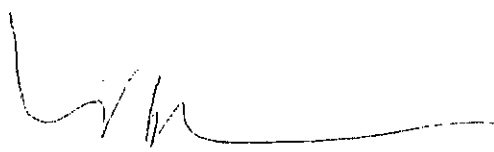


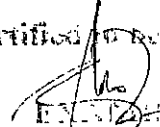
and he may be transferred to a nearest school, but the competent authority ignored recommendations of the inquiry officer and acted in an arbitrary manner. We are mindful of the fact that absence does constitute misconduct but imposition of major penalty on the charges of absence appears to be harsh, which needs to be reduced.

05. We are of the considered opinion that the appellant has not been treated in accordance with law and was condemned unheard. The penalty so awarded is harsh, which does not commensurate with gravity of the guilt, hence we are constrained to partially accept the instant appeal. The impugned order dated 25-11-2020 is set aside and the penalty of compulsory retirement is converted into stoppage of increments for three years. The intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
25.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Certified to be true copy

MEMBER
Khayal Pablikhan
Service Tribunal
Peshawar

Approved by the Chairman 17-2-22
Approved by the Member 16-2-22
Approved by the Member 18/2-22
Approved by the Member 18/2-22
Date of filing the appeal 27-4-22
Date of filing the appeal 27-4-22

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J. J.

The Director,

E. & Secondary Education

Peshawar

(13)

Subject: Requester for re-instatement of Service in the light of
H. Service Tribunal's judgment passed in Service Appeal
No/16410/2020 dated 25.01.2022

Sir,

With due veneration it is please state that

The above captioned judgment's cleared copy along with
an application filed before DEO (M), Peshawar for
the purpose in question on 10-05-2022. I paid
several visits to DEO's office but in vain.

Therefore it is requested in your excellency
that you may very kindly issue order for implementation
of the subject purpose with the records of
pure justice and compassionate grounds. It
shall be extremely grateful to you

With profound regards!

Date: 16/8/2022

Your Brother in Islam

Muhammad Nor

90 Madani Meharwal

S.P.S.T G.P.S Nayan Kot

Distt: Kotli Poonch

(14)

Annexure B

OFFICE OF THE SERVICE TRIBUNAL K.P.I.
PESHAWAR

Att. No. (14/2020)

Mohammad Noor (SI/ST, 317) Kot Pathan
Petitioner

Versus

- 1) Government of Khyber Pakhtunkhwa through Chief Secretary, Government of Peshawar
- 2) Director, Elementary & Secondary Education Department, K.P.I. near National School Peshawar
- 3) District Education Officer (Male) Kot Pathan, Kohistan
- 4) Enquiry Officer (SDEO (Male) Civil) Pata Kohistan..... Respondents

SERVICE APPEAL NO. 16410/2020

APPLICATION FOR IMPLEMENTATION OF ORDER OF THIS HONOURABLE TRIBUNAL DATED 25.01.2020 AND ALSO INITIATING CONTEMPT OF COURT PROCEEDINGS AGAINST THE RESPONDENTS.

Respectfully Sheweth:

- 1) That, the above titled appeal was filed before this Honourable Tribunal which was decided on 25.01.2020

(Copy of the judgment is attached herewith as Annexure 'A')

- 2) That, on acceptance of the appeal the impugned order dated 25.11.2020 was set aside and the penalty of compulsory retirement was converted into stoppage of increments for three years and the petitioner was reinstated into service.

[Handwritten signature]

11/15/2022
 11/15/2022
 11/15/2022

[Handwritten signature]

November 2022

in my hand and seal of the Tribunal on the 15th day
 of November in the year 2022
 I have signed and affixed my seal
 to the original and a copy of the
 same and the original has been
 filed with the Clerk of the
 Tribunal and a copy of the
 same has been furnished to the
 parties and the witnesses
 appearing in this matter.
 In testimony whereof I have hereunto
 set my hand and seal of office
 at the City of New York
 on the 15th day of November
 2022.

(K) [Signature]
 Clerk of the Tribunal

SCANNED
 KRAT
 RESHOWA

I have signed and affixed my seal
 to the original and a copy of the
 same and the original has been
 filed with the Clerk of the
 Tribunal and a copy of the
 same has been furnished to the
 parties and the witnesses
 appearing in this matter.
 In testimony whereof I have hereunto
 set my hand and seal of office
 at the City of New York
 on the 15th day of November
 2022.

(16)