

E.P. No. 102/2020
M. Arif vs Govt

24.09.2020

Petitioner in person and Addl. AG alongwith Hussain Ahmad, Focal Person for the respondents present.

Representative of the respondents states that upon given some more time, he will meet the petitioner today and assist him in collection with consolidation of the relevant service record in order to finalize the implementation proceedings. The petitioner accepts the offer.

Adjourned for further proceedings to 16.11.2020 before S.B.


Chairman

16.11.2020

Petitioner in person and Addl. AG alongwith Hussain Ahmad, Focal Person and Munawar Khan, SST for the respondents present.

Representatives of respondents seek time to furnish proper implementation report on the next date. To come up for implementation report on 04.1.2021 before S.B.


Chairman

04.01.2021

Petitioner alongwith counsel and Addl. AG alongwith Munawar Khan, ADO (Lit.) for the respondents present.

The representative of respondents has provided copy of notification dated 01.01.2021, whereby, the petitioner has been awarded major penalty of compulsory retirement after conducting a regular enquiry.





In view of the development, the petitioner states that he will seek remedy against the order dated 01.01.2021 and requests for consigning to record the implementation proceedings in hand.

Order accordingly.


Chairman

FORM OF ORDER SHEET

Execution Petition No. 108 /2020

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	30-06-2020	<p>The Implementation Petition of Muhammad Arif submitted to-day by Noor Muhammad Khattak Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	07.08.2020	<p>This Execution Petition be put up before S. Bench on <u>07/08/2020</u></p> <p style="text-align: right;">CHAIRMAN </p> <p>Neither petitioner nor his counsel is present, therefore, notices be issued to petitioners as well as his respective counsel together with notice to the respondents. File to come up for implementation report on 24.09.2020 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD JAMAL KHAN) MEMBER</p>
<p>- Noted and 24.09.2020 </p>		



DISTRICT EDUCATION OFFICE, DISTRICT KHYBER AT JAMRUD

NOTIFICATION:

1. **Whereas**, the appellat namely Mr. Muhammad Arif was appointed as Arabic Teacher in the Respondent Department vide order dated 02-04-1986. The teacher concerned was proceeded on Ex-Pakistan Leave w.e.f. September 2007 to September 2010 without approval/sanction of the competent authority & consequently he was reported as absent from duty & his salary was stopped by the then AEO Khyber.
2. **And whereas**, feeling aggrieved, the appellat filed Service Appeal No.606/2015 case titled Muhammad Arif Arabic Teacher Vs Government of Khyber Pakhtunkhwa & others before the Honorable Service Tribunal Khyber Pakhtunkhwa with the prayer for adjustment/acceptance of arrival report of the appellat against the post of Arabic Teacher (BS-12) with all back benefits and hence the case was decided vide judgment dated 16-01-2020 with the direction to the Respondent Department, **to decide the Departmental appeal dated 05-02-2015 of the appellat strictly in accordance with Law.**
3. **And whereas**, in compliance of the Judgment dated 16-01-2020 passed by the Honorable Service Tribunal Khyber Pakhtunkhwa, the Respondent Department has conducted a regular inquiry vide Notification No. 20692-97 dated 07-11-2020 through enquiry committee comprising the following officers.
 - i. Muhammad Ihsan Shah, Principal GHS Muhammad Khan Killi, District Khyber (Chairman).
 - ii. Mr. Haq Mali Khan, Headmaster GHS Zintara, District Khyber (Member).

The inquiry report was submitted to the respondent department on 24-12-2020 with the following recommendations.

- i. The employee concerned should given compulsory retirement.
- ii. The willful of the absent period above mentioned employee w.e.f 01/8/2007 to 31-7-2010 should be converted into leave without pay.

Now therefore, in compliance of the Judgment dated 16-01-2020 passed by the Honorable Service Tribunal Khyber Pakhtunkhwa & in exercise of the powers conferred under Rule -14 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, I, Nisar Muhammad, District Education Officer (Male), District Khyber / Competent Authority is pleased to impose major penalty of "**Compulsory Retirement**" from service upon Mr. Muhammad Arif, against the post of Arabic Teacher (BPS-12), District Khyber for the charges levelled against him in the interest of public service.


District Education Officer (M)
District Khyber

Endstt. No.37/

Dated Peshawar the. 01/01/2021

Copy of the above is forwarded for information & n/action to the:

1. Learned Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. Learned AAG Khyber Pakhtunkhwa Service Tribunal Peshawar.
3. PA to Director E&SE, Peshawar.
4. Mr. Muhammad Arif, Ex-AT, District Khyber.


District Education Officer (M)
District Khyber

01/01/21

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 108 /2020
In
Appeal No.606/2015

MUHAMMAD ARIF

VS


EDUCATION DEPTT:

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PETITIONER/APPLICANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE
MOBILE NO.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 108 /2020
In
Appeal No.606/2015

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 480
Dated 30-6-2020

Mr. Muhammad Arif, AT (BPS-12),
GHSS Kohi Sher Haider, Merged area District Khyber.

..... **PETITIONER**

VERSUS

- 1- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Education Merged area District, Merged area Secretariat, Warsak Road, Peshawar.
- 3- The District Education Officer, District Khyber.

.....**RESPONDENTS**

IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT
DATED 02.03.2017 IN LETTER AND SPIRIT

R/SHEWETH:

- 1- That the petitioner filed Service appeal bearing No. 606/2015 before this august Service Tribunal against the inaction of the respondents by not adjusting/accepting the arrival report of the appellant as Arabic Teacher.
- 2- That the appeal of petitioner was finally heard by this august Tribunal on 16.01.2020 and was decided in favor of the petitioner vide judgment dated 16.01.2020 with the directions to the appellate authority to decide the Departmental appeal of appellant strictly in accordance with law within the period of three months. Copy of the judgment is attached as annexure..... **A.**
- 3- That after obtaining attested copy of the judgment dated 16.01.2020 the petitioner submitted before the respondents for implementation but till date the judgment of this Tribunal has not been implemented by the respondent in letter and spirit.
- 4- That the petitioner has no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may be directed to implement the judgment dated 16.01.2020 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER


MUHAMMAD ARIF

THROUGH:


NOOR MOHAMMAD KHATTAK

&


MIR ZAMAN SAFI
ADVOCATES

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2020

In

Appeal No.606/2015

MUHAMMAD ARIF

VS

EDUCATION DEPTT:

AFFIDAVIT

I Noor Mohammad Khattak, Advocate on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



NOOR MOHAMMAD KHATTAK
ADVOCATE

A-4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 606/2015

Date of institution ... 28.05.2015

Date of judgment ... 16.01.2020



Muhammad Arif, Arabic Teacher (BPS-12),
GHSS, Kohi Sher Haider, Khyber Agency

... (Appellant)

VERSUS

1. The Additional Chief Secretary FATA, FATA Secretariat Warsak Road Khyber Pakhtunkhwa, Peshawar.
 2. The Director Education FATA, FATA Secretariat, Warsak Road, Khyber Pakhtunkhwa, Peshawar.
 3. The Agency Education Officer, Khyber Agency at Jamrud.
 4. The Political Agent, Khyber Agency at Khyber House, Peshawar.
- ... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT ADJUSTING/ACCEPTING THE ARRIVAL REPORT OF THE APPELLANT AS ARABIC TEACHER AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STIPULATED PERIOD OF NINETY DAYS.

Mr. Noor Muhammad Khattak, Advocate.

... For appellant.

Mr. Kabirullah Khattak, Additional Advocate General

... For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the

appellant and Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments heard and record perused.

2. Brief facts of present service appeal are that the appellant was serving in Education Department as Arabic Teacher since 02.04.1986. The appellant

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

B

submitted leave application in the year 2007 which was accepted and the appellant was granted leave with effect from September 2007 to September 2010 (but the sanctioned of leave is not available on record). That on the expiry of said leave, the appellant submitted arrival report to the Agency Education Officer Khyber Agency but in response, the appellant was informed by the concerned authority that the school where the appellant was posted has been destroyed due to military operation and after completion of rehabilitation process the appellant will be adjusted. That the appellant time and again requested the concerned authority for his adjustment ⁱⁿ as Arabic Teacher but in vain, therefore, he filed departmental appeal on 05.02.2015 but the same was not responded hence, the present appeal.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving as Arabic Teacher in Education Department. It was further contended that in the year 2007 he submitted application for three years leave which was granted to him by the competent authority. It was further contended that when after the expiry of his leave he submitted application for adjustment but he was told by the concerned authority that the school where he was serving has been destroyed by the military operation, therefore, after rehabilitation process he will be adjusted. It was further contended that he time and again requested for his adjustment but in vain, therefore, he filed departmental appeal but the same was not responded. It was further contended that neither any departmental proceeding i.e proper inquiry, show-cause notice etc was issued against the appellant nor any adverse order regarding removal or dismissal from service was issued by the competent authority and the

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ATTESTED

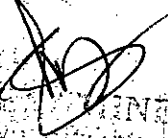
Handwritten signature
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar.

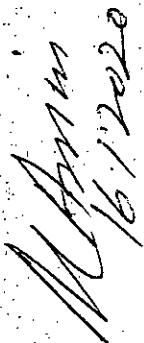
appellant is still in service, therefore, respondent-department is bound to adjust him and prayed for acceptance of appeal.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that neither the appellant was granted sanctioned of the aforesaid leave nor the appellant has any service record with the respondent-department and the same if any is fake. It was further contended that neither any final original nor appellate order made by the departmental authority is available on the record nor the same has been challenged by the appellant in service appeal, therefore, the present appeal is not maintainable. It was further contended that the appellant has gone abroad during the period of 2007 to 2010 and in this respect his travel history is also available on the record, therefore, it was contended that the appellant was not entitled for any adjustment and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant has claimed that he was serving as Arabic Teacher in Education Department and he was granted sanction of leave with effect from September 2007 to September 2010 for a period of three years and after expiry of his leave when he applied for joining his duty he was told that the school where he was serving his duty has been destroyed by the military operation, therefore, after rehabilitation process he will be adjusted but he has not been adjusted, therefore, he filed departmental appeal and service appeal. While on the other hand, the respondent-department has claimed in the written reply that no service record of the appellant was found in the office of respondents. It was further stated that service book of the appellant is also fake. It was also stated in the written reply/comments that the appellant was not granted sanction of any leave,

ATTESTED


 CLERK
 Khushalpur
 Service Tribunal,
 Peshawar


 16/1/2020

②

therefore, the appellant is not entitled for any indulgence/adjustment. Perusal of the record further reveals that the Assistant Director/Incharge FIA Immigration BKIA Peshawar has issued a letter dated 13.05.2019 to the District Education Officer, Khyber Tribal District at Jamrud in response to his letter No. 6144 dated 09.05.2019 in respect of travel history of the appellant and the copy of the said response letter dated 13.05.2019 alongwith copy of travel history of the appellant is available on the record. Moreover, a fact finding inquiry against the appellant alongwith 14 others teachers was also conducted by the inquiry committee and the inquiry committee submitted their joint report on 30.05.2018 wherein it has been recommended that the appeal of the appellant be regretted, therefore, it is clear beyond doubt from the joint inquiry report as well as from the letter dated 13.05.2019 issued by the Assistant Director/Incharge FIA Immigration BKIA Peshawar to the District Education Officer, Khyber Tribal District at Jamrud in response to the letter No. 6144 dated 09.05.2019 that the appellant was serving in Education Department and the claim of the official respondents regarding the fakeness of service record of the appellant is baseless and has been negated by these documents. Moreover, on one hand that the appellant has claimed that he was granted leave by the competent authority while on the other hand the respondent-department has negated the same. Furthermore, the record also reveals that no adverse order regarding his dismissal/removal from service of the appellant has been issued so far by the respondent-department. The record further reveals that the appellant has also filed departmental appeal but the same has not been decided by the respondent-department so far, therefore, in such circumstances, we deem it appropriate to direct the departmental authority to decide the departmental appeal dated 05.02.2015

M. J. Khan
16/1/2020

ATTESTED

[Signature]
 Director
 Service Tribunal,
 Peshawar

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of the appellants strictly in accordance with law within a period of three months from the date of copy of receipt of this judgment. The departmental authority is also directed to communicate the order of department-authority to the appellants and thereafter, if the appellants were aggrieved then they will be at liberty to approach this Tribunal. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.01.2020

Muhammad Amin Khan Kundi
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER.

Hussain Shah
(HUSSAIN SHAH)
MEMBER

Certified to be a true and correct copy
of the original
as per the order of the
Tribunal.
Peshawar

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VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Muhammed Arif

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Muhammad Arif

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. ____/____/2020

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

MIR ZAMAN SAFI
&

AFRASIAB KHAN WAZIR
ADVOCATES

OFFICE:

Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141



DISTRICT EDUCATION OFFICE
DISTRICT KHYBER AT JAMRUD

PHONE. 091-5820584 FAX 091-5820584

OFFICE ORDER

In compliance to Judgment of the Honorable Service Tribunal in Service Appeal No. 606/2015-exu-P- 102/2020 case title Muhammad Arif versus Education Department dated , 24/09/2020 and recommendation of the departmental appellate committee in its meeting held on 06/11/2020 at Directorate of Education.

Following committee are hereby constituted to probe into the matter .

1. Mr. Ihsan Shah Principal GHS Muhammad Khan Killi Chairman)
2. Mr. Haq Mali Khan Head Master GHS Zintara Landi Kotal (Member)

The inquiry officers are directed to submit inquiry report with clear recommendation immediately please.

**DISTRICT EDUCATION OFFICER
DISTRICT KHYBER AT JAMRUD**

Endst: No. 20692-97

Dated 7/11/ /2020

Copy for information and necessary action is forwarded to the

- 1 Director Education Khyber Pakhtunkhawa at Peshawar.
- 2 Deputy Director Litigation Pakhtunkhawa at Peshawar.
- 3 All committee members
- 4 Deputy Commissioner District Khyber at Peshwar.
- 5 Principal GHS Muhammad Khan Killi Landi Kotal District Khyber.
- 6 Head Master GHS Zintara Landi Kotal District Khyber..
- 7 ADEO(M) Concerned local office
- 8 Superintendent local office.

**DISTRICT EDUCATION OFFICER
DISTRICT KHYBER AT JAMRUD**

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07/11/20