

I want to withdraw my petition.

MP

1738-7482978

28.06.2021

Petitioner present in person.

Muhammad Adeel Butt learned Additional Advocate General for respondents present.

Former submitted an application seeking withdrawal of the instant petition. In this regard, his statement was recorded on the margin of order sheet and signature was also obtained thereon.

Application is allowed. Instant execution petition stands dismissed as withdrawn. No order as to costs. File be consigned to the record room.

Announced.
28.06.2021


(Rozina Rehman)
Member (J)

08.03.2021

Counsel for the petitioner present. Assistant Advocate General for respondents present.

Learned counsel for the petitioner apprised that lengthy arguments have already been concluded before the Single Bench previously, therefore, it would be appropriate that order may be passed in the execution petition by the same bench.

Adjourned to 06.05.2021 before S.B.



(Mian Muhammad)
Member (E)

06.05.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 28.06.2021 for the same as before.



Reader

خدمت مناب - منسب صاحب سرور سے ڈیپوٹیشن کے لیے درخواست

منسب قاعلیٰ بنام ڈائریکٹر اکیونٹس KPK

تاریخ پیشی = 28/06/21

ایک ع = 64/2020

درخواست نمبر اد لیس و ایس ایس
جو کہ آفیسر آف اکیونٹس 5963/2021 جمع کرے

مناب عالی

سائل حسب ذیل عرفت رسالہ ہے

یہ کہ سائل کا ایک عدد لیس مذکورہ بالا 64/2020
عدالت حقور میں زیر کوئی ہے۔ جس میں آج
تاریخ پیشی مقرر ہے۔

(1)

یہ کہ سائل اپنی فریضی سے مذکورہ لیس و ایس
لیا جا چکا ہے۔

(2)

اس لئے آج - حاجات سے گذارش کی جا رہی ہے
ہیلہ سائل کا لیس و ایس کرنے کا حکم صادر فرمایا
جائے - 28/6/21

28/06/21

(M. Hussain)

منسب قاعلیٰ ولد عبد العزیز
اکیونٹس ڈیپارٹمنٹ

26.01.2021

Petitioner with counsel present.

Mr. Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Perusal of record would reveal that de-novo inquiry was conducted in view of the directions of this Tribunal whereafter, second inquiry was conducted but the record is silent in respect of the order of the competent authority for initiation of second inquiry. A request was made by learned A.A.G for adjournment in order to produce the relevant documents. Last chance is given. To come up for further proceedings on 29.01.2021 before this S.B.



(Rozina Rehman)
Member (J)

29.01.2021

Petitioner in person present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Muhammad Azeem ADEO for respondents present.

All relevant documents were submitted today and are placed on file. A short adjournment was sought by representative ~~on~~ of respondents in order to go ~~th~~ ~~rough~~ the entire record of the petitioner; allowed. To come up for further proceedings on 08.03.2021 before S.B.



(Rozina Rehman)
Member (J)

Mushtaq

23.12.2020

Petitioner with counsel present.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Hafiz Ibrahim Director, Abdul Samad Deputy Director, Hayat Khan Assistant Director and Wahid Ullah ADEO for respondents present.

Notification dated 23.12.2020 was produced today vide which the petitioner was not held entitled to the grant of back benefits w.e.f 01.10.2014 to 30.06.2020 in view of the inquiry report dated 30.11.2020 of District Education Officer (Male) Nowshera. All relevant documents were also produced and are placed on record.

On the other hand, learned counsel for petitioner was of the view that de-novo inquiry as per orders of this Tribunal was not conducted within a period of 90 days, therefore, the inquiry conducted after 90 days and order of the competent authority on the strength of inquiry report has got no value in the eyes of law. Arguments on the point heard. To come up for order on 26.01.2021 before S.B.

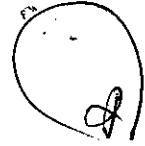

(Rozina Rehman)
Member (J)

21.12.2020

Petitioner present in person.

Kabir Ullah Khattak learned Additional Advocate General present. Abdul Samad Deputy Director present who produced corrigendum dated 04.12.2020.

Record shows that it was on 28.10.2020 when Director Elementary & Secondary Education Khyber Pakhtunkhwa was put on notice to attend the Tribunal in person and to inform about the de-novo inquiry and further nomination of the inquiry but today, Deputy Director attended the Tribunal and produced corrigendum. He is, therefore, directed to make sure the presence of Director alongwith relevant record in respect of the present petitioner on 23.12.2020 before S.B.



(Rozina Rehman)
Member (J)

28.10.2020

Petitioner present in person.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Abdul Wahid Litigation Officer for respondents present.

Representative of respondents submitted a notification in respect of nomination of an inquiry officer to conduct de-novo inquiry against the petitioner and to submit his recommendation/finding within 5 days.

Admittedly, de-novo inquiry has already been conducted, report is available on file and it was on 14.09.2020 when the respondents were directed to expedite the process and submit implementation report in view of the de-novo inquiry, but today, another notification in respect of nomination of an inquiry officer was submitted and there is no order of the competent authority in respect of acceptance or rejection of the de-novo inquiry report.

In view of above, Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar be put on notice to attend this Tribunal in person and to inform about the de-novo inquiry and further nomination of the inquiry officer.

Adjourned to 21.12.2020 before S.B.

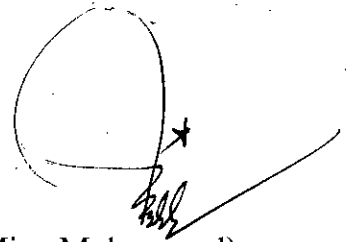

(Rozina Rehman)
Member (J)

13.07.2020

Counsel for the petitioner and Addl: AG for respondents present.

The matter was adjourned through Reader Note, therefore, the office shall issue notices to the respondents for submission of implementation report.

Adjourned to 14.09.2020 before S.B.



(Mian Muhammad)
Member(E)

14.09.2020

Petitioner in person and Addl. AG alongwith Sajid ADEO for the respondents present.

Representative of the respondents states that in pursuance to the judgment under implementation denovo enquiry has been conducted and concluded, however, an order is yet to be passed thereon by the competent authority.

The respondents are required to expedite the process and submit requisite implementation report on next date of hearing without fail.



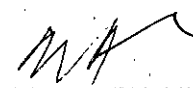

Adjourned to 28.10.2020 before S.B.



Chairman

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. 64 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	24.02.2020	<p>The execution petition of Mr. Mushtaq Ali submitted today by Akhunzada Syed Pervez 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-	02/03/20.	<p>This execution petition be put up before S. Bench on <u>20/03/2020.</u></p> <p style="text-align: right;"> MEMBER</p>
20.03.2020		<p>Petitioner in person present. Notices be issued to respondents for implementation report for 16.04.2020 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD AMIN KHAN KUNDI) MEMBER</p>
16.04.2020		<p>Due to public holiday on account of COVID-19, the case is adjourned to 13.07.2020 for the same. To come up for the same as before S.B.</p> <p style="text-align: right;"> Reader</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,

PESHAWAR

Execution petition no. 64/2020

C.O.C No. _____/2020

In

Service Appeal No. 1228/2018

Mushtaq AliPETITIONER

VERSUS

Mr. Hafiz Ibrahim & other Respondents

I N D E X

S. No	Description of Documents	Annex	Pages
1	Application for contempt of court		1-3
2	Affidavit		4
3	Copy of the Order/judgment dated 25.10.2019 of this Hon'ble Service tribunal	A	5-10
4	Copy of de-novo inquiry dated 06.01.2020	B	11-14
5	Wakalat Nama		15

Petitioner

Through



Akhunzada Syed Pervez
Advocate, High Court Peshawar.
Cell # 0300-3160098

Dated: 24.02.2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Execution Petition no 64 / 2020

C.O.C No. 64 / 2020

In

Service Appeal No. 1228/2018

Khyber Pakhtunkhwa
Service Tribunal

Case No. 238

Date 24-2-2020

Mushtaq Ali S/O Abdul Ghani R/O Musazai, Gul Abad, Inqilab Road,
Peshawar, Ex-Senior Clerk District Education Officer (M).

.....PETITIONER

VERSUS

1. Mr. Hafiz Ibrahim, Director Elementary and Secondary Education,
Khyber Pakhtunkhwa, Peshawar R/O Firdous Chowk Peshawar.
2. Mr. Irfan Ali, District Education Officer (M) Peshawar R/O
Hashnagri, Peshawar.

..... RESPONDENTS

**PETITION UNDER SECTION 3, 4 & 5 OF THE CONTEMPT
OF COURT ACT, FOR INITIATING CONTEMPT OF COURT
PROCEEDINGS AGAISNT THE RESPONDENTS FOR NOT
HONOURING JUDGMENT DATED 25.10.2019 IN SERVICE
APPEAL NO. 1228/2018 PASSED BY THIS HONOURABLE
TRIBUNAL AND PETITION FOR THE IMPLEMENTATION
OF THE ORDER OF THIS HON'BLE TRIBUNAL DATED
25.10.2019 IN APPEAL NO. 1228/2018.**

Respectfully Sheweth:

That the petitioner humbly submits as under;

1. That above noted service appeal was filed by the petitioner
before this Hon'ble Service Tribunal and this Hon'ble Service

Tribunal vide order & judgment dated 25.10.2019 partially accepted the said appeal and directed the respondents to reinstate the appellant/petitioner into service and also directed the respondent-department to conduct de-novo inquiry in the mode and manners prescribed under Government Servants (Efficiency & discipline) Rules, 2011 strictly in accordance with law within period of 90 days from the date of receipt of copy of this judgment, however the issue of back benefits will be subject to outcome of the de-novo inquiry. **(Attested Copy of the order/judgment dated 25.10.2019 is attached as annexure "A").**

2. That certified copy of judgment was conveyed to the respondents for compliance by the petitioners, but they did not implement the judgment of this Hon'ble Service Tribunal till today and hence this petition, inter alia, on the following grounds:

GRUNDS:

- A. That non-compliance of the aforesaid judgment dated 25.10.2019 of this Honorable Service tribunal by the respondents is illegal, without lawful authority based on malafide.
- B. That thereafter the petitioners time and again approached the respondents for the implementation of the judgment & Order of this Hon'ble Service Tribunal but all in vain.
- C. That by not honoring the judgment of this Hon'ble Court the Respondents has intentionally/ willfully and deliberately made contempt of this Hon'ble Service Tribunal.
- D. That the acts of the respondents are against the law and natural justice as well as the order of this Hon'ble Service Tribunal.
- E. That non-compliance of the order of the Honorable Court, speaks malafide on the part of respondents and to lower the position of the judiciary in the eye of public at large.

- F. That from the facts and grounds taken the in the service appeal, it has become crystal clear that the respondents have committed contempt of court.
- G. That it is pertinent to mention here that although the respondent-department vide office order No. 452 dated 06.01.2020 has conducted de-novo inquiry but despite of conclusion of that very de-novo inquiry the respondents are not ready to implement the judgment & Order of this Hon'ble Service Tribunal, hence they committed gross violation of order and judgment of this honorable tribunal. **(Copy of de-novo inquiry dated 06.01.2020 is attached as Annexure "B")**
- H. That the above named respondents have grossly violated, disregarded and disobeyed the lawful order of this Hon'ble Court and have thus committed the act of contempt of court and therefore is liable to be prosecuted under the law.
- I. That any other ground will be raised at the time of arguments with the prior permission of this Hon'ble Court.

It is, therefore, humbly prayed that on acceptance of this Petition, the contempt of court proceedings may please be initiated against the above mentioned Respondents for noncompliance / disobedience of the order and judgment of this Hon'ble service tribunal and the respondents may kindly be further directed to implement the order of this Hon'ble service tribunal which has been directed on dated 25.10.209 passed by this Hon'ble service tribunal in Service Appeal No. 1228/2018 for the interest of justice.

Through

Petitioner



Akhunzada Syed Pervez

Advocate, High Court Peshawar.

Cell # 0300-3160098

Dated: 24.02.2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

C.O.C No. _____/2020

In

Service Appeal No. 1228/2018

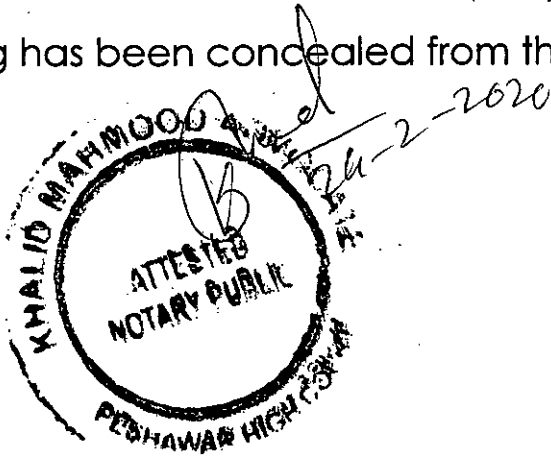
Mushtaq AliPETITIONER

VERSUS

Mr. Hafiz Ibrahim & other Respondents

AFFIDAVIT

I, Mushtaq Ali S/O Abdul Ghani R/O Musazai, Gul Abad, Inqilab Road, Peshawar, Ex-Senior Clerk District Education Officer (M) District Battagram, do hereby solemnly affirm and declare on oath that the contents of this accompanying Contempt of Court Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.




DEPONENT

To,

5

The Director Elementary & Secondary Education
Govt of Khyber Pakhtunkhwa, Peshawar

Subject:- APPEAL FOR REINSTATEMENT INTO SERVICE
IN THE LIGHT OF HON'BLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA ORDER.

Respected Sir,

Reference to the judgment dated 25.10.2019, passed by the Khyber Pakhtunkhwa Service Tribunal Peshawar in the Service Appeal No.1228/2018, on the subject noted above, it is humbly prayed that I may graciously be reinstated into service at the earliest, please.

An immediate response in the matter will be highly appreciated.

Regards,

Sincerely yours,


Mushtaq Ali

Ex-Senior Clerk
District Education Office
(Male)
Battagram

Dated:- 25.11.2019

Encl: Copy of judgment dated 25.10.2019 is attached.

Received
Memorandum Assn.
25/11/19

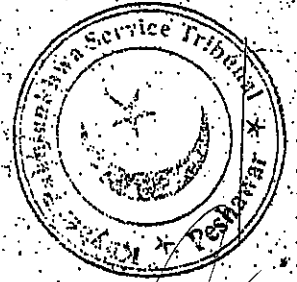
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 1228/2018

Date of institution ... 08.10.2018

Date of judgment ... 25.10.2019



Mushtaq Ali S/o Abdul Gahani R/o Musazai, Gul Abad,
Inqilab Road, Peshawar, Senior Clerk District Education Officer (M),
Battagram. ... (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. District Education Officer (M) Peshawar, Hashtnagri, Peshawar.
3. District Education Officer (M) Battagram Bazar, Battagram.
4. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Firdous Chowk Peshawar. ... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER ENDST NO. 1505-10/F.NO/A-23/MS/APPEAL MUSHTAQ ALI DATED 18.09.2018 OF RESPONDENT NO. 4(DIRECTOR ELEMENTARY & SECONDARY EDUCATION, KHYBER PAKHTUNKHWA, FIRDOUS CHOWK PESHAWAR) WHEREBY HE UPHOLD THE ORDER OF MAJOR PENALTY IMPOSED BY RESPONDENT NO. 2 (DISTRICT EDUCATION OFFICER (M) PESHAWAR, HASHTNAGRI, PESHAWAR) ENDST NO. 729-32/DATED PESHAWAR THE 05.09.2014 AND REJECTED THE APPEAL OF THE APPELLANT FOR NO LEGAL REASON.

25.10.2019

Mr. Akhunzada Syed Pervez, Advocate
Mr. Kabirullah Khattak, Additional Advocate General

For appellant.
For respondents

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. HUSSAIN SHAH

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)


ATTESTED

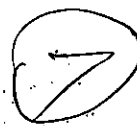
JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the

appellant and Mr. Kabirullah Khattak, Additional Advocate General alongwith
Mr. Arshed Ali, ADO for the respondents present. Arguments heard and records
perused.

Attested


Khyber Pakhtunkhwa Service Tribunal,
Peshawar



2 Brief facts of the case as per present service appeal are that the appellant was serving as Senior Clerk in Education Department. He was imposed major penalty of compulsory retirement vide order dated 05.09.2014 on the allegation of absence from duty by the competent authority. The appellant after availing departmental remedy, filed service appeal before this Tribunal and after hearing arguments this Tribunal issued direction to the appellate authority (Respondent No. 4 i.e Direction Elementary & Secondary Education, Khyber Pakhtunkhwa) to decide the departmental appeal filed by the appellant within two months of the receipt of copy of judgment vide detailed judgment dated 10.07.2018. The departmental authority rejected/dismissed the departmental appeal vide order dated 18.09.2018 and thereafter, the appellant filed the present service appeal on 08.10.2018.

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

4. Learned counsel for the appellant contended that the appellant was serving as Senior Clerk in Education Department. It was further contended that the appellant was involved in criminal case vide FIR No. 304 dated 23.03.2013 under section 489-F PPC Police Station Takht Bahi. It was further contended that the absence of the appellant was not intentional/deliberate but the same was due to involvement of the appellant in the aforesaid criminal case. It was further contended that neither absence period has been mentioned by the competent authority in the impugned order nor by the departmental authority in the order of departmental appeal. It was further contended that neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and defence nor any absence notice was issued to the appellant at his home address nor any absence notice/show-cause notice was advertised in two newspapers as required under rule-9 of Government Servants (Efficiency &

Handwritten signature and date:
25.10.2019

ATTESTED

Handwritten signature
Secretary
Service Tribunal,
Peshawar

Handwritten signature
Attested

Discipline) Rules, 2011 therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside 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 the appellant remained absent with effect from 18.05.2013 till the impugned order dated 05.09.2014 without permission of lawful authority. It was further contended that a proper show-cause notice was issued to the appellant which was also received by the appellant on 18.02.2014 as revealed from the copy of show-cause notice but the appellant could not satisfy the competent authority and the Principal of Government Higher Secondary School Hazar Khawani Peshawar recommended for compulsory retirement from service vide inquiry report dated 15.05.2014 therefore, it was vehemently contended that after fulfilling all the codal formalities, the appellant was rightly imposed major penalty of compulsory retirement and prayed for dismissal of appeal.

Handwritten notes:
21/11/14
25.10.2019

6. Perusal of the record reveals that the appellant was serving as Senior Clerk in Education Department. The record further reveals that the appellant was involved in the aforesaid criminal case due to which the appellant remained absent from duty with effect from 18.05.2013. The record further reveals that the appellant was imposed major penalty of compulsory retirement by the competent authority i.e District Education Officer Male Peshawar vide order dated 05.09.2014. The record further reveals that the appellant filed departmental appeal against the impugned order dated 05.09.2014 but the same was not responded by the departmental authority within the stipulated period therefore, the appellant filed Service Appeal before this Tribunal. The record further reveals that this Tribunal disposed off the service appeal of the appellant and directed the departmental authority to decide the departmental appeal.

ATTESTED

Signature
Additional Advocate General
Service Tribunal,
Peshawar

Signature
Attested

9

by the appellant within two months of the receipt of copy of judgment vide detailed judgment dated 10.07.2018. The record further reveals that the departmental authority also dismissed the departmental appeal of the appellant vide order dated 18.09.2018 and thereafter, the appellant filed the present service appeal on 08.10.2018. The record further reveals that the appellant was imposed major penalty of compulsory retirement on the allegation of absence from duty but neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and defence. The record further reveals that the competent authority has issued only a show-cause notice undated to the appellant for the absence with effect from 18.05.2013 which was received to the appellant on 18.02.2014 and after issuing the show-cause notice, the appellant was imposed major penalty of compulsory retirement vide order dated 05.09.2014 but neither regular inquiry was dispensed by the competent authority in the aforesaid show-cause notice nor any reason for dispensing regular inquiry was mentioned in the said show-cause notice. The record further reveals that the aforesaid show-cause notice was received by the appellant on 18.02.2014 as revealed from the copy of show-cause notice available on the record but a fact finding inquiry was conducted by the Principal of Government Higher Secondary School Hazar Khawani Peshawar on 15.05.2014 after issuing a show-cause notice which itself speak that the said fact finding inquiry is against the rules as the competent authority was required to first initiate proper inquiry including charge sheet, statement of allegation against the appellant and thereafter, if the appellant was proved guilty than he would have issued a show-cause notice for the absence period but the inquiry officer has submitted inquiry report after the aforesaid show-cause notice therefore, the whole proceeding is illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order. reinstate the appellant into service and direct the

M. Akbar Khan
 25.9.2019

ATTESTED

[Signature]
 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

[Signature]
Attested

10

respondent-department to conduct de-novo inquiry in the mode and manners prescribed under Government Servants (Efficiency & Discipline) Rules, 2011 strictly in accordance with law within a period of 90 days from the date of receipt of copy of this judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.10.2019

Muhammad Amin
(MUHAMMAD AMIN KHAN KUND)
MEMBER

Hussain Shah
(HUSSAIN SHAH)
MEMBER

Certified to be true copy
[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Copy 14-11-19
Number of Words 2000
Copying Fee 22-00
Urgent _____
Total 22-00
Name of Copy [Signature]
Date of Completion of Copy 19-11-19
Date of Delivery of Copy 19-11-19

[Signature]
Attested

(11)



OFFICE OF THE
PRINCIPAL GHS NANAK PORA PESHAWAR
CITY

To, No. 452 / Principal/GHS Nanak Pore/Enquiry /Mushtaq /SC / dated 06/01/2020

The District Education Officer
(Male) Peshawar.

Subject; SUBMISSION OF ENQUIRY REPORT
Memo,

With reference to your office order Endstt No. 2252-56 dated; 24-12-2019.

Enclosed please find herewith enquiry report in R/o Mr. Mushtaq Ali Ex- Senior Clerk DEO (M)
Battagram along with its enclosure for further necessary action please.
(Enclosed as above).

(NAVEED AKHTAR)
Principal/Enquiry Officer BPS-18
GHS Nanak Pora
Peshawar

3457
07/01/2020

PRINCIPAL
G.H.S Nanak Pura
Peshawar

Attested

12

P1 of 3

OFFICE OF THE PRINCIPAL GHS NANAK PURA, DISTRICT PESHAWAR

ENQUIRY REPORT IN SERVICE APPEAL NO. 1228/2018 IN R/O MR . MUSHTAQ ALI EX-SENIOR CLERK OFFICE OF THE DEO(M) BATTAGRAM

INTRODUCTION:-

The undersigned has been appointed as enquiry Officer by the DEO(Male) Peshawar vide Order issued under Endst: No. 2252-56 dated ; 24-12-2019 in pursuance of the decision of the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1228/2018 with the following .

1. The absence period i.e. 18-05-2013 to 12-2-2014
2. Promotion order from Junior Clerk to Senior Clerk
3. To enquire the whether the concerned officer/ officers signed countersigned the relevant papers pertaining to promotion of appellant to the post of S/Clerk;
4. To examine the track record in education department.

HISTORY OF THE CASE.

In compliance with the order issued by the worthy DEO(M) Peshawar the undersigned started the enquiry preceding and called Mr. Mushtaq Ali Ex-Senior Clerk to appear before the enquiry officer on the date/time and venue so fixed on 28-12-2019. The undersigned studied all the relevant documents available on the record as well as judgment issued by the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Having gone through the record thoroughly, it was observed that the then Principal GHSS No.4 Kakshal, Peshawar City submitted the absence report of the mentioned accused appellant wef 18-05-2013 to 12-02-2014 (09) Months. However Mr. Mushtaq Ali Ex-Junior Clerk GHSS No.4 Kakshal, Peshawar City submitted his application for medical leave w.e.f 18-05-2013 to 18-01-2014 (copy attached) Furthermore, he was hospitalized and admitted at Khursheed Medical Center & Surgical Hospital Peshawar w.e.f 18-05-2013 to 31-05-2013. He was discharged from Hospital on 31-05-2013 and the Doctors advised him for complete bed rest for 06 Month. A Questionnaire to this effect was served on him (copy attached) He replied to the said Questionnaire accordingly. As per statement obtained from him, it was revealed that he was patient of Hepatitis "C" Hence, he was not in position to perform his duty.

After the thorough checking of his documents as well Original Service Book (copy attached) he was appointed as Junior Clerk in Elementary & Secondary Education Department on 15-12-1986 vide Director E & SE Khyber Pakhtunkhwa Peshawar (copy attached) He performed his duty regularly w.e.f 15-12-1986 to 17-05-2013. As per his original service book he was not remained on leave without pay. His service record was found duly verified by the concerned Officers/DEOs/DDO,s from time to time till 29-09-2014. All the relevant documents i.e Original Service Book ,ACR, Non Involvement, Reliving Chit, LPC duly attested /Re- Attested by the Principal GHSS No.4 Peshawar City in connection with his promotion case to the post of Senior Clerk.

Attested

[Signature]
Principal
GHS Nanak Pura
Peshawar

(B) 2

P 2 of 3

Accordingly, based on the above mentioned verified record, the Director E&SE KP, Peshawar issued his promotion order as Senior Clerk vide Endst: No. 4015-4040/ .F.No.A-

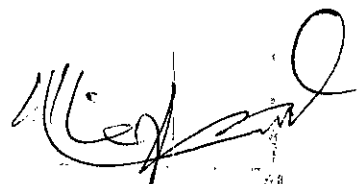
23/MS/Promotion/S/Clerk/DD(F&A) dated 28-05-2014 appearing at S.No. (39) and adjusted him at DEO(M) office Battagram. He took over charge of his new assignment/post on 04-06-2014 and he performed his duty w.e.f 04-06-2014 to 29-09-2014. Later on, Directorate E&SE KP, Peshawar had withdrawn his promotion order as S/Clerk on the basis of his compulsory retirement order issued by the then DEO(M) Peshawar.

FINDINGS:

Keeping in view history of the case dig out as above and after careful checking of the relevant record, the undersigned reached to the following conclusion/findings:-

1. The appellant concerned was on medical leave for the period from 18-05-2013 to 18-01-2014.
2. All the documents available on the record showing that he submitted his application for medical Leave and the Principal concerned had forwarded his leave application to DEO (M) Peshawar on 18-05-2013. However his Leave was not sanctioned by the then DEO (M) Peshawar.
3. Later on, the appellant was promoted to the Post of Senior Clerk vide Directorate E&SE KP, Peshawar Order vide Endst: No. 4015-4040/ .F.No.A-23/MS/Promotion/S/Clerk/DD (F&A) dated; 28-05-2014 falling at S.No. (39) and adjusted him at DEO (M) office Battagram.
4. The Principal GHSS No.4 Kakshal Peshawar City reported him as absent, and ignored the application of the Mr. Mushtaq Ali Ex-Junior Clerk GHS Kakshal Peshawar already forwarded by him.
5. Furthermore, all the documents relevant to his promotion duly attested by the Principal Mr. Muhammad Tahir GHSS No.4 Kakshal Peshawar City vide his letter No. 91 dated; 17-12-2015 and re-verified by the Principal concerned on 30-12-2019.
6. Furthermore, Directorate E & SE also conducted an enquiry in this case through Mr. Saif-ur-Rahman Principal GHS No.1 Nowshera Cantt (copy attached) who had recommended that the said appellant/Ex-Senior Clerk may be reverted to his lower Post i.e Junior Clerk.
7. Moreover, Mr. Mushtaq Ali Ex-Senior Clerk lodged his appeal before the service Tribunal Peshawar vide Service Appeal No.1228/2018 and passed his Judgment announced on 25-10-2019 at the disposal of DEO (M) Peshawar to conduct de-novo enquiry.
8. It is also worth mentioning that Directorate E&SE KP, Peshawar issued letter to DEO (M) Peshawar for re-instatement of his services in the compliance of the Judgment of Honorable Service Tribunal Peshawar Khyber Pakhtunkhwa Peshawar referred to above.

~~Attested~~



GHS Nanak Pura
Peshawar

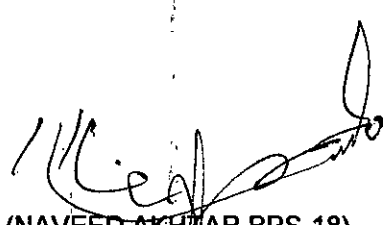
(14) 3

P-3 13

RECOMMENDATION:-s

Keeping in view aforesaid findings into consideration, it is recommended that:-

1. In the compliance with the Judgment of Honorable Service Tribunal Peshawar, the incumbent DEO (M) Peshawar is requested first to set aside the compulsory retirement order of Mr. Mushtaq Ali Ex-Junior Clerk GHS Kakshal Peshawar issued by the then DEO (M) Peshawar vide Endst: No.72932 dated 05-09-2014 and he may be re-instated in service against his original post of Junior Clerk retrospectively.
2. The absent period w.e.f 18-05-2013 to 18-01-2014 as Junior Clerk may be converted into Medical Leave.
3. After his reinstatement against Junior Clerk post, his case along with this inquiry report may be forwarded to the Director E&SE KP, Peshawar for restoration of his promotion order to the post of Senior Clerk which was with-drawn by the Directorate E&SE KP Peshawar vide Order No.6145-52 dated 17-09-2014 and he may be adjusted against first available Senior Clerk post.
4. The period for which he remained under trail at Honorable Service Tribunal Peshawar w.e.f 30-09-2014 (Appeal date) till the date of restoration of his promotion order as S/Clerk may be considered as spent on duty as the case of the appellant concerned remained under trail in the High Court and Service Tribunal Peshawar respectively.
5. His promotion order may be restored to the Post of Senior Clerk from the date of his taking over charge as senior Clerk i.e 04-06-2014 as due to him under the rules .


(NAVEED AKHTAR BPS-18)
Principal
GHS Nanak Pura Peshawar City
(Enquiry Officer)

GHS Nanak Pura
Peshawar


Attested

قیمت 50 روپے	37484			
ایڈویکیٹ: <i>3002</i>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: BC 7788				
رابطہ نمبر: 03003160098				

بعدالت جناب: *صدر محترم خواہ سروس کوٹلوہل لیٹا*

دعویٰ: <i>درخواست کوٹلوہل لیٹا</i>	مخارج: <i>سلسلہ عدالت عالیہ کوٹلوہل لیٹا</i>
علت نمبر:	<i>عدالت عالیہ کوٹلوہل لیٹا</i>
مورخہ:	
جرم:	
تھانہ:	

باعت تحریر آنگہ

مخارج: سلسلہ عدالت عالیہ کوٹلوہل لیٹا

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 آن مقام *لیٹا* کیلئے *افاضل ادرہ سندھ لہور صدر ایڈووکیٹ محمد سعید* کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے یقیناً اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخست منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے
 المرقوم: *24/02/2020*

**PESHAWAR BAR ASSOCIATION
 KHYBER PAKHTUNKHWA**

Accepted

مقام کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹوکاپی ناقابل قبول ہوگی۔

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P-26

4



OFFICE OF THE
PRINCIPAL GHS NANAK PORA PESHAWAR
CITY

To, No. 452 / Principal/GHS Nanak Pore/Enquiry /Mushtaq /SC / dated 06/01 /2020

The District Education Officer
(Male) Peshawar.

Subject; SUBMISSION OF ENQUIRY REPORT
Memo,

With reference to your office order Endstt No. 2252-56 dated; 24-12-2019.

Enclosed please find herewith enquiry report in R/o Mr. Mushtaq Ali Ex- Senior Clerk DEO (M)
Battagram along with its enclosure for further necessary action please.
(Enclosed as above).

(NAVEED AKHTAR)
Principal/Enquiry Officer BPS-18
GHS Nanak Pora
Peshawar

3431
07/1/2020

PRINCIPAL
G.H.S Nanak Pura
Peshawar

OFFICE OF THE PRINCIPAL GHS NANAK PURA, DISTRICT PESHAWAR

ENQUIRY REPORT IN SERVICE APPEAL NO. 1228/2018 IN R/O MR . MUSHTAQ ALI EX-SENIOR CLERK OFFICE OF THE DEO(M) BATTAGRAM

INTRODUCTION:-

The undersigned has been appointed as enquiry Officer by the DEO(Male) Peshawar vide Order issued under Endst: No. 2252-56 dated ; 24-12-2019 in pursuance of the decision of the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1228/2018 with the following .

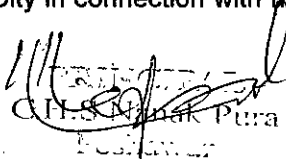
1. The absence period i.e. 18-05-2013 to 12-2-2014
2. Promotion order from Junior Clerk to Senior Clerk
3. To enquire the whether the concerned officer/ officers signed countersigned the relevant papers pertaining to promotion of appellant to the post of S/Clerk.
4. To examine the track record in education department.

HISTORY OF THE CASE.

In compliance with the order issued by the worthy DEO(M) Peshawar the undersigned started the enquiry preceding and called Mr. Mushtaq Ali Ex-Senior Clerk to appear before the enquiry officer on the date/time and venue so fixed on 28-12-2019. The undersigned studied all the relevant documents available on the record as well as judgment issued by the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Having gone through the record thoroughly, it was observed that the then Principal GHSS No.4 Kakshal, Peshawar City submitted the absence report of the mentioned accused appellant wef 18-05-2013 to 12-02-2014 (09) Months. However Mr. Mushtaq Ali Ex-Junior Clerk GHSS No.4 Kakshal, Peshawar City submitted his application for medical leave w.e.f 18-05-2013 to 18-01-2014 (copy attached) Furthermore, he was hospitalized and admitted at Khursheed Medical Center & Surgical Hospital Peshawar w.e.f 18-05-2013 to 31-05-2013. He was discharged from Hospital on 31-05-2013 and the Doctors advised him for complete bed rest for 06 Month. A Questionnaire to this effect was served on him (copy attached) He replied to the said Questionnaire accordingly. As per statement obtained from him, it was revealed that he was patient of Hepatitis "C" Hence, he was not in position to perform his duty.

After the thorough checking of his documents as well Original Service Book (copy attached) he was appointed as Junior Clerk in Elementary & Secondary Education Department on 15-12-1986 vide Director E & SE Khyber Pakhtunkhwa Peshawar (copy attached) He performed his duty regularly w.e.f 15-12-1986 to 17-05-2013. As per his original service book he was not remained on leave without pay. His service record was found duly verified by the concerned Officers/DEOs/DDO,s from time to time till 29-09-2014. All the relevant documents i.e Original Service Book ,ACR, Non Involvement, Reliving Chit, LPC duly attested /Re- Attested by the Principal GHSS No.4 Peshawar City in connection with his promotion case to the post of Senior Clerk.


Principal GHS Nanak Pura
Peshawar

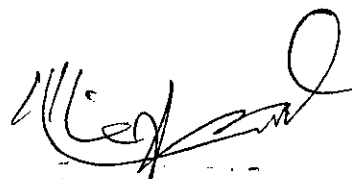
Accordingly, based on the above mentioned verified record, the Director E&SE KP, Peshawar issued his promotion order as Senior Clerk vide Endst: No. 4015-4040/ .F.No.A-

23/MS/Promotion/S/Clerk/DD(F&A) dated 28-05-2014 appearing at S.No. (39) and adjusted him at DEO(M) office Battagram. He took over charge of his new assignment/post on 04-06-2014 and he performed his duty w.e.f 04-06-2014 to 29-09-2014. Later on, Directorate E&SE KP, Peshawar had withdrawn his promotion order as S/Clerk on the basis of his compulsory retirement order issued by the then DEO(M) Peshawar.

FINDINGS:

Keeping in view history of the case dig out as above and after careful checking of the relevant record, the undersigned reached to the following conclusion/findings:-

1. The appellant concerned was on medical leave for the period from 18-05-2013 to 18-01-2014.
2. All the documents available on the record showing that he submitted his application for medical Leave and the Principal concerned had forwarded his leave application to DEO (M) Peshawar on 18-05-2013. However his Leave was not sanctioned by the then DEO (M) Peshawar.
3. Later on, the appellant was promoted to the Post of Senior Clerk vide Directorate E&SE KP, Peshawar Order vide Endst: No. 4015-4040/ .F.No.A-23/MS/Promotion/S/Clerk/DD (F&A) dated; 28-05-2014 falling at S.No. (39) and adjusted him at DEO (M) office Battagram.
4. The Principal GHSS No.4 Kakshal Peshawar City reported him as absent, and ignored the application of the Mr. Mushtaq Ali Ex-Junior Clerk GHS Kakshal Peshawar already forwarded by him.
5. Furthermore, all the documents relevant to his promotion duly attested by the Principal Mr. Muhammad Tahir GHSS No.4 Kakshal Peshawar City vide his letter No. 91 dated; 17-12-2015 and re-verified by the Principal concerned on 30-12-2019.
6. Furthermore, Directorate E & SE also conducted an enquiry in this case through Mr. Saif-ur-Rahman Principal GHS No.1 Nowshera Cantt (copy attached) who had recommended that the said appellant/Ex-Senior Clerk may be reverted to his lower Post i.e Junior Clerk.
7. Moreover, Mr. Mushtaq Ali Ex-Senior Clerk lodged his appeal before the service Tribunal Peshawar vide Service Appeal No.1228/2018 and passed his Judgment announced on 25-10-2019 at the disposal of DEO (M) Peshawar to conduct de-novo enquiry.
8. It is also worth mentioning that Directorate E&SE KP, Peshawar issued letter to DEO (M) Peshawar for re-instatement of his services in the compliance of the Judgment of Honorable Service Tribunal Peshawar Khyber Pakhtunkhwa Peshawar referred to above.

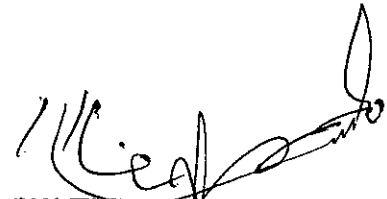

G.H.S Nanak Pura
Peshawar

P-3 A3

RECOMMENDATION:-s

Keeping in view aforesaid findings into consideration, it is recommended that:-

1. In the compliance with the Judgment of Honorable Service Tribunal Peshawar, the incumbent DEO (M) Peshawar is requested first to set aside the compulsory retirement order of Mr. Mushtaq Ali EX-Junior Clerk GHS Kakshal Peshawar issued by the then DEO (M) Peshawar vide Endst: No.72932 dated 05-09-2014 and he may be re- instated in service against his original post of Junior Clerk retrospectively.
2. The absent period w.e.f 18-05-2013 to 18-01-2014 as Junior Clerk may be converted into Medical Leave.
3. After his reinstatement against Junior Clerk post, his case along with this inquiry report may be forwarded to the Director E&SE KP, Peshawar for restoration of his promotion order to the post of Senior Clerk which was with-drawn by the Directorate E&SE KP Peshawar vide Order No.6145-52 dated 17-09-2014 and he may be adjusted against first available Senior Clerk post.
4. The period for which he remained under trail at Honorable Service Tribunal Peshawar w.e.f 30-09-2014 (Appeal date) till the date of restoration of his promotion order as S/Clerk may be considered as spent on duty as the case of the appellant concerned remained under trail in the High Court and Service Tribunal Peshawar respectively.
5. His promotion order may be restored to the Post of Senior Clerk from the date of his taking over charge as senior Clerk i.e 04-06-2014 as due to him under the rules .



(NAVEED AKHTAR BPS-18)
Principal
GHS Nanak Pura Peshawar City
(Enquiry Officer)

G.H.S Nanak Pura
Peshawar

Most Immediate/Top Priority
Court Matter

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.
Phone: 091-9225344 Email: ddadmn.ese@gmail.com

Notification.

In continuation to this office Notification issued under Endst: No.1379-80 dated 12/05/2020 Mr. Sajjad Akhtar District Education Officer (Male) Nowshera is hereby nominated as Enquiry Officer to conduct De-novo enquiry against Mr. Mushtaq Ali Ex-Junior Clerk District Peshawar in the light of the Judgment of the Honourable Khyber Pakhtunkhwa Service Tribunal dated 25/10/2019 (copy attached).

Note: The Enquiry Officer is directed to submit his recommendation/findings within 05 days positively.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

984-85
Endst: No. _____/A-23/MS/Appeal/Mushtaq Ali S/Clerk. Dated Peshawar the 19/10/2020

Copy forwarded to the:-

1. Mr. Sajjad Akhtar District Education Officer (Male) Nowshera along with copy of Judgment of the Khyber Pakhtunkhwa Service Tribunal dated 25/10/2019 and other relevant documents in the case of Mushtaq Ali.
2. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

Assistant Director (Admn)
Directorate of Elementary & Secy Edu:
Khyber Pakhtunkhwa Peshawar

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 3806 /ST

Dated 09 / 11 / 2020


To

The Director E&SE,
Government of Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: - **ORDER IN EXECUTION PETITION NO. 64/2020 MR. MUSHTAQ ALI .**

I am directed to forward herewith a certified copy of order dated 28.10.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

Annex ~~H~~

PREAMBLE/AUTHORITY

The Director E&SE Deptt. Khyber Pakhtunkhwa has constituted the enquiry committee consists on the following officer to conduct de-novo enquiry against Mr. Mushtaq Ali S/Clerk, GHSS Dak Ismail Khel Nowshera, Ex-J/Clerk District Peshawar in the light of judgement of the Hon'ble Service Tribunal Khyber Pakhtunkhwa dated 25-10-2019 vide Notification No.564-SS/A-23, MS/Appeal/Mushtaq Ali S/Clerk Dated 15-10-2020 (Annex-A).

ENQUIRY OFFICER/COMMITTEE

Mr. Sajjad Akhtar Iqbal District Education Officer (Male) Nowshera.

APPELLANT

Mushtaq Ali S/Clerk now at GHSS Dak Ismail Khel Nowshera ex-J/Clerk District Peshawar.

CONTENTS OF APPEAL

The appellant is requesting for the Back Benefits for the period from 01-10-2014 to 30.6.2020.

Proceedings:-

The Enquiry Committee started the proceedings accordingly. The available record was checked thoroughly. Findings of the enquiry are submitted herewith as desired in the above mentioned Notification please.

Findings:-

- i- The Hon'able service tribunal has announced the decision in appeal case of Mushtaq Ali S/Clerk now at GHSS Dak Ismail Khel Nowshera ex-J/Clerk District Peshawar wherein he was re-instated in service and ordered for de-novo enquiry in connection with Back benefits.
- ii- The Director E&SE Khyber Pakhtunkhwa has re-instated him vide exdtt No.5621-25/F.No. A-23/MS/Appeal/Mushtaq Ali S/Clerk/Battagram dated 06-03-2020 and placed his service at the disposal of DEO (M) Nowshera for further posting resultantly adjusted him against S/Clerk post at GHSS Dak Ismail Khel Nowshera (Annex-B).
- iii- The appellant submitted appeal for Back benefit on 25-11-2019 to the Director E&SE Khyber Pakhtunkhwa.
- iv- Two enquiries have already been conducted against him.
- v- Due to his compulsory retirement from service, his pay was stopped w.e.from 01-10-2014 to 30-06-2020.

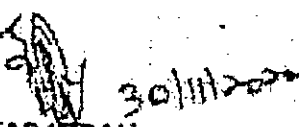
- vi. The concerned S/Clerk was directed to appear before the enquiry Officer for personal hearing and provide duty certificate of intervening period vide office order No. 7183 dated 10-11-2020 (Annex-C).
- vii. He submitted an affidavit on stamp paper that "he was compulsorily notified by L&SE Deptt: Khyber Pakhtunkhwa and his pay was stopped w.e. from 01-10-2014 to 30-06-2020 while he has not performed duty during the said period (Annex-D).
- viii. He requested that the intervening period i.e. 01-10-2014 to 30-06-2020 may please be converted as period of duty or at least leave with full pay.

RECOMMENDATION

In the light of above mentioned facts and documentary proof on record, the enquiry committee reached to the conclusion that the above named official has not performed duty for the period from 01-10-2014 to 30-06-2020.

It is therefore recommended that the above mentioned intervening period may please be converted into extra ordinary Leave without pay to regularize his service.

Dated _____/2020.


(SAJJAD AKHTAR (EBAL))
District Education Officer,
Male Nowshera.

2017]

HEADNOTES OF CASES

19

2017 P L C (C.S.) Note 20

[Peshawar High Court]

Before Ishlaq Ibrahim, C.J. and Waqar Ahmad Seth, J

IFTIKHAR AHMAD

versus

GOVERNMENT OF KHYBER PAKHTUNKHWA
through Chief Secretary and 2 others

Writ Petition No.1541-P of 2016, decided on 22nd September, 2016.

Per Waqar Ahmad Seth, J

(a) Civil service---

*---De novo proceedings---Non-compliance of judgment of Service Tribunal---
Effect---Service Tribunal had ordered for de novo inquiry to be completed within
three months but department failed to conclude the same within the time given by
the Tribunal---Effect---Employee was issued charge-sheet after a lapse of about ten
months from the judgment of Service Tribunal---Department was bound to
implement the judgment of Tribunal in letter and spirit within the time given---
Failure of department to implement the judgment within time, would result that
proceedings thereafter would be void---No reason or justification had been put
forward by the department for the delay in conducting of de novo proceedings---
Directions of Service Tribunal had become law---When law required a thing to be
done in a particular manner, it would be nullity in the eye of law if not performed
in that very prescribed manner--- Department was bound to have performed in the
manner in which competent court of law had issued the directions---Public
functionaries were supposed to act upon and execute/implement the judgment of
court of law to maintain the rule of law and supremacy of justice---Proceedings
initiated by the department were set aside in circumstances---Constitutional petition
was allowed. [Paras. 8, 11, 12, 13 & 14 of the judgment]*

Zahooruddin Sheikh v. Pakistan Atomic Energy Commission 2007 PLC
(C.S.) 959 and National Bank of Pakistan v. Shamoos Khan and others 2010 PLC
(C.S.) 608 rel.

(b) Administration of justice---

*---When law required a thing to be done in a particular manner, it would be
nullity in the eye of law if not performed in that very prescribed manner. [Para-12
of the judgment]*

Ijaz Anwar for Petitioner.

Moin ud Din Hamayun, A.A.G. for Respondents.

ZC/350/P

Petition allowed.

PLC

Full text of the judgment can be viewed at www.pakistanlawsite.com

~~NO~~
NO

8-7-11

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IN THE FEDERAL SERVICE TRIBUNAL, BIRMINGHAM
Appeals No. 130 to 133(D)(2)/2011 & Appeal No. 804 to
807(C)(2)/2011

Mellon-Rehman & others
vs
F.C.

Referred: Mr. Ayres H. Bohring, and
Mrs. Neelam S. Ahl, Members
Present: Mr. Stephen James Hunt, Counsel for the
Appellants
Mr. Farouk Iqbal Khan, Advocate for the
Respondents with Mr. Muhammad Shahid,
Assistant, as DR.

ORDER
8.7.2011

These appeals have been received on 30.6.2011. During pendency of the
appeals a CFC's Order No. 1004-2-17 dated 10.08.2011 has been received in regard
to the reinstatement of the appellants in compliance of the TST judgment dated
29.10.2010. We have passed the said order of Commissioner, Frontier
Consolidatory, KEX, Pakistan whereby the grievances of the appellants have been
instigated and the appellants stands re-instated in their subject or de novo industry.
Period of record reveals that this Tribunal has given a clear verdict in its
judgment dated 29.10.2010 that the de novo procedure should be completed
within a period of four months from the date a copy of judgment is received in the
office of respondents. In compliance of said judgment dated 29.10.2010, the
respondents have reinstated the appellants on 10.6.2011 after lapse of more than
seven months which is clear violation of TST judgment. Now at this stage
the order of reinstatement of de novo industry is against the spirit of TST judgment and
it is not fair. As the mandate given to the respondents department
has been over-ruled in this stage reinstatement of de novo industry is not fair.
Balance is placed on the case reported as FTS 2004 TFC (Services) 123 and 2004
2004 TFC (Services) 123 and 2004 TFC (Services) 123 and 2004 TFC (Services) 123
which the respondents have failed to conduct de novo industry within
time of four months stipulated by the Service Tribunal, as a consequence thereof
they had been directed to make payment of back benefits to the employees.
Keeping in view the above the appellants stands reinstated in service w.e.f. the
date of dismissal with all consequential benefits.
Let it be referred.

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24
MEMBER

24
MEMBER

CERTIFIED TRUE COPY

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Federal Service Tribunal
Birmingham



Mushtaq Ali Ex-Senior Clerk VS Secretary E&SED & others

Subject: APPLICATION FOR SUBMISSION OF BRIEF CASE HISTORY IN EXECUTION PETITION NO. 64/2020 IN SERVICE APPEAL NO. 1228/2018 CASE TITLED MUSHTAQ ALI EX-SENIOR CLERK VS SECRETARY & OTHERS.

The Respondents No.1-4 submit as under:-

1. **That** the titled service appeal was instituted on 08-10-2018 before this Honorable Tribunal against the impugned order dated 18-09-2018 of the Respondent No.4 whereby, he upheld the order dated 05-09-2014 of the Respondent No.2 to the extent of maintaining the major penalty of removal from service against the appellant & a copy whereof is **Annexure-A**.
2. **That** aggrieved from the order dated 05-09-2014 of the Respondent No.2, the appellant has filed a Departmental appeal to the Respondent No.4 for setting aside the impugned order of the DEO (M) Peshawar but the same has been rejected vide Notification dated 18-09-2018 by the Respondent No.4 after observing all the codal formalities by maintaining the impugned order dated 05-09-2014 of the DEO (M) Peshawar on the grounds being legally competent & a copy whereof is **Annexure-B**.
3. **That** aggrieved from the orders & Notifications dated 05-08-2014 & 18-09-2018 of the DEO (M) Peshawar Director E&SE Khyber Pakhtunkhwa Peshawar respectively, the appellant has filed the titled case before this Honorable Tribunal with the prayer for setting aside the impugned orders & Notification of the Respondent Department along with his re-instatement in service against the senior clerk post & a copy of the main service appeal is **Annexure-C**.
4. **That** the Respondent Department was put on Notice for the submission of Joint Para wise Comments which was submitted accordingly by contesting the titled case on both factual & legal grounds & finally the case was decided vide Judgment dated 25-10-2019 by setting aside the impugned orders & Notifications dated 05-09-2014 & 18-09-2018 of the Respondent No.2 & 4 with the directions to conduct De-nove inquiry & to the matter under the provision of E&D Rules 2011 within a period of 90 days with further observations that the issue of back benefits of the appellant will be subject to the outcome of the De-nove inquiry & Copies of the Joint Para Wise Comments & Judgment dated 25-10-2019 are **Annexure D & E**.
5. **That** in compliance of the Judgment dated 25-10-2019 of this Honorable Tribunal the Respondent Department has conducted De-nove inquiry vide Notification No.2252-56 dated 24-12-2019 through the Principal GHS Nanak Pura District Peshawar who submitted inquiry report vide his office letter No.452 dated 06-01-2020 which was observed as mis directed & even against the facts & circumstances of the case ,hence, declared null & void under sub-rule 6 rule 14 of E&D rules 2011 by the Respondent No.4 by nominating another inquiry committee through the DEO (M) Nowshera vide Notification/Corrigendum No.2012-20 dated 04-12-2020 who submitted inquiry report on dated 30-11-2020 with the observation that the appellant has not performed his official duty w.e.f. 01-10-2014 to 30-06-2020 against the Senior Clerk post, hence, the intervening period may be treated as EOL & a copy of the cited Rules, Notification dated 24-12-2019, inquiry report dated 06-01-2020, corrigendum order dated 04-12-2020 & inquiry report of the DEO (M) Nowshera are **Annexures-F, G, H, I & K**.
6. **That** in the meantime, the appellant has filed an Execution Petition No.64/2020 under the above said titled before this Honorable Bench for the implementation of the Judgment dated 25-10-2019 & was fixed for implementation report on dated 21-12-2020 & a copy of the order sheet dated 21-12-2020 is available on Judicial file for ready reference.

7. That in compliance of the Judgment dated 25-10-2019 of this Honorable Tribunal, the Respondent No.4/Diretor E&SE Khyber Pakhtunkhwa Peshawar after considering the facts & circumstances of the case along with consulting the inquiry report of the DEO (M) Nowshera has made the appellatant not entitled for the grant of back service benefits w.e.f. 01-10-2014 to 30-06-2020 on the analogy of question of Law & facts of no duty & no Pay passed by this Honorable Tribunal as well as the august Supreme Court of Pakistan & a copy of the Notification to the extent of compliance report is **Annexure-L**.

Therefore, in view of the above made submissions, this Honorable Bench may very graciously be pleased to deem the judgment dated 25-10-2019 of this Tribunal to has been implemented in its true letter & sprite by the Respondent Department with the additional submission that the titled petition may kindly be disposed of in favor of the Respondent Department in the interest of Justice please.

Dated: 23/12/2020.


DIRECTOR

E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 1-4)

AFFIDAVIT

I, **Hayat Khan Asstt: Director (Litigation-II)** E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant brief case history in the titled case/application are true & correct to the best of my knowledge & belief.


Deponent

(A)

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Annex (16) P-10

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OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR.

COMPULSORY RETIREMENT:-

Whereas absence report was received from the principal GHSS No.4 Kakshal Peshawar city against Mr.Mushtaq Ali J/Clerk ,vide his Memo No.47 dated:22/05/2013, No.53,dated:29/05/2013, No.63 dated:13/06/2013 and No.71 dated:24/06/2013.

Whereas the principal was directed vide this office memo No.430,dated:06/07/2013 to furnish latest information regarding absence of the official concerned.

Whereas the principal GHSS No.4 Kakshal Peshawar city has confirmed the absence of the official from 18/05/2013 vide his memo No.99 dated:22/11/2013.

Whereas Show Cause Notice was served on the official concerned through principal GHSS No.4 Kakshal Peshawar city vide this office Memo No.3187 dated:12/02/2014 duly acknowledged by him on 18/02/2014.

Whereas the reply to show cause notice dated 19/02/2014 was received in this office.

Whereas an inquiry was conducted through the principal GHSS Hazar Khwani Peshawar in compliance with notification issued in this regard vide Endst No:6049-51 dated:27/03/2014.

Whereas the inquiry officer recommended for imposing of major penalty (Compulsory Retirement.) vide his report No.160dated:15/05/2014.

And whereas I ,Mr.Sharif Gul DEO(M) Peshawar being competent authority am pleased to impose major penalty (Compulsory Retirement) under Rules 4(b) (ii) of Govt of KPK Govt Servants (E&D) Rules 2011 w.e.f 18/05/2013.

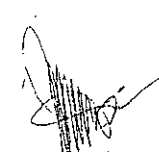
The pay of the official concerned of the absence period should be recovered and copy of challan be furnished to this office for reference and record.

(Sharif Gul)
District Education Officer,
(Male) Peshawar.

Endst: No. 729-324 Dated Peshawar the 5/9 /2014.

Copy for information and necessary action to the :-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Director E&SE KPK Peshawar.
3. Principal GHSS No.4 Kakshal Peshawar city for strict compliance regarding recovery from the official concerned.
4. Official Concerned.


Deputy District Education Officer,
(Male) Peshawar.

NOTIFICATION.

WHEREAS, on finality of disciplinary proceedings under Khyber Pakhtunkhwa E&D Rules-2011 major penalty of Compulsory retirement from service was imposed upon Mr. Mushtaq Ali, Ex-Junior Clerk GHSS No. 4 Kakshal Peshawar city by the DEO (M) Peshawar vide Notification No. 729-32 dated 5.9.2014.

AND WHEREAS, the said aggrieved Junior Clerk filed a departmental appeal dated 30.9.2014 & 8.12.2014 to the Director E&SE Khyber Pakhtunkhwa Peshawar (appellate Authority) for redressal of his grievances/reinstatement in service.

AND WHEREAS, the appellant filed a service appeal No. 438/2017 before the Khyber Pakhtunkhwa service Tribunal Peshawar.

AND WHEREAS, the operative part of the judgment dated 10.7.2018 contains the following remarks.

"In the stated circumstances this Tribunal is constrained to issue directions to the appellate authority (respondent No. 4) to decide the departmental appeal filed by the appellant within two months of the receipt of this judgment"

AND WHEREAS, in pursuance of the judgment dated 10.07.2018 and Section 17 read with sub rule (1) & (2) of the E&D Rules-2011 the appellate authority called for the record of the case and comments from the concerned DEO vide letter No. 3030 dated 27.1.2018 for consideration of the appeal.

AND WHEREAS, the DEO concerned had provided the requisite record/comments accordingly vide his letter No. 4984 dated 6.9.2016 describing the reason/circumstances under which the appellant was compulsory retired from service after fulfillment of code of articles.

AND WHEREAS, to know the factual position the Director E&SE (appellate authority) ordered an Scrutiny Committee vide Notification No. 4995-2016 dated 29.8.2018 to examine the appeal in light of record provided by the DEO (M) Peshawar.

AND WHEREAS, consequent upon perusal of relevant record, reason and circumstances by the appellate authority under which Mr. Mushtaq Ali, Ex-Junior Clerk GHSS No. 4 Kakshal Peshawar city (appellant) was Compulsory retired, the appeal submitted by the aforesaid Ex-Junior Clerk for reinstatement was not found tenable by the Scrutiny Committee constituted for the purpose.


NOW, THEREFORE, in exercise of the powers conferred under Section-17 rule (2) (a) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, the Director E&SE/appellate authority **"uphold the order of Major penalty and reject appeal"** lodged by Mr. Mushtaq Ali, Ex-Junior Clerk GHSS Kakshal District Peshawar (appellant)

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 1505-10 /F.No. /A-23/MS/appel. w/ Mushtaq Ali Dated Peshawar the 18/9/2018.

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

- 1- Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar w/ to Service Appeal No. 438/2017.
- 2- Deputy Director (Litigation) Local Office.
- 3- District Education Officer (Male) Peshawar.
- 4- DEO (Male) Battagram.
- 5- Appellant concerned.
- 6- PA to the Director E&SE Khyber Pakhtunkhwa Peshawar.


Assistant Director (Admn)
E&SE, Khyber Pakhtunkhwa, Peshawar

18/9/2018

Annex - C

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①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No. 1228/2018

Khyber Pakhtunkhwa
Service Tribunal

Sl. No. 1463

Date 08-10-2018

Mushtaq Ali S/o Abdul Ghani R/o Musazai, Gul Abad,
Inqilab Road, Peshawar, Senior Clerk District Education
Office (M), Battagram

.....Appellant

VERSUS

1. The Secretary Elementary & Secondary Education,
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. District Education Officer (M) Peshawar, Hashtnagri,
Peshawar.
3. District Education Officer (M) Battagram Bazar,
Battagram.
4. Director Elementary & Secondary Education,
Khyber Pakhtunkhwa, Firdous Chowk Peshawar

.....Respondents

APPEAL UNDER SECTION 4 OF KPK SERVICE
TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
OFFICE ORDER ENDST NO.1505-10/F.NO/A-
23/MS/APPEAL/MUSHTAQ ALI DATED
18.09.2018 OF RESPONDENT NO.4 (DIRECTOR
ELEMENTARY & SECONDARY EDUCATION,
KHYBER PAKHTUNKHWA, FIRDOUS CHOWK
PESHAWAR) WHEREBY HE UPHOLD THE ORDER
OF MAJOR PENALTY IMPOSED BY RESPONDENT
NO.2 (DISTRICT EDUCATION OFFICER (M)
PESHAWAR, HASHTNAGRI, PESHAWAR) ENDST
NO.729-32/DATED PESHAWAR THE 05.09.2014
AND REJECTED THE APPEAL OF THE
APPELLANT FOR NO LEGAL REASON.

Filed today

Q. Ali

8/10/18.

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②

PRAYER:-

ON ACCEPTANCE OF INSTANT APPEAL, THIS HON'BLE TRIBUNAL WOULD BE PLEASED TO SET ASIDE THE OFFICE ORDER ENDST NO.729-32/DATED PESHAWAR THE 05.09.2014 AND ENDST NO.1505-10/F.NO/A-23/MS/APPEAL/MUSHTAQ ALI DATED 18.09.2018 OF THE APPELLANT AND REINSTATE THE APPELLANT TO HIS POST AND DUTIES WITH ALL BACK BENEFITS.

Respectfully Sheweth;-

Brief Facts of the case are as under:-

1. That the appellant has been serving Education Department from last 29 years, presently posted as senior Clerk in the office of Respondent No.3 since 20.05.2014. **(Copy of posting and promotion orders are attached as Annexure "A")**.
2. That on 05.09.2014, the respondent No.2 issued mercilessly compulsory retirement order of appellant on ground of absence from 18.05.2013. **(Copy of order of compulsory retirement is attached as Annexure "B")**.
3. That appellant has been suffered from HCV seriously and had submitted an application for leave on medical ground from 18.05.2013 to 18.01.2014, which was duly forwarded by principal to the EDO & (E&S) Peshawar. The appellant remained in hospital for treatment from 18.05.2013 to 31.05.2013, **(Photo Copies of application and medical certificate are attached as Annexure "C" & "D")**.
4. That the appellant during his medical leave period also remained in jail for 4 months from 27th July 2013 20th November 2013 U/S 489-F PPC. **(Copy of FIR, Application, Certificate are attached as Annexure D-1 to D-3")**.

subsequent inquiry the appellant had never been absent from service. The withdrawal of the promotion order is illegal, unlawful and against the facts. On the ignition of second inquiry and by setting aside the finding of the first inquiry, the impugned orders should have been withdrawn according to rules, but against the in flagrant violation of rules the impugned orders were kept operative. **(Copies of Application for re-inquiry dated 22.07.2015 subsequent inquiry report of record of attendance, charge report, LPC, duty certificate other relevant documents are attached as Annexure "G")**.

9. That on 01.02.2017 the appellant again filed a departmental appeal before the respondent No.4 for his reinstatement but the respondent paid no heed to said representation/appeal, hence the appellant approached this Hon'ble Service Tribunal. **(Copy of representation of appeal dated 01.02.2017 is attached as Annexure "H")**.
10. That on 10.07.2018 this Hon'ble Service Tribunal disposed off the above mentioned appeal with directions to respondent No.4/appellate authority to decide the departmental appeal filed by the appellant within 2 months of the receipt of the judgment. **(Copy of the grounds of appeal, judgment and order sheet dated 10.07.2018 are attached as Annexure "I")**.
11. That on 18.09.2018 the respondent No.4 illegally and unlawfully dismissed the appeal of the appellant. **(Copy of the order dated 18.09.2018 is attached as Annexure "J")**.
12. That the appellant feeling aggrieved by the office order Endst No.1505-10/F.No/A-23/MS/Appeal/Mushtaq Ali dated 18.09.2018 passed by Respondent No.4 and office order dated 05.09.2014 passed by Respondent No.2 is filing the instant appeal on the following grounds inter alia;

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GROUNDS:-

- A. That the impugned office orders Endst No.729-32/Dated Peshawar the 05.09.2014 and Endst No.1505-10/F.No/A-23/MS/Appeal/Mushtaq Ali dated 18.09.2018 against the appellant is illegal, unlawful, without jurisdiction/lawful authority and hence not maintainable.
- B. That on 05.09.2014, the respondent No.2 issued mercilessly compulsory retirement order of appellant on ground of absence from 18.05.2013 but the period of absence has not been specifically shown.
- C. That the department initiated an illegal, unlawful, and ex-Parte formal inquiry against the appellant and the inquiry officer in fill-in-the-blank manner without providing opportunity to appellant for his defense or for explaining his position, even no opportunity was given to the appellant to face and cross examined the witnesses etc, or the produced his witnesses along with documents etc.
- D. That no inquiry as according to the prescribed ruled. has been conducted by the inquiry officer, however, the appellant has been punished as a result of a summary trial without proving any allegation against the appellant as have been leveled in the Show Cause Notice.
- E. That neither any witness has been produced against the appellant nor the appellant has allowed to cross examine any of the witnesses, hence the appellant has not been given a fair chance of hearing and he has been condemned unheard.
- F. That the appellant has never committed any misconduct and he is innocent, nothing has been proved against the appellant in the whole process/procedure under the E&D rules and is

liable to be reinstated back to his service with all back benefits.

- G. That the subsequent inquiry has proved that the appellant had never been absent from his duty but he had remained in jail for some time and was acquitted from the charge. The withdrawal of the promotion order is illegal, unlawful and against the facts. On the ignition of second inquiry and by setting aside the finding of the first inquiry, the impugned orders should have been withdrawn according to rules, but again the in flagrant violation of rules the impugned orders were kept operative. The respondent No.4 failed to appreciate the said subsequent inquiry conducted by Mr Saif Ur Rehman (Principal/Inquiry Officer).
- H. That it is pertinent to mention here the respondent No.4 has also failed to pass any findings on subsequent inquiry, moreover, the office order dated 18.09.2018 is against law facts and the said subsequent inquiry hence not maintainable.
- I. That the respondent No.4 have also violated the order/direction dated 10.07.2018 given by this Hon'ble Service Tribunal.
- J. That the Respondent No.4 even in his order dated 18.09.2018 neither discussed the inquiry report of Mr Saif Ur Rehman (Principal/Inquiry Officer) nor giving any adverse findings on the said subsequent inquiry so the office order dated 18.09.2018 passed by Respondent No.4 is against law, facts and record of the case.
- K. That there is major contradiction in the disputed inquiry report. And the appellant was in service and he took their re-leaving chit, salary, allowance & LPC etc during his service (as the respondents alleged his absence) but the appellant was in continuation of his service, hence inquiry report in compulsory retirement

is based on malafide which is not maintainable.

L. That both the above mentioned inquiry Reports contradicts each other.

M. That the appellant was not a habitual absentee, he regularly performed his duty and has never been guilty of any misconduct.

N. That the entire available record nullifies the charge.

O. That appellant has been suffered from HCV seriously and had submitted an application for leave on medical ground from 18.05.2013 to 18.01.2014m which was duly forwarded by principal to the EDO (E&S) Peshawar. The appellant remained in hospital for treatment from 18.05.2013 to 31.05.2013.

P. That the respondent No.2 has traversed his jurisdiction to issue the compulsory retirement order dated 05.09.2014 the appellant who has been transferred to the office of respondent No.3 on 28.05.2014. the appellant was no more under the service of respondent No.2.

Q. That the impugned order is void ab-initio and without jurisdiction and in violation of fundamental rights guaranteed by constitution of Islamic Republic of Pakistan, 1973.

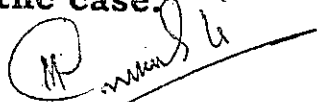
R. That there were no disciplinary proceedings against the appellant since 20.05.2014, the Departmental Promotion Committee promoted the appellant from the post of Junior Clerk to the post of senior clerk with due consideration of the unblemished and clear service record of the appellant and he was promotion from Peshawar to Battagram against the vacant post of Senior Clerk.

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23/MS/Appeal/Mushtaq Ali dated
18.09.2018 of the appellant and reinstate
the appellant to his post and duties with all
back benefits.

Any other relief may also be granted in
favour of appellant which deems fit in
circumstances of the case.


Appellant

Through


Akhunzada Syed Pervez
Advocate, High Court
Peshawar

Dated:- 06.10.2018

Annex D 71

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

SERVICE APPEAL NO.1228/2018

Mushtaq Ali Ex. Junior Clerk.....Appellant

V/S

Secretary Education Etc.....Respondent

REPLY ON BEHALF OF RESPONDENTS.

Respectively Sheweth:

The Respondents submits bellow:

PRELIMINARY OBJECTIONS:

1. That the Appellant has got no cause of action /locus standi.
2. That the Appellant has concealed material facts from this Hon,ble Tribunal.
3. That the Appellant has been estopped by his own conduct to file the instant appeal before this Hon'ble Tribunal.
4. That the instant Appeal is badly time barred.
5. That the instant Appeal is not maintainable in its present form.
6. That the instant Appeal is bad for mis-joinder and non-joinder for the necessary parties.
7. That the Appellant has not come with clean hands to this Hon'ble Tribunal.
8. That the instant Appeal is barred by law.

ON FACTS.

1. That Para No.1 is correct to the extent that the appellant was Ex-Employee of the Education Department, while rest of the Para is incorrect and misleading, hence denied.

Moreover, there were so many complaints lodged against the Appellant.

Furthermore, the Appellant intentionally remained absent from duty and he was compulsorily retired from his service vide DEO (M) Peshawar Endst: No.729-32 dated 05-09-2014.

(Complaints/ compulsory retirement order attached as Annex: A &B)

2. That Para No.2 is correct to the extent that the appellant has been compulsory retired from his service on the ground of habitual absenteeism and misconduct after adopting proper procedure.

(Absentee report is attached as Annex: C)

3. That Para No.3 is incorrect, misleading and against material facts, hence denied.
- Moreover, the application of the Appellant regarding leave is fake and bogus

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P-250

and there is no official record of the application in question, neither was any medical leave sanctioned to the appellant.

That in reply to Para No.4, it is submitted that the Appellant neither informed the Respondent nor the Principal of concerned school GHSS No.4 Peshawar regarding his imprisonment in jail, furthermore, the Respondents fulfill all the codal formalities within the limits of rules and regulation before the compulsory retirement of the appellant from service hence Para No.4 is incorrect and denied.

5. That Para No.5 is incorrect, misleading and against the facts the promotion order of the appellant to senior clerk has been withdrawn /cancelled from the date of issuance on dated 28-05-2014 by the Respondent No.04 vide letter No.6145-52 dated 17-09-2014 observing all the codal formalities.

(Copy of withdrawal order is attached as Annex: D)

6. That Para No. 6 is incorrect and denied. The respondent initiated proper departmental proceeding against the appellant. The respondent issued show cause notice to the appellant and his reply was unsatisfactory and against the ground reality. Moreover, the respondent conducts inquiry in light of the said inquiry report from service. Furthermore the appellant was involved in embezzlement of Rs.280000/- and the same amount has been deducted from him.

(Copy of show cause notice, inquiry & embezzlement order are attached as Annex: E, F & G)

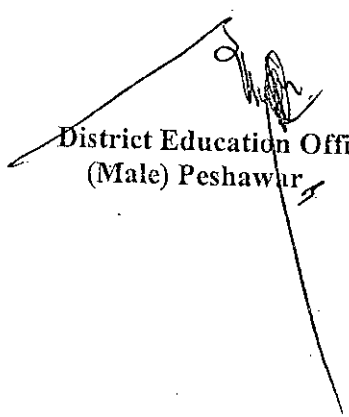
7. That Para No.7 pertains to Court record.
8. That Para No.8 also pertains to record while rest of the Para reply has been given in the above Para.
9. That Para No.9 pertains to record.
10. That Para No.10 pertains to record.
11. That Para No.11 is incorrect, misleading and against the facts. The Respondent No.4 acted according to law, rules and policy.
12. That Para No.12 is incorrect, misleading and against the facts. The appellant has no cause of action to file the instant appeal.

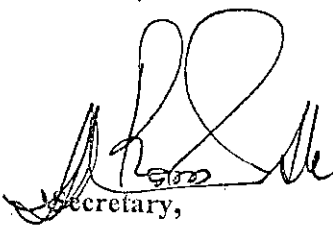
GROUNDS


- A. That Ground-A is incorrect and denied. The Respondent acted according to law, Rules and regulation.
B. That Ground-B is incorrect and denied. The detail reply has been given in the above Para of facts.
C. That Ground-C is incorrect and misleading and against the facts. The inquiry proceeding was according to law.
D. That Ground-D is incorrect and against the facts. The Respondent adopted all the codal formalities under the prescribed rules.
E. That Ground-D is incorrect and misleading. All the proceeding has been done in the light of solid material facts.
F. That the details reply of Ground-F is given in the facts Para.
G. That Ground-G is incorrect. The reply has been given in the above facts Para.
H. That Ground-H is incorrect, misleading and against the facts.

- at Ground-I is incorrect, misleading and against the facts.
- That Ground-I is incorrect, misleading and against the facts. The detail reply is given in the above Para of facts.
- That Ground-K is incorrect, misleading and against the facts. The detail reply is given in the above Para of facts.
- L. That Ground-L is pertains to record.
- M. That Ground-M is incorrect, it is submitted that the appellant intentionally absent from his duty due to this reason he was compulsory retired from his duty. Moreover, the detail reply has been given in facts Para No.2.
- N. That Ground-N is incorrect and misleading.
- O. That Ground-O is incorrect, it is submitted that the application regarding leave is fake and bogus and there is no official record of the application in question.
- P. That Ground-P is incorrect. The detail reply has been given in the facts Para.
- Q. That Ground-Q is incorrect and denied. The order of the respondent is according to law and rules.
- R. That Ground-R has already discussed in the facts Para.
- S. That Ground-S is incorrect and denied. The Respondent fulfilled all the codel formalities.
- T. That Ground-T is incorrect and misleading all the proceeding has done according to rules and law.
- U. That Ground-U is incorrect and denied the respondents are bound to act according to law.
- V. That the reply of Ground-V has been already given in the facts Para.
- W. That respondent seeks leave of this Hon'ble Tribunal to raise additional ground at the time of arguments.

It is therefore, very humbly prayed that on acceptance of this reply, the instant appeal may very kindly be dismissed with cost.


District Education Officer
(Male) Peshawar


Secretary,
(E &SE) KPK Peshawar


Director,
(E &SE) KPK Peshawar

Annex E 68

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1228/2018

Date of institution ... 08.10.2018

Date of judgment ... 25.10.2019

Mushtaq Ali S/o Abdul Gahani R/o Musazai, Gul Abad,
Inqilab Road, Peshawar, Senior Clerk District Education Officer (M),
Battagram. ... (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. District Education Officer (M) Peshawar, Hashtnagri, Peshawar.
3. District Education Officer (M) Battagram Bazar, Battagram.
4. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Firdous Chowk Peshawar. ... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER ENDST NO. 1505-10/F.NO/A-23/MS/APPEAL MUSHTAQ ALI DATED 18.09.2018 OF RESPONDENT NO. 4(DIRECTOR ELEMENTARY & SECONDARY EDUCATION, KHYBER PAKHTUNKHWA, FIRDOUS CHOWK PESHAWAR) WHEREBY HE UPHOLD THE ORDER OF MAJOR PENALTY IMPOSED BY RESPONDENT NO. 2 (DISTRICT EDUCATION OFFICER (M) PESHAWAR, HASHTNAGRI, PESHAWAR) ENDST NO. 729-32/DATED PESHAWAR THE 05.09.2014 AND REJECTED THE APPEAL OF THE APPELLANT FOR NO LEGAL REASON.

Mr. Akhunzada Syed Pervez, 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 alongwith
- Mr. Arshed Ali, ADO for the respondents present. Arguments heard and record
perused.

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2. Brief facts of the case as per present service appeal are that the appellant was serving as Senior Clerk in Education Department. . He was imposed major penalty of compulsory retirement vide order dated 05.09.2014 on the allegation of absence from duty by the competent authority. The appellant after availing departmental remedy, filed service appeal before this Tribunal and after hearing arguments this Tribunal issued direction to the appellate authority (Respondent No. 4 i.e Direction Elementary & Secondary Education, Khyber Pakhtunkhwa) to decide the departmental appeal filed by the appellant within two months of the receipt of copy of judgment vide detailed judgment dated 10.07.2018. The departmental authority rejected/dismissed the departmental appeal vide order dated 18.09.2018 and thereafter, the appellant filed the present service appeal on 08.10.2018.

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

4. Learned counsel for the appellant contended that the appellant was serving as Senior Clerk in Education Department. It was further contended that the appellant was involved in criminal case vide FIR No. 304 dated 23.03.2013 under section 489-F PPC Police Station Takht Bahi. It was further contended that the absence of the appellant was not intentional/deliberate but the same was due to involvement of the appellant in the aforesaid criminal case. It was further contended that neither absence period has been mentioned by the competent authority in the impugned order nor by the departmental authority in the order of departmental appeal. It was further contended that neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and defence nor any absence notice was issued to the appellant at his home address nor any absence notice/show-cause notice was advertised in two newspapers as required under rule-9 of Government Servants (Efficiency &

M. A. Bhatti
25.10.2019

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Discipline) Rules, 2011 therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside 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 the appellant remained absent with effect from 18.05.2013 till the impugned order dated 05.09.2014 without permission of lawful authority. It was further contended that a proper show-cause notice was issued to the appellant which was also received by the appellant on 18.02.2014 as revealed from the copy of show-cause notice but the appellant could not satisfy the competent authority and the Principal of Government Higher Secondary School Hazar Khawani Peshawar recommended for compulsory retirement from service vide inquiry report dated 15.05.2014 therefore, it was vehemently contended that after fulfilling all the codal formalities, the appellant was rightly imposed major penalty of compulsory retirement and prayed for dismissal of appeal.

*W. A. Khan
25.10.2019*

6. Perusal of the record reveals that the appellant was serving as Senior Clerk in Education Department. The record further reveals that the appellant was involved in the aforesaid criminal case due to which the appellant remained absent from duty with effect from 18.05.2013. The record further reveals that the appellant was imposed major penalty of compulsory retirement by the competent authority i.e District Education Officer Male Peshawar vide order dated 05.09.2014. The record further reveals that the appellant filed departmental appeal against the impugned order dated 05.09.2014 but the same was not responded by the departmental authority within the stipulated period therefore, the appellant filed Service Appeal before this Tribunal. The record further reveals that this Tribunal disposed off the service appeal of the appellant and directed the departmental authority to decide the departmental appeal filed

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by the appellant within two months of the receipt of copy of judgment vide detailed judgment dated 10.07.2018. The record further reveals that the departmental authority also dismissed the departmental appeal of the appellant vide order dated 18.09.2018 and thereafter, the appellant filed the present service appeal on 08.10.2018. The record further reveals that the appellant was imposed major penalty of compulsory retirement on the allegation of absence from duty but neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and defence. The record further reveals that the competent authority has issued only a show-cause notice undated to the appellant for the absence with effect from 18.05.2013 which was received to the appellant on 18.02.2014 and after issuing the show-cause notice, the appellant was imposed major penalty of compulsory retirement vide order dated 05.09.2014 but neither regular inquiry was dispensed by the competent authority in the aforesaid show-cause notice nor any reason for dispensing a regular inquiry was mentioned in the said show-cause notice. The record further reveals that the aforesaid show-cause notice was received by the appellant on 18.02.2014 as revealed from the copy of show-cause notice available on the record but a fact finding inquiry was conducted by the Principal of Government Higher Secondary School Hazar Khawani Peshawar on 15.05.2014 after issuing a show-cause notice which itself speak that the said fact finding inquiry is against the rules as the competent authority was required to first initiate proper inquiry including charge sheet, statement of allegation against the appellant and thereafter, if the appellant was proved guilty than he would have issued a show-cause notice for the absence period but the inquiry officer has submitted inquiry report after the aforesaid show-cause notice therefore, the whole proceeding is illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order, reinstate the appellant into service and direct the

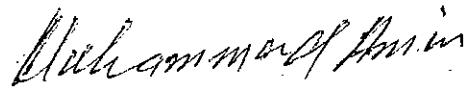
M. Akbar
25.10.2019

respondent-department to conduct de-novo inquiry in the mode and manners prescribed under Government Servants (Efficiency & Discipline) Rules, 2011 strictly in accordance with law within a period of 90 days from the date of receipt of copy of this judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.10.2019



(HUSSAIN SHAH)
MEMBER



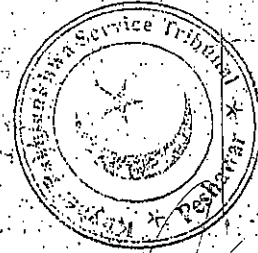
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

6 Annex E

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 1228/2018

Date of institution ... 08.10.2018
Date of judgment ... 25.10.2019



Mushtaq Ali S/o Abdul Gahani R/o Musazai, Gul Abad,
Inqilab Road, Peshawar, Senior Clerk District Education Officer (M),
Battagram. ... (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. District Education Officer (M) Peshawar, Hashtnagri, Peshawar.
3. District Education Officer (M) Battagram Bazar, Battagram.
4. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Firdous Chowk Peshawar. ... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER ENDST NO. 1505-10/F.NO/A-23/MS/APPEAL MUSHTAQ ALI DATED 18.09.2018 OF RESPONDENT NO. 4(DIRECTOR ELEMENTARY & SECONDARY EDUCATION, KHYBER PAKHTUNKHWA, FIRDOUS CHOWK PESHAWAR) WHEREBY HE UPHOLD THE ORDER OF MAJOR PENALTY IMPOSED BY RESPONDENT NO. 2 (DISTRICT EDUCATION OFFICER (M) PESHAWAR, HASHTNAGRI, PESHAWAR) ENDST NO. 729-32/DATED PESHAWAR THE 05.09.2014 AND REJECTED THE APPEAL OF THE APPELLANT FOR NO LEGAL REASON.

25.10.2019

Mr. Akhunzada Syed Pervez, Advocate
Mr. Kabirullah Khattak, Additional Advocate General

For appellant.
For respondents

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. HUSSAIN SHAH

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

ATTESTED

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI MEMBER: - Counsel for the

appellant and Mr. Kabirullah Khattak, Additional Advocate General along with
Mr. Arshed Ali, ADO for the respondents present. Arguments heard and record
perused.

Attested




2 Brief facts of the case as per present service appeal are that the appellant was serving as Senior Clerk in Education Department. He was imposed major penalty of compulsory retirement vide order dated 05.09.2014 on the allegation of absence from duty by the competent authority. The appellant after availing departmental remedy, filed service appeal before this Tribunal and after hearing arguments this Tribunal issued direction to the appellate authority (Respondent No. 4 i.e Direction Elementary & Secondary Education, Khyber Pakhtunkhwa) to decide the departmental appeal filed by the appellant within two months of the receipt of copy of judgment vide detailed judgment dated 10.07.2018. The departmental authority rejected/dismissed the departmental appeal vide order dated 18.09.2018 and thereafter, the appellant filed the present service appeal on 08.10.2018.

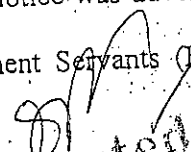
3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving as Senior Clerk in Education Department. It was further contended that the appellant was involved in criminal case vide FIR No. 304 dated 23.03.2013 under section 489-F PPC Police Station Takht Bahi. It was further contended that the absence of the appellant was not intentional/deliberate but the same was due to involvement of the appellant in the aforesaid criminal case. It was further contended that neither absence period has been mentioned by the competent authority in the impugned order nor by the departmental authority in the order of departmental appeal. It was further contended that neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and defence nor any absence notice was issued to the appellant at his home address nor any absence notice/show-cause notice was advertised in two newspapers as required under rule-9 of Government Servants (Efficiency &

25.10.2019
 M. J. Khan
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ATTESTED


 M. J. Khan
 Service Tribunal,
 Peshawar


 Attested

Discipline) Rules, 2011 therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside 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 the appellant remained absent with effect from 18.05.2013 till the impugned order dated 05.09.2014 without permission of lawful authority. It was further contended that a proper show-cause notice was issued to the appellant which was also received by the appellant on 18.02.2014 as revealed from the copy of show-cause notice but the appellant could not satisfy the competent authority and the Principal of Government Higher Secondary School Hazar Khawani Peshawar recommended for compulsory retirement from service vide inquiry report dated 15.05.2014 therefore, it was vehemently contended that after fulfilling all the codal formalities, the appellant was rightly imposed major penalty of compulsory retirement and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving as Senior Clerk in Education Department. The record further reveals that the appellant was involved in the aforesaid criminal case due to which the appellant remained absent from duty with effect from 18.05.2013. The record further reveals that the appellant was imposed major penalty of compulsory retirement by the competent authority i.e District Education Officer Male Peshawar vide order dated 05.09.2014. The record further reveals that the appellant filed departmental appeal against the impugned order dated 05.09.2014 but the same was not responded by the departmental authority within the stipulated period therefore, the appellant filed Service Appeal before this Tribunal. The record further reveals that this Tribunal disposed off the service appeal of the appellant and directed the departmental authority to decide the departmental appeal.

75-10-2019

ATTESTED

SENIOR CLERK
EDUCATION DEPARTMENT
PESHAWAR

Attested

by the appellant within two months of the receipt of copy of judgment vide detailed judgment dated 10.07.2018. The record further reveals that the departmental authority also dismissed the departmental appeal of the appellant vide order dated 18.09.2018 and thereafter, the appellant filed the present service appeal on 08.10.2018. The record further reveals that the appellant was imposed major penalty of compulsory retirement on the allegation of absence from duty but neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and defence. The record further reveals that the competent authority has issued only a show-cause notice undated to the appellant for the absence with effect from 18.05.2013 which was received to the appellant on 18.02.2014 and after issuing the show-cause notice, the appellant was imposed major penalty of compulsory retirement vide order dated 05.09.2014 but neither regular inquiry was dispensed by the competent authority in the aforesaid show-cause notice nor any reason for dispensing regular inquiry was mentioned in the said show-cause notice. The record further reveals that the aforesaid show-cause notice was received by the appellant on 18.02.2014 as revealed from the copy of show-cause notice available on the record but a fact finding inquiry was conducted by the Principal of Government Higher Secondary School Hazar Khawani Peshawar on 15.05.2014 after issuing a show-cause notice which itself speak that the said fact finding inquiry is against the rules as the competent authority was required to first initiate proper inquiry including charge sheet, statement of allegation against the appellant and thereafter, if the appellant was proved guilty than he would have issued a show-cause notice for the absence period but the inquiry officer has submitted inquiry report after the aforesaid show-cause notice therefore, the whole proceeding is illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order. reinstate the appellant into service and direct the

M. H. Khan
25.10.2019

ATTESTED

[Signature]
 Member
 Keyed Tribunal
 Service Tribunal,
 Peshawar

[Signature]
Attested

respondent-department to conduct de-novo inquiry in the mode and manners prescribed under Government Servants (Efficiency & Discipline) Rules, 2011 strictly in accordance with law within a period of 90 days from the date of receipt of copy of this judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.10.2019

Muhammad Amin
(MUHAMMAD AMIN KHAN KUND)
MEMBER

[Signature]

(HUSSAIN SHAH)
MEMBER

Certified to be true copy
[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

[Signature]

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Attested

(11)

Annex F



OFFICE OF THE
PRINCIPAL GHS NANAK PORA PESHAWAR
CITY

No. 452 / Principal/GHS Nanak Pore/Enquiry /Mushtaq /SC / dated 06/01/2020

To,

The District Education Officer
(Male) Peshawar.

Subject; SUBMISSION OF ENQUIRY REPORT
Memo,

With reference to your office order Endstt No. 2252-56 dated; 24-12-2019.

Enclosed please find herewith enquiry report in R/o Mr. Mushtaq Ali Ex- Senior Clerk DEO (M) Battagram along with its enclosure for further necessary action please.
(Enclosed as above).

(NAVEED AKHTAR)
Principal/Enquiry Officer BPS-18
GHS Nanak Pora
Peshawar

3451
07/01/2020

PRINCIPAL,
GHS Nanak Pura
Peshawar

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Annex G2

**OFFICE OF THE PRINCIPAL GHS NANAK
PURA, DISTRICT PESHAWAR**

**ENQUIRY REPORT IN SERVICE APPEAL NO. 1228/2018 IN R/O MR .
MUSHTAQ ALI EX-SENIOR CLERK OFFICE OF THE DEO(M) BATTAGRAM**

INTRODUCTION:-

The undersigned has been appointed as enquiry Officer by the DEO(Male) Peshawar vide Order issued under Endst: No. 2252-56 dated ; 24-12-2019 in pursuance of the decision of the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1228/2018 with the following .

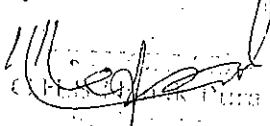
1. The absence period i.e. 18-05-2013 to 12-2-2014
2. Promotion order from Junior Clerk to Senior Clerk
3. To enquire the whether the concerned officer/ officers signed countersigned the relevant papers pertaining to promotion of appellant to the post of S/Clerk.
4. To examine the track record in education department.

HISTORY OF THE CASE

In compliance with the order issued by the worthy DEO(M) Peshawar the undersigned started the enquiry preceding and called Mr. Mushtaq Ali Ex-Senior Clerk to appear before the enquiry officer on the date/time and venue so fixed on 28-12-2019. The undersigned studied all the relevant documents available on the record as well as judgment issued by the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Having gone through the record thoroughly, it was observed that the then Principal GHSS No.4 Kakshal, Peshawar City submitted the absence report of the mentioned accused appellant wef 18-05-2013 to 12-02-2014 (09) Months. However Mr. Mushtaq Ali Ex-Junior Clerk GHSS No.4 Kakshal, Peshawar City submitted his application for medical leave w.e.f 18-05-2013 to 18-01-2014 (copy attached) Furthermore, he was hospitalized and admitted at Khursheed Medical Center & Surgical Hospital Peshawar w.e.f 18-05-2013 to 31-05-2013. He was discharged from Hospital on 31-05-2013 and the Doctors advised him for complete bed rest for 06 Month. A Questionnaire to this effect was served on him (copy attached) He replied to the said Questionnaire accordingly. As per statement obtained from him, it was revealed that he was patient of Hepatitis "C" Hence, he was not in position to perform his duty.

After the thorough checking of his documents as well Original Service Book (copy attached) he was appointed as Junior Clerk in Elementary & Secondary Education Department on 15-12-1986 vide Director E & SE Khyber Pakhtunkhwa Peshawar (copy attached) He performed his duty regularly w.e.f 15-12-1986 to 17-05-2013. As per his original service book he was not remained on leave without pay. His service record was found duly verified by the concerned Officers/DEOs/DDO,s from time to time till 29-09-2014. All the relevant documents i.e Original Service Book ,ACR, Non Involvement, Reliving Chit, LPC duly attested /Re- Attested by the Principal GHSS No.4 Peshawar City in connection with his promotion case to the post of Senior Clerk.


Enquiry Officer

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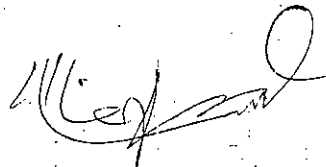
Accordingly, based on the above mentioned verified record, the Director E&SE KP, Peshawar issued his promotion order as Senior Clerk vide Endst: No. 4015-4040/ .F.No.A-

23/MS/Promotion/S/Clerk/DD(F&A) dated 28-05-2014 appearing at S.No. (39) and adjusted him at DEO(M) office Battagram. He took over charge of his new assignment/post on 04-06-2014 and he performed his duty w.e.f 04-06-2014 to 29-09-2014. Later on, Directorate E&SE KP, Peshawar had withdrawn his promotion order as S/Clerk on the basis of his compulsory retirement order issued by the then DEO(M) Peshawar.

FINDINGS:

Keeping in view history of the case dig out as above and after careful checking of the relevant record, the undersigned reached to the following conclusion/findings:-

1. The appellant concerned was on medical leave for the period from 18-05-2013 to 18-01-2014.
2. All the documents available on the record showing that he submitted his application for medical Leave and the Principal concerned had forwarded his leave application to DEO (M) Peshawar on 18-05-2013. However his Leave was not sanctioned by the then DEO (M) Peshawar.
3. Later on, the appellant was promoted to the Post of Senior Clerk vide Directorate E&SE KP, Peshawar Order vide Endst: No. 4015-4040/ .F.No.A-23/MS/Promotion/S/Clerk/DD (F&A) dated; 28-05-2014 falling at S.No. (39) and adjusted him at DEO (M) office Battagram.
4. The Principal GHSS No.4 Kakshal Peshawar City reported him as absent, and ignored the application of the Mr. Mushtaq Ali Ex-Junior Clerk GHS Kakshal Peshawar already forwarded by him.
5. Furthermore, all the documents relevant to his promotion duly attested by the Principal Mr. Muhammad Tahir GHSS No.4 Kakshal Peshawar City vide his letter No. 91 dated; 17-12-2015 and re-verified by the Principal concerned on 30-12-2019.
6. Furthermore, Directorate E & SE also conducted an enquiry in this case through Mr. Saif-ur-Rahman Principal GHS No.1 Nowshera Cantt (copy attached) who had recommended that the said appellant/Ex-Senior Clerk may be reverted to his lower Post i.e Junior Clerk.
7. Moreover, Mr. Mushtaq Ali Ex-Senior Clerk lodged his appeal before the service Tribunal Peshawar vide Service Appeal No.1228/2018 and passed his Judgment announced on 25-10-2019 at the disposal of DEO (M) Peshawar to conduct de-novo enquiry.
8. It is also worth mentioning that Directorate E&SE KP, Peshawar issued letter to DEO (M) Peshawar for re-instatement of his services in the compliance of the Judgment of Honorable Service Tribunal Peshawar Khyber Pakhtunkhwa Peshawar referred to above.


Gh. S. Ahmad
Peshawar

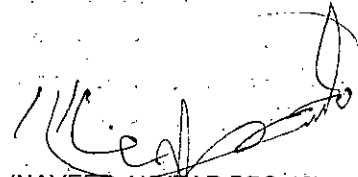
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RECOMMENDATION:-s

Keeping in view aforesaid findings into consideration, it is recommended that;-

1. In the compliance with the Judgment of Honorable Service Tribunal Peshawar, the incumbent DEO (M) Peshawar is requested first to set aside the compulsory retirement order of Mr. Mushtaq Ali Ex-Junior Clerk GHS Kakshai Peshawar issued by the then DEO (M) Peshawar vide Endst: No.72932 dated 05-09-2014 and he may be re-instated in service against his original post of Junior Clerk retrospectively.
2. The absent period w.e.f 18-05-2013 to 18-01-2014 as Junior Clerk may be converted into Medical Leave.
3. After his reinstatement against Junior Clerk post, his case along with this inquiry report may be forwarded to the Director E&SE KP, Peshawar for restoration of his promotion order to the post of Senior Clerk which was with-drawn by the Directorate E&SE KP Peshawar vide Order No.6145-52 dated 17-09-2014 and he may be adjusted against first available Senior Clerk post.
4. The period for which he remained under trail at Honorable Service Tribunal Peshawar w.e.f 30-09-2014 (Appeal date) till the date of restoration of his promotion order as S/Clerk may be considered as spent on duty as the case of the appellant concerned remained under trail in the High Court and Service Tribunal Peshawar respectively.
5. His promotion order may be restored to the Post of Senior Clerk from the date of his taking over charge as senior Clerk i.e 04-06-2014 as due to him under the rules .


(NAVEED AKHTAR BPS-18)
Principal
GHS Nanak Pura Peshawar City
(Enquiry Officer)

GHS Nanak Pura
Peshawar

- (b) requiring the discovery and production of documents, and receiving evidence on affidavits; and
- (c) issuing commissions for the examination of witnesses or documents.

(2) The proceedings under these rules shall be deemed to be the judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

13. Duties of the departmental representative.---The departmental representative shall perform the following duties, namely:

- (a) render full assistance to the inquiry officer or the inquiry committee, as the case may be, during the proceedings where he shall be personally present and fully prepared with all the relevant record relating to the case, on each date of hearing;
- (b) cross-examine the witnesses produced by the accused, and with the permission of the inquiry officer or inquiry committee, as the case may be, may also cross-examine the prosecution witnesses; and
- (c) rebut the grounds of defense offered by the accused before the inquiry officer or the inquiry committee, as the case may be.

14. Order to be passed on receipt of report from the inquiry officer or inquiry committee.---(1) On receipt of report from the inquiry officer or inquiry committee, as the case may be, the competent authority, shall examine the report and the relevant case material and determine whether the inquiry has been conducted in accordance with the provisions of these rules.

(2) If the competent authority is satisfied that the inquiry has been conducted in accordance with the provisions of these rules, it shall further determine whether the charge or charges have been proved against the accused or not.

(3) Where the charge or charges have not been proved, the competent authority shall exonerate the accused by an order in writing, or it shall follow the procedure as given in sub-rule (6) of this rule.

(4) Where the charge or charges have been proved against the accused, the competent authority shall issue a show cause notice to the accused by which it shall-

- (a) Inform him of the charges proved against him and the penalty or penalties proposed to be imposed upon him;

- (b) give him reasonable opportunity of showing cause against the penalty or penalties proposed to be imposed upon him and to submit as to why one or more of the penalties as provided in rule 4 may not be imposed upon him and to submit additional defense in writing, if any, within a period which shall not be less than seven days and more than fifteen days from the day the charge or charges have been communicated to him: provided that the accused shall, in his reply to show cause notice, indicate as to whether he wants to be heard in person or not;
- (c) Provide a copy of the inquiry report to the accused; and
- (d) Direct the departmental representative to appear, with all the relevant record, on the date of hearing.

(5) After affording personal hearing to the accused the competent authority shall, keeping in view the findings and recommendations of the inquiry officer or inquiry committee, as the case may be, facts of the case and defense offered by the accused during personal hearing, by an order in writing-

- (i) Exonerate the accused if charges had not been proved; or
- (ii) Impose any one or more of the penalties specified in rule 4 if charges have been proved.

(6) Where the competent authority is satisfied that the inquiry proceedings have not been conducted in accordance with the provisions of these rules or the facts and merits of the case have been ignored or there are other sufficient grounds, it may, after recording reasons in writing, either remand the inquiry to the inquiry officer or the inquiry committee, as the case may be, with such directions as the competent authority may like to give, or may order a de novo inquiry through different inquiry officer or inquiry committee.

(7) After receipt of reply to the show cause notice and affording opportunity of personal hearing, the competent authority shall decide the case within a period of fifteen days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons.

(8) If the case is not decided by the competent authority within the prescribed period of fifteen days, the accused may submit an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period.

15. Personal hearing.---The competent authority may, by an order in writing, call the accused and the departmental representative, alongwith relevant record of the case, to appear before him, for personal hearing on the fixed date and time.

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed
Mr. Justice Sajjad Ali Shah
Mr. Justice Munib Akhtar

¹⁰⁸⁶
C.A.No.1068 of 2018 and CMA No.985-P of 2018

[Against the order dated 29.03.2018, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Execution Petition No.67/2017]

Govt. of KP through Secretary Elementary & ...Appellant (s)
Secondary Education, Peshawar & others.

VERSUS

Syed Shahin Shah. ...Respondent(s)

For the Appellant (s) : Barrister Qasim Wadood, Addl.A.G. KP

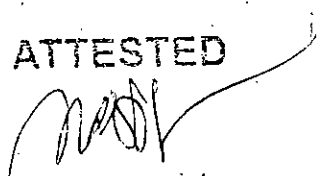
For the Respondent(s) : Rai Muhammad Nawaz Kharral, ASC
Syed Rifaqat Hussain Shah, AOR

Date of Hearing : 16.09.2019

ORDER

GULZAR AHMED, J.— The respondent was appointed as a Primary School Teacher in May, 2010. His very appointment order was considered to be unlawful for that he has concealed many facts about his age and previous employment, thus, through order dated 17.01.2013 his service was dispensed. Against his dismissal order, the respondent filed Service Appeal before the Khyber Pakhtunkhwa Service Tribunal; Peshawar (**the Tribunal**), which was accepted by the Tribunal vide its judgment dated 04.07.2016 by setting aside the order dated 17.01.2013 and reinstating the respondent in service with direction that an enquiry be conducted in the manner as prescribed by the law, by the competent authority within a period of two months of the receipt of

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

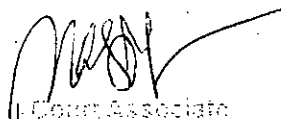
judgment and in case, the competent authority fails to conduct and conclude the enquiry within the specified period then the respondent shall be deemed to be reinstated in service with back benefits by treating the period spent out of service w.e.f. 13.01.2013 till date as leave of the kind due. Pursuant to this judgment of the Tribunal, it appears that the appellant-department conducted an enquiry in which the respondent also seems to have participated and, on conclusion of enquiry, the appellant again passed order dated 30.03.2017, by which the respondent was again removed from service. The respondent did not challenge the order of his removal dated 30.03.2017 rather on 18.04.2017, he filed Execution Petition No.67 of 2017 before the Tribunal against the District Education Officer (Male), Peshawar, etc for disobedience of judgment dated 04.07.2016 and awarding of exemplary punishment under the relevant law. After hearing parties, the Tribunal passed the impugned order dated 29.03.2018, the operative para of which is as follows:

"This Tribunal in the judgment dated 04.07.2016 clearly fixed time of 60 days for conclusion of enquiry. The department did not honor the time and regardless of other merits, the said order would have no effect under the law as settled in the above mentioned rulings. Consequently, the impugned order dated 30.03.2017 is set aside and the judgment of this Tribunal dated, 04.07.2016 would be implemented and the appellant would be treated as reinstated in accordance with the direction in the order dated 04.07.2016. To come up for implementation report on 24.04.2018 before S.B."

The judgments cited by the Tribunal in the impugned order, are also that of the Tribunal.

2. We have noted that judgment of the Tribunal dated 04.07.2016 was not challenged by any party and pursuant to

ATTESTED



Court Associate
Supreme Court of Pakistan
Islamabad


which the appellant also started conducting enquiry but the same could not be concluded within the period of two months, as fixed by the Tribunal by its judgment. However, the fact remains that the respondent continues to participate in the enquiry and on conclusion of the enquiry, the appellant again passed order dated 30.03.2017, by which the respondent was again removed from service. This Court was seized of a similar situation in the case titled as **The Divisional Superintendent, Postal Services, Lahore etc v. Muhammad Boota, etc** [C.A.No.231-L of 2012], in which order dated 26.10.2017 was passed, where this Court has dealt with the matter as follows:

"2. Learned counsel for the petitioner contends that there is no statutory bar to continue the inquiry and take it to the logical conclusion within a reasonable time and in the instant case, the matter was remanded by the learned Tribunal on 4th January, 2010 to conduct de-novo inquiry within the period of four months. It is urged that large number of witnesses were examined, which consumed considerable time and the inquiry was completed on 10.12.2010, in which the respondent also participated and produced defence evidence. After consideration of all the material, collected by the inquiry committee, the embezzlement amount was directed to be recovered from the petitioner and major penalty was recommended. Based on such inquiry, show cause notice was issued to the respondent on 10.12.2010 followed by 15.12.2010. After hearing the petitioner, he was dismissed from service on 26.1.2011. All such proceedings were set aside in appeal by the Tribunal merely on the ground that since inquiry could not be completed within the given time, therefore, no credibility of law could be given to such inquiry.

3. The conclusion drawn by the learned Tribunal is not backed by any law. Invariably in large number of cases the cases are remanded and directions are made to the authority concerned to conduct de-novo proceedings within given time. On completion of the inquiry, proceedings are invariably considered by the appellate authority looking all the facts and circumstances of the case. In the instant case we have noted that respondent has fully participated in the inquiry, led his evidence even beyond the period prescribed by the Tribunal. No prejudice is shown to have been caused to the respondent, even he participated in the proceedings throughout without any reservation or objection.

4. In this view of the matter, The Federal Service Tribunal was not justified to brush aside the entire inquiry

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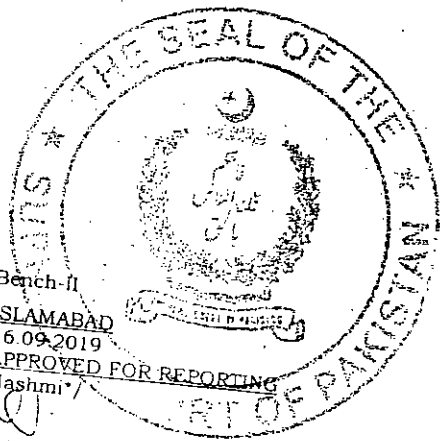

Court Associate
Supreme Court of Pakistan
Islamabad

as, prima facie, substantial embezzlement was established to have been made from the public fund in the hands of the respondent, therefore, appeal is allowed. The impugned judgment is set aside and service appeal shall be deemed to be pending. The Tribunal is directed to hear the parties and decide the appeal preferably within a period of three months".

3. The case in hand being of a similar nature, therefore, we tend to follow the same and find the impugned order dated 29.03.2018 of the Tribunal to be suffering from legal defect and set aside the same. The appeal is, therefore, allowed.

CMA No.985-P of 2018

4. As the main appeal has been allowed, therefore, the CMA stands disposed of.



24/9/19

—sd— Gulzar Ahmed, J
—sd— Sajjad Ali Shah, J
—sd— Munib Akhter, J

Certified to be True Copy

[Signature] 16/10/2019
Court Associate
Supreme Court of Pakistan
Islamabad

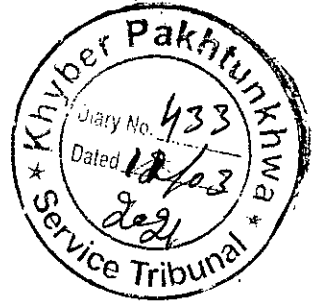
BEFORE THE COURT OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

C.O.C No.64/2020

Mushtaq Ali

Versus

Mr. Hafiz Ibrahim & other



Put up to the court with relevant app of -

11/3/2021

APPLICATION FOR EARLY HEARING

Respectfully Sheweth,

Shall remain posted and come up for proceedings in view of order dated 8.5.2021 on the date fixed.

1. That the captioned case is pending adjudication before this Hon'ble Court in which fixed for 06.05.2021.
2. That the verification of the case has been completed.
3. That record of the said case is available and case of the petitioner as urgent in nature hence this petition.
4. That there is no legal bar if the same is allowed by this Hon'ble Court.

Deq
11/3/21

It is, therefore, most humbly prayed that on acceptance of the instant application, the captioned case may very graciously be fixed for today.

Dated: 11/03/2021

Petitioner

Through

Mushtaq Ali
Mushtaq Ali S/o Abdul Ghani

AFFIDAVIT:-

I, Mushtaq Ali S/o Abdul Ghani R/o Mohallah Gulabad Inqilab Road Mosazai Peshawar, do hereby solemnly affirm and declare on oath that the contents of this application are true and correct to the best my knowledge and belief and nothing has been concealed from this Hon'ble Court.

ATTESTED



Deponent

CNIC# 17301-7488978-7


BRIEF HISTORY OF THE CASE TITLED MUSHTAQ ALI VS GOVT: OF KPK

1. Mr. Mushtaq Ali Senior Clerk remained absent from his official duties w.e.f. 18/05/2013 to 16/01/2014. To investigate the matter in issue an enquiry was conducted through Principal GHSS Hazar Khwani, Vide Order dated 19/08/2015.
2. The Enquiry Officer submitted his the enquiry report to the Department on 15/5/2014 with the following recommendations: (Annex-A)
 - a. Salary of the absent period may be recovered (9-months).
 - b. His absence period may be converted into leave without pay.
 - c. He may be compulsory retired.
3. In light of enquiry report the official concerned was imposed major Penalty of compulsory Retirement from service w.e.f 18/5/2013 vide order dated 5/9/2014. (Annex-B)
4. Feeling aggrieved from the order dated 5/9/2014, the appellant filed the titled case before this Honorable Service tribunal which was decided vide Judgment dated 25/10/2019 whereby the impugned order 05/09/2014 was set aside with direction to the Respondent Department for conducting DE-NOVO inquiry into the matter, the issue of back benefit of the appellant will be subject to the outcome of the DE-NOVO inquiry. (Annex-C)
5. In compliance of the Judgment dated 25-10-2019 of this Honorable Tribunal, the Respondent Department has conducted DE-NOVO inquiry vide Notification No.2252-56 dated 24-12-2019 through the Principal GHS Nanak Pura District Peshawar. (Annex-D)
6. The inquiry report was submitted to the Department on 06-01-2020 which was found as miss-directed & even against the facts & circumstances of the case & was declared null & void under the sub-rule 6 rule 14 of E & D rules 2011 by the Respondent No.4 & constituted another inquiry enquiry through the DEO (M) Nowshera vide Notification/Corrigendum No.2012-20 dated 04-12-2020. (Annex: E, F)

E+F

7. DEO (M) Nowshera submitted his inquiry report on dated 30-11-2020 with the observations that the *appellant has not performed his official duty w.e.f. 01-10-2014 to 30-06-2020 against the Senior Clerk post, hence, the intervening period may be treated as Leave without pay.* (Annex-6)
8. Consequent upon the Judgment dated 25-10-2019 of this Honorable Tribunal, the Respondent No.4/Director E&SE Khyber Pakhtunkhwa Peshawar after considering the facts & circumstances of the case along with consulting the inquiry report of the DEO (M) Nowshera has made the appellant not entitled for the grant of back service benefits w.e.f. 01-10-2014 to 30-06-2020 on the analogy of question of Law & facts of no duty & no Pay passed by this Honorable Tribunal as well as the august Supreme Court of Pakistan(Annex-6)

Prepared By


Dr. Hayat Khan
Assistant Director (Litigation-II)
E&SE Department Khyber
Pakhtunkhwa Peshawar

FIST Enquiry

*Mr + Ghan
He put up on file
15/5/14*

Office of the Principal
GHSS Hazar Khawani Peshawar.
No 160. Dated 15-05-2014

To

District Officer (M)
(E&SE) Peshawar.

Subject: Enquiry report in respect of Mushtaq Ali J/C.

1. The undersigned has been appointed as enquiry officer vide your letter No 6049-51 dated 27-03-2014 in connection with the willful absence of Mr Mushtaq Ali J/C GHSS No 4 Peshawar City w.e.f 18-03-2013 to 12-02-2014 (9th months).
2. As a show cause notice was served upon to the said J/C about his absence.
3. A questionnaire was served upon him.
4. As per his reply, written statement, he was remained absent from duty and was behind the bar w.e.f 18-05-2013 to 06-01-2014.

FINDINGS.

1. All the statements of Mr Mushtaq Ali J/C have no documentary proof and hence seems baseless Annex(A).
2. The complain/report of his immediate officer was more weighty.

RECOMMENDATIONS.

1. Salary of the absent period may be recovered (9th months) w.e.f 18-05-2013 to 12-02-2014.
2. His absence period may be converted into leave without pay.
3. He may be compulsory retired from his service.

Signed 15/5/2014
PRINCIPAL
GHSS HAZAR KHAWANI PESHAWAR
PRINCIPAL
G.H.S.S. Hazar Khawani
Peshawar

(A)

1118

Annex A/6 P-10

(B)

34

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR.

COMPULSORY RETIREMENT:-

Whereas absence report was received from the principal GHSS No.4 Kakshal Peshawar city against Mr.Mushtaq Ali J/Clerk vide his Memo No.47 dated:22/05/2013, No.53,dated:29/05/2013, No.63 dated:13/06/2013 and No.71 dated:24/06/2013.

Whereas the principal was directed vide this office memo No.430,dated:06/07/2013 to furnish latest information regarding absence of the official concerned.

Whereas the principal GHSS No.4 Kakshal Peshawar city has confirmed the absence of the official from 18/05/2013 vide his memo No.99 dated:22/11/2013.

Whereas Show Cause Notice was served on the official concerned through principal GHSS No.4 Kakshal Peshawar city vide this office Memo No:3187 dated:12/02/2014 duly acknowledged by him on 18/02/2014.

Whereas the reply to show cause notice dated 19/02/2014 was received in this office.

Whereas an inquiry was conducted through the principal GHSS Hazar Khwani Peshawar in compliance with notification issued in this regard vide Endst No:6049-51 dated:27/03/2014.

Whereas the inquiry officer recommended for imposing of major penalty (Compulsory Retirement) vide his report No.160dated:15/05/2014.

And whereas I, Mr.Sharif Gul DEO(M) Peshawar being competent authority am pleased to impose major penalty (Compulsory Retirement) under Rules 4(b) (ii) of Govt of KPK Govt Servants (E&D) Rules 2011 w.e.f 18/05/2013.


The pay of the official concerned of the absence period should be recovered and copy of challan be furnished to this office for reference and record.

(Sharif Gul)
District Education Officer,
(Male) Peshawar.

Endst: No. 729-32 Dated Peshawar the 5/9 /2014

Copy for information and necessary action to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Director E&SE KPK Peshawar.
3. Principal GHSS No.4 Kakshal Peshawar city for strict compliance regarding recovery from the official concerned.
4. Official Concerned.


Deputy District Education Officer,
(Male) Peshawar.

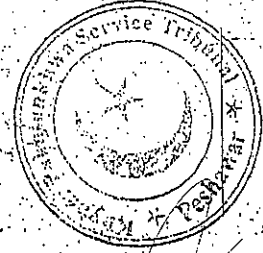
6 Annex E

(C)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 1228/2018

Date of institution ... 08.10.2018
Date of judgment ... 25.10.2019



Mushtaq Ali S/o Abdul Gahani R/o Musazai, Gul Abad,
Inqilab Road, Peshawar, Senior Clerk District Education Officer (M),
Battagram. (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. District Education Officer (M) Peshawar, Hashtnagri, Peshawar.
3. District Education Officer (M) Battagram Bazar, Battagram.
4. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Firdous Chowk Peshawar. (Respondents)

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
OFFICE ORDER ENDST NO. 1505-10/F.NO/A-23/MS/APPEAL
MUSHTAQ ALI DATED 18.09.2018 OF RESPONDENT NO.
4(DIRECTOR ELEMENTARY & SECONDARY EDUCATION,
KHYBER PAKHTUNKHWA, FIRDOUS CHOWK
PESHAWAR) WHEREBY HE UPHOLD THE ORDER OF
MAJOR PENALTY IMPOSED BY RESPONDENT NO. 2
(DISTRICT EDUCATION OFFICER (M) PESHAWAR,
HASHTNAGRI, PESHAWAR) ENDST NO. 729-32/DATED
PESHAWAR THE 05.09.2014 AND REJECTED THE APPEAL
OF THE APPELLANT FOR NO LEGAL REASON.

Muhammad Amin
25.10.2019

Mr. Akhunzada Syed Pervez, Advocate
Mr. Kabirullah Khattak, Additional Advocate General

For appellant.
For respondents

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. HUSSAIN SHAH

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

ATTESTED

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI MEMBER:- Counsel for the

appellant and Mr. Kabirullah Khattak, Additional Advocate General along with
Mr. Arshed Ali, ADO for the respondents present. Arguments heard and records
perused.

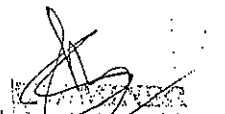
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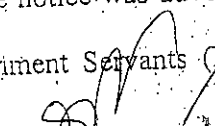
2 Brief facts of the case as per present service appeal are that the appellant was serving as Senior Clerk in Education Department. He was imposed major penalty of compulsory retirement vide order dated 05.09.2014 on the allegation of absence from duty by the competent authority. The appellant after availing departmental remedy, filed service appeal before this Tribunal and after hearing arguments this Tribunal issued direction to the appellate authority (Respondent No. 4 i.e Direction Elementary & Secondary Education, Khyber Pakhtunkhwa to decide the departmental appeal filed by the appellant within two months of the receipt of copy of judgment vide detailed judgment dated 10.07.2018. The departmental authority rejected/dismissed the departmental appeal vide order dated 18.09.2018 and thereafter, the appellant filed the present service appeal on 08.10.2018.

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

4. Learned counsel for the appellant contended that the appellant was serving as Senior Clerk in Education Department. It was further contended that the appellant was involved in criminal case vide FIR No. 304 dated 23.03.2013 under section 489-F PPC Police Station Takht Bahi. It was further contended that the absence of the appellant was not intentional/deliberate but the same was due to involvement of the appellant in the aforesaid criminal case. It was further contended that neither absence period has been mentioned by the competent authority in the impugned order nor by the departmental authority in the order of departmental appeal. It was further contended that neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and defence nor any absence notice was issued to the appellant at his home address nor any absence notice/show-cause notice was advertised in two newspapers as required under rule-9 of Government Servants Efficiency &

ATTESTED


 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar


 Attested

Discipline) Rules, 2011 therefore; the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside 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 the appellant remained absent with effect from 18.05.2013 till the impugned order dated 05.09.2014 without permission of lawful authority. It was further contended that a proper show-cause notice was issued to the appellant which was also received by the appellant on 18.02.2014 as revealed from the copy of show-cause notice but the appellant could not satisfy the competent authority and the Principal of Government Higher Secondary School Hazar Khawani Peshawar recommended for compulsory retirement from service vide inquiry report dated 15.05.2014 therefore, it was vehemently contended that after fulfilling all the codal formalities, the appellant was rightly imposed major penalty of compulsory retirement and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving as Senior Clerk in Education Department. The record further reveals that the appellant was involved in the aforesaid criminal case due to which the appellant remained absent from duty with effect from 18.05.2013. The record further reveals that the appellant was imposed major penalty of compulsory retirement by the competent authority i.e District Education Officer Male Peshawar vide order dated 05.09.2014. The record further reveals that the appellant filed departmental appeal against the impugned order dated 05.09.2014 but the same was not responded by the departmental authority within the stipulated period therefore, the appellant filed Service Appeal before this Tribunal. The record further reveals that this Tribunal disposed off the service appeal of the appellant and directed the departmental authority to decide the departmental appeal.

21/11/2019
25.10.2019

ATTESTED

SENIOR CLERK
Education Department
Peshawar

Attested

by the appellant within two months of the receipt of copy of judgment vide detailed judgment dated 10.07.2018. The record further reveals that the departmental authority also dismissed the departmental appeal of the appellant vide order dated 18.09.2018 and thereafter, the appellant filed the present service appeal on 08.10.2018. The record further reveals that the appellant was imposed major penalty of compulsory retirement on the allegation of absence from duty but neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and defence. The record further reveals that the competent authority has issued only a show-cause notice undated to the appellant for the absence with effect from 18.05.2013 which was received to the appellant on 18.02.2014 and after issuing the show-cause notice, the appellant was imposed major penalty of compulsory retirement vide order dated 05.09.2014 but neither regular inquiry was dispensed by the competent authority in the aforesaid show-cause notice nor any reason for dispensing regular inquiry was mentioned in the said show-cause notice. The record further reveals that the aforesaid show-cause notice was received by the appellant on 18.02.2014 as revealed from the copy of show-cause notice available on the record but a fact-finding inquiry was conducted by the Principal of Government Higher Secondary School Hazar Khawani Peshawar on 15.05.2014 after issuing a show-cause notice which itself speak that the said fact finding inquiry is against the rules as the competent authority was required to first initiate proper inquiry including charge sheet, statement of allegation against the appellant and thereafter, if the appellant was proved guilty than he would have issued a show-cause notice for the absence period but the inquiry officer has submitted inquiry report after the aforesaid show-cause notice therefore, the whole proceeding is illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order, reinstate the appellant into service and direct the

M. J. Khan
25.10.2019

ATTESTED

[Signature]
Chief Executive
Service Tribunal,
Peshawar

[Signature]
Attested

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respondent-department to conduct de-novo inquiry in the mode and manners prescribed under Government Servants (Efficiency & Discipline) Rules, 2011 strictly in accordance with law within a period of 90 days from the date of receipt of copy of this judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.10.2019

Muhammad Amin
(MUHAMMAD AMIN KHAN KUND
MEMBER

Hussain Shah
(HUSSAIN SHAH)
MEMBER

Certified to be true copy
[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Copy *14-11-19*
Number of Words *2000*
Copying Fee *22-02*
Urgent *[]*
Total *22-02*
Name of Copy *[]*
Date of Completion of Copy *19-11-19*
Date of Delivery of Copy *19-11-19*

[Signature]
Attested

(11)

Annex F



OFFICE OF THE
PRINCIPAL GHS NANAK PORA PESHAWAR
CITY

No. 452 / Principal/GHS Nanak Pore/Enquiry /Mushtaq /SC / dated 06/01/2020

To,

The District Education Officer
(Male) Peshawar.

Subject; SUBMISSION OF ENQUIRY REPORT
Memo,

With reference to your office order Endstt No. 2252-56 dated; 24-12-2019.

Enclosed please find herewith enquiry report in R/o Mr. Mushtaq Ali Ex- Senior Clerk DEO (M)

Battagram along with its enclosure for further necessary action please.

(Enclosed as above).

(NAVEED AKHTAR)
Principal/Enquiry Officer BPS-18
GHS Nanak Pora
Peshawar

3481
02/1/2020

PRINCIPAL
GHS Nanak Pora
Peshawar

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~~PI 13~~

Annex G2

**OFFICE OF THE PRINCIPAL GHS NANAK
PURA, DISTRICT PESHAWAR**

**ENQUIRY REPORT IN SERVICE APPEAL NO. 1228/2018 IN R/O MR .
MUSHTAQ ALI EX-SENIOR CLERK OFFICE OF THE DEO(M) BATTAGRAM**

INTRODUCTION:-

The undersigned has been appointed as enquiry Officer by the DEO(Male) Peshawar vide Order issued under Endst: No. 2252-56 dated ; 24-12-2019 in pursuance of the decision of the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1228/2018 with the following .

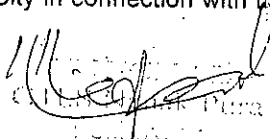
1. The absence period i.e. 18-05-2013 to 12-2-2014
2. Promotion order from Junior Clerk to Senior Clerk
3. To enquire the whether the concerned officer/ officers signed countersigned the relevant papers pertaining to promotion of appellant to the post of S/Clerk,
4. To examine the track record in education department.

HISTORY OF THE CASE

In compliance with the order issued by the worthy DEO(M) Peshawar the undersigned started the enquiry preceding and called Mr. Mushtaq Ali Ex-Senior Clerk to appear before the enquiry officer on the date/time and venue so fixed on 28-12-2019. The undersigned studied all the relevant documents available on the record as well as judgment issued by the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Having gone through the record thoroughly, it was observed that the then Principal GHSS No.4 Kakshal, Peshawar City submitted the absence report of the mentioned accused appellant wef 18-05-2013 to 12-02-2014 (09) Months. However Mr. Mushtaq Ali Ex-Junior Clerk GHSS No.4 Kakshal, Peshawar City submitted his application for medical leave w.e.f 18-05-2013 to 18-01-2014 (copy attached) Furthermore, he was hospitalized and admitted at Khursheed Medical Center & Surgical Hospital Peshawar w.e.f 18-05-2013 to 31-05-2013. He was discharged from Hospital on 31-05-2013 and the Doctors advised him for complete bed rest for 06 Month. A Questionnaire to this effect was served on him (copy attached) He replied to the said Questionnaire accordingly. As per statement obtained from him, it was revealed that he was patient of Hepatitis "C" Hence, he was not in position to perform his duty.

After the thorough checking of his documents as well Original Service Book (copy attached) he was appointed as Junior Clerk in Elementary & Secondary Education Department on 15-12-1986 vide Director E & SE Khyber Pakhtunkhwa Peshawar (copy attached) He performed his duty regularly w.e.f 15-12-1986 to 17-05-2013. As per his original service book he was not remained on leave without pay. His service record was found duly verified by the concerned Officers/DEOs/DDO,s from time to time till 29-09-2014. All the relevant documents i.e Original Service Book ,ACR, Non Involvement, Reliving Chit, LPC duly attested /Re- Attested by the Principal GHSS No.4 Peshawar City in connection with his promotion case to the post of Senior Clerk.


Principal GHS Nanak Pura

KB 2

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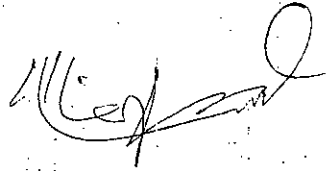
Accordingly, based on the above mentioned verified record, the Director E&SE KP, Peshawar issued his promotion order as Senior Clerk vide Endst: No. 4015-4040/ .F.No.A-

23/MS/Promotion/S/Clerk/DD(F&A) dated 28-05-2014 appearing at S.No. (39) and adjusted him at DEO(M) office Battagram. He took over charge of his new assignment/post on 04-06-2014 and he performed his duty w.e.f 04-06-2014 to 29-09-2014. Later on, Directorate E&SE KP, Peshawar had withdrawn his promotion order as S/Clerk on the basis of his compulsory retirement order issued by the then DEO(M) Peshawar.

FINDINGS:

Keeping in view history of the case dig out as above and after careful checking of the relevant record, the undersigned reached to the following conclusion/findings:-

1. The appellant concerned was on medical leave for the period from 18-05-2013 to 18-01-2014.
2. All the documents available on the record showing that he submitted his application for medical Leave and the Principal concerned had forwarded his leave application to DEO (M) Peshawar on 18-05-2013. However his Leave was not sanctioned by the then DEO (M) Peshawar.
3. Later on, the appellant was promoted to the Post of Senior Clerk vide Directorate E&SE KP, Peshawar Order vide Endst: No. 4015-4040/ .F.No.A-23/MS/Promotion/S/Clerk/DD (F&A) dated; 28-05-2014 falling at S.No. (39) and adjusted him at DEO (M) office Battagram.
4. The Principal GHSS No.4 Kakshal Peshawar City reported him as absent, and ignored the application of the Mr. Mushtaq Ali Ex-Junior Clerk GHS Kakshal Peshawar already forwarded by him.
5. Furthermore, all the documents relevant to his promotion duly attested by the Principal Mr. Muhammad Tahir GHSS No.4 Kakshal Peshawar City vide his letter No. 91 dated; 17-12-2015 and re-verified by the Principal concerned on 30-12-2019.
6. Furthermore, Directorate E & SE also conducted an enquiry in this case through Mr. Saif-ur-Rahman Principal GHS No.1 Nowshera Cantt (copy attached) who had recommended that the said appellant/Ex-Senior Clerk may be reverted to his lower Post i.e Junior Clerk.
7. Moreover, Mr. Mushtaq Ali Ex-Senior Clerk lodged his appeal before the service Tribunal Peshawar vide Service Appeal No.1228/2018 and passed his Judgment announced on 25-10-2019 at the disposal of DEO (M) Peshawar to conduct de-novo enquiry.
8. It is also worth mentioning that Directorate E&SE KP, Peshawar issued letter to DEO (M) Peshawar for re-instatement of his services in the compliance of the Judgment of Honorable Service Tribunal Peshawar Khyber Pakhtunkhwa Peshawar referred to above.



Ghousi Habibullah
Peshawar

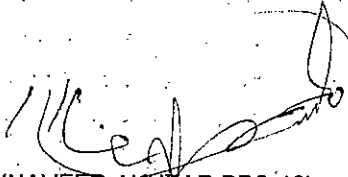
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P-3 B3

RECOMMENDATION:-s

Keeping in view aforesaid findings into consideration, it is recommended that:-

1. In the compliance with the Judgment of Honorable Service Tribunal Peshawar, the incumbent DEO (M) Peshawar is requested first to set aside the compulsory retirement order of Mr. Mushtaq Ali Ex-Junior Clerk GHS Kakshal Peshawar issued by the then DEO (M) Peshawar vide Endst: No.72932 dated 05-09-2014 and he may be re-instated in service against his original post of Junior Clerk retrospectively.
2. The absent period w.e.f 18-05-2013 to 18-01-2014 as Junior Clerk may be converted into Medical Leave.
3. After his reinstatement against Junior Clerk post, his case along with this inquiry report may be forwarded to the Director E&SE KP, Peshawar for restoration of his promotion order to the post of Senior Clerk which was with-drawn by the Directorate E&SE KP Peshawar vide Order No.6145-52 dated 17-09-2014 and he may be adjusted against first available Senior Clerk post.
4. The period for which he remained under trail at Honorable Service Tribunal Peshawar w.e.f 30-09-2014 (Appeal date) till the date of restoration of his promotion order as S/Clerk may be considered as spent on duty as the case of the appellant concerned remained under trail in the High Court and Service Tribunal Peshawar respectively.
5. His promotion order may be restored to the Post of Senior Clerk from the date of his taking over charge as senior Clerk i.e 04-06-2014 as due to him under the rules .


(NAVEED AKHTAR BPS-18)
Principal
GHS Nanak Pura Peshawar City
(Enquiry Officer)

GHS Nanak Pura
Peshawar

Most Immediate
Court Matter

**DIRECTORATE ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR.**



No _____

Dated Peshawar the 04/12/2020

CORRIGENDUM

Consequent upon the approval of the competent authority & in continuation of this office Notification issued vide Endst No. 984-85 dated 15-10-2020, whereby Mr. Sajjad Akhtar, District Education Officer (M) Nowshera has been nominated as an inquiry officer for conducting De-novo inquiry in compliance of the Judgment dated 25-10-2019 passed by the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No.1228/2018 case titled Mushtaq Ali Junior Clerk Vs Secretary E&SE Department & others. Moreover, the Notification issued Endst No. 1379-80 dated 12-05-2020 along with inquiry report are hereby stand re-called being unsatisfactory under the provision section 21 of General Clauses Act 1897 by treating the Notification dated 15-10-2020 as in field with immediate effect in the interest of public services.

-SD-

DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst. No: 2012-20

Copy forwarded for information to the:-

- 1 Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
- 2 AAG Khyber Pakhtunkhwa Service Tribunal Peshawar.
- 3 Deputy Secretary (Legal) E&SE Department KPK Peshawar.
- 4 District Education Officer (M) Peshawar.
- 5 District Education Officer (M) Nowshera.
- 6 Section Officer (Lit: II) E&SE Department KPK Peshawar.
- 7 Deputy Director (Legal) Local Directorate.
- 8 PA to Director, local Directorate.
- 9 Mr. Mushtaq Ali Ex-Junior Clerk District Peshawar.

Assistant Director (Admn)

for Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Due to his compulsory retirement from service, his pay was stopped w.e.f. from 01-10-

2014 to 30-06-2020.

- (b) requiring the discovery and production of documents, and receiving evidence on affidavits; and
- (c) issuing commissions for the examination of witnesses or documents.

(2) The proceedings under these rules shall be deemed to be the judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

13. **Duties of the departmental representative.**---The departmental representative shall perform the following duties, namely:

- (a) render full assistance to the inquiry officer or the inquiry committee, as the case may be, during the proceedings where he shall be personally present and fully prepared with all the relevant record relating to the case, on each date of hearing;
- (b) cross-examine the witnesses produced by the accused, and with the permission of the inquiry officer or inquiry committee, as the case may be, may also cross-examine the prosecution witnesses; and
- (c) rebut the grounds of defense offered by the accused before the inquiry officer or the inquiry committee, as the case may be.

14. **Order to be passed on receipt of report from the inquiry officer or inquiry committee.**---(1) On receipt of report from the inquiry officer or inquiry committee, as the case may be, the competent authority, shall examine the report and the relevant case material and determine whether the inquiry has been conducted in accordance with the provisions of these rules.

(2) If the competent authority is satisfied that the inquiry has been conducted in accordance with the provisions of these rules, it shall further determine whether the charge or charges have been proved against the accused or not.

(3) Where the charge or charges have not been proved, the competent authority shall exonerate the accused by an order in writing, or it shall follow the procedure as given in sub-rule (6) of this rule.

(4) Where the charge or charges have been proved against the accused, the competent authority shall issue a show cause notice to the accused by which it shall-

- (a) Inform him of the charges proved against him and the penalty or penalties proposed to be imposed upon him;

- (b) give him reasonable opportunity of showing cause against the penalty or penalties proposed to be imposed upon him and to submit as to why one or more of the penalties as provided in rule 4 may not be imposed upon him and to submit additional defense in writing, if any, within a period which shall not be less than seven days and more than fifteen days from the day the charge or charges have been communicated to him: provided that the accused shall, in his reply to show cause notice, indicate as to whether he wants to be heard in person or not;
- (c) Provide a copy of the inquiry report to the accused; and
- (d) Direct the departmental representative to appear, with all the relevant record, on the date of hearing.

(5) After affording personal hearing to the accused the competent authority shall, keeping in view the findings and recommendations of the inquiry officer or inquiry committee, as the case may be, facts of the case and defense offered by the accused during personal hearing, by an order in writing-

- (i) Exonerate the accused if charges had not been proved; or
- (ii) Impose any one or more of the penalties specified in rule 4 if charges have been proved.

(6) Where the competent authority is satisfied that the inquiry proceedings have not been conducted in accordance with the provisions of these rules or the facts and merits of the case have been ignored or there are other sufficient grounds, it may, after recording reasons in writing, either remand the inquiry to the inquiry officer or the inquiry committee, as the case may be, with such directions as the competent authority may like to give, or may order a de novo inquiry through different inquiry officer or inquiry committee.

(7) After receipt of reply to the show cause notice and affording opportunity of personal hearing, the competent authority shall decide the case within a period of fifteen days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons.

(8) If the case is not decided by the competent authority within the prescribed period of fifteen days, the accused may submit an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period.

15. Personal hearing.---The competent authority may, by an order in writing, call the accused and the departmental representative, alongwith relevant record of the case, to appear before him, for personal hearing on the fixed date and time.

Annex #

4

PREAMBLE/AUTHORITY

The Director E&SE Deptt: Khyber Pakhtunkhwa has constituted the enquiry committee consists on the following officer to conduct de-novo enquiry against Mr. Mushtaq Ali S/Clerk, GHSS Dak Ismail Khel Nowshera, Ex-J/Clerk District Peshawar in the light of judgement of the Hon'ble Service Tribunal Khyber Pakhtunkhwa dated 25-10-2019 vide Notification No. 561-MS/A-23/MS/Appeal/Mushtaq Ali S/Clerk Dated 15-10-2020 (Annex-2).

ENQUIRY OFFICER/COMMITTEE

Mr. Sajjad Akhtar Iqbal District Education Officer (Male) Nowshera.

APPELLANT

Mushtaq Ali S/Clerk now at GHSS Dak Ismail Khel Nowshera ex-J/Clerk District Peshawar.

CONTENTS OF APPEAL

The appellant is requesting for the Back Benefits for the period from 01-10-2014 to 30.6.2020.

Proceedings:-

The Enquiry Committee started the proceedings accordingly. The available record was checked thoroughly. Findings of the enquiry are submitted herewith as desired in the above mentioned Notification please.

Findings:-

- i- The Hon'able service tribunal has announced the decision in appeal case of Mushtaq Ali S/Clerk now at GHSS Dak Ismail Khel Nowshera ex-J/Clerk District Peshawar wherein he was re-instated in service and ordered for de-novo enquiry in connection with Back benefits.
 - ii- The Director E&SE Khyber Pakhtunkhwa has re-instated him vide order No. 561-25/F.No. A-23/MS/Appeal/Mushtaq Ali S/Clerk/Battagram dated 06-03-2020 and placed his service at the disposal of DEO (M) Nowshera for further posting resultantly adjusted him against S/Clerk post at GHSS Dak Ismail Khel Nowshera (Annex-3).
- The appellant submitted appeal for Back benefit on 25-11-2019 to the Director E&SE Khyber Pakhtunkhwa.
- Two enquiries have already been conducted against him.
- Due to his compulsory retirement from service, his pay was stopped w.e.f. from 01-10-2014 to 30-06-2020.

- vi- The concerned S/Clerk was directed to appear before the enquiry Officer for personal hearing and provide duty certificate of intervening period vide office order No. 7173 dated 10-11-2020 (Annex-C).
- vii- He submitted an affidavit on stamp paper that he was compulsorily retired by ESE Deptt: Khyber Pakhtunkhwa and his pay was stopped w.e. from 01-10-2014 to 30-06-2020 while he has not performed duty during the said period (Annex-D).
- viii- He requested that the intervening period i.e 01-10-2014 to 30-06-2020 may please be converted as period of duty or at least leave with full pay.

RECOMMENDATION

In the light of above mentioned facts and documentary proof on record, the enquiry committee reached to the conclusion that the above named official has not performed duty for the period from 01-10-2014 to 30-06-2020.

It is therefore recommended that the above mentioned intervening period may please be converted into extra ordinary Leave without pay to regularize his service.

Dated _____/2020.

(SAJJAD AKHTAR (EBAL))
District Education Officer,
Male Nowshera.



(H)

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR**

NOTIFICATION:

1. **Whereas**, the titled service appeal was instituted on 08-10-2018 before this Honorable Tribunal against the impugned order dated 18-09-2018 of the Respondent No.4 whereby, he upheld the order dated 05-09-2014 of the Respondent No.2 to the extent of maintaining the major penalty of removal from service against the appellant.
2. **And Whereas**, aggrieved from the order dated 05-09-2014 of the Respondent No.2, the appellant has filed a Departmental appeal to the Respondent No.4 for setting aside the impugned order of the DEO (M) Peshawar but the same has been rejected vide Notification dated 18-09-2018 by the Respondent No.4 after observing all the codal formalities by maintaining the impugned order dated 05-09-2014 of the DEO (M) Peshawar on the grounds of being legally competent.
3. **And whereas**, aggrieved from the orders & Notifications dated 05-08-2014 & 18-09-2018 of the DEO (M) Peshawar, Director E&SE Khyber Pakhtunkhwa respectively, the appellant has filed the titled case before this Honorable Tribunal with the prayer for setting aside the impugned orders & Notifications of the Respondent Department along with his re-instatement in service against the senior clerk post, & finally the case was decided vide Judgment dated 25-10-2019 by setting aside the impugned orders & Notifications dated 05-09-2014 & 18-09-2018 of the Respondent No.2 & 4 with the directions to conduct De-nove inquiry in to the matter under the provision of E&D Rules 2011 within a period of 90 days with further observations that the issue of back benefits of the appellant will be subject to the outcome of the De-nove inquiry.
4. **And Whereas**, in compliance of the Judgment dated 25-10-2019 of this Honorable Tribunal, the Respondent Department has conducted De-nove inquiry vide Notification No.2252-56 dated 24-12-2019 through the Principal GHS Nanak Pura District Peshawar who submitted inquiry report vide his office letter No.452 dated 06-01-2020 which was observed as mis directed & even against the facts & circumstances of the case, hence, declared null & void under the sub-rule 6 rule 14 of E&D rules 2011 by the Respondent No.4 by nominating another inquiry committee through the DEO (M) Nowshera vide Notification/Corrigendum No.2012-20 dated 04-12-2020, who submitted his inquiry report on dated 30-11-2020 with the observations that the appellant has not performed his official duty w.e.f. 01-10-2014 to 30-06-2020 against the Senior Clerk post, hence, the intervening period may be treated as EOL.
5. **And Whereas**, consequent upon the Judgment dated 25-10-2019 of this Honorable Tribunal, the Respondent No.4/Director E&SE Khyber Pakhtunkhwa Peshawar after considering the facts & circumstances of the case along with consulting the inquiry report of the DEO (M) Nowshera has made the appellant not entitled for the grant of back service benefits w.e.f. 01-10-2014 to 30-06-2020 on the analogy of question of Law & facts of no duty & no Pay passed by this Honorable Tribunal as well as the august Supreme Court of Pakistan.

Therefore, in compliance of the Judgment dated 25/10/2020, passed by this Honorable Tribunal in the titled appeal & in Exercise of the Powers conferred upon the undersigned under the relevant provisions of Law & Rules in field, the appellant is hereby made NOT entitled for the grant of Back service benefits w.e.f. 01-10-2014 to 30-06-2020 against the senior clerk post, in view of the inquiry report dated 30-11-2020 of the District Education officer (M) Nowshera with immediate effect & in the interest of public Service.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endstt. No. 6252-59

Dated Peshawar the 23/12 /2020

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. Section Officer (Litigation-II) E&SE Department Khyber Pakhtunkhwa Peshawar.
4. District Education Officer (M/F) Battagram.
5. District Education Officer (M/F) Nowshera.
6. Deputy Director (F&A) local Directorate.
7. Mr. Mushtaq Ali Senior Clerk r/o Musa Zai Gulabad Inqilab Road Peshawar.
8. PA to Director E&SE, Peshawar.
9. Master File.

Deputy Director (F&A)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

23/12/2020