

17.06.2021

Due to cancellation of tour, Bench is not available. Therefore, case to come up for the same as before on 30.09.2021.


Reader

30.09.2021

None present on behalf of the petitioner. Muhammad Adeel Butt, Addl. AG alongwith Muhammad Tauseef, ADEO for the respondents present.

According to operative part of the judgment dated 19.03.2018 passed in Service Appeal No. 375/2016, the present petitioner was reinstated into service with liberty to the department to hold denovo proceedings within a period of ninety days from the date of receipt of judgment. The issue of back benefits was subject to the final outcome of denovo proceedings, if any, and rules on the subject. The Execution Petition was filed on 16.06.2018 with the prayer that respondents may be directed to restore the service of the petitioner with all back benefits. According to copy of the order No. 12892-99/IMU/Sep-2015, dated 10.09.2018 produced before the Tribunal on 17.09.2019, the petitioner was reinstated into service. However, the information as to denovo enquiry given on the said date by the representative of the respondent was incomplete for want of the order in consequence of the denovo enquiry and the representative was directed to produce the same. The needful was done on 18.11.2019 and copy of the enquiry report was placed on file. According to copy of the order of even number and date i.e

10.09.2018 issued after denovo enquiry, the petitioner was reinstated with immediate effect against a vacant post of PST and the intervening period w.e.f. 04.11.2015 till date was treated as leave without pay. In view of the said position, the implementation of the judgment has reached to its conclusion in view of the final order issued after denovo enquiry. Rest is for the petitioner whether he was happy or unhappy with the order of denovo enquiry, however, if he was unhappy, the legal course was open for him. This Execution Petition is consigned to the record room, without any further proceedings.



Chairman
Camp Court, A/Abad

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
DISTRICT MANSEHRA

RE-INSTATEMENT:

To be substituted with Even No & dated

In pursuance to the Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar vide No. 624/ST dated 26/03/2018 in respect of Service Appeal No. 375/2016 the Honorable Service Tribunal Camp Court Abbottabad Judgment Announced on 19-03-2018. Competent Authority E&SE (M) Mansehra please to reinstate Mr. Syed Akmal Shah Ex.PST (B-12) in to Govt: Service with immediate effect, against vacant PST post at GPS Dotar Circle Khaki & intervening period w.e.f 4/11/2015 to updated will be decided as per denove inquiry report /recommendations.

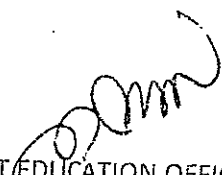
Sd/=

DISTRICT EDUCATION OFFICER
(MALE) MANSEHRA

Endst: No 12892-99 /IMU/ Sep-2015/ Dated 10/09 /2018

Copy of above is forwarded to:

1. The Director E&SE Peshawar.
2. The Registrar KP Service Tribunal Peshawar w/r to his letter no as above.
3. The Deputy Commissioner Mansehra.
4. The SDEO (M) Mansehra.
5. The District Account Officer Mansehra.
6. The ASDEO (M) Circle Khaki.
7. The Teacher Concerned.
8. The DMO Mansehra.


DY: DISTRICT EDUCATION OFFICER
(MALE) MANSEHRA

Arrival Report

According to the Endst No 12892-99/1MU/SEP.2018

10-9-2018

From the office District Education Officer
(Male) Mansehra Mr Syed Akmal Shah PST
BPS.12 who has been adjusted in GPS Dotar
Circle khaki has arrived on 1-11-2018 before.
He is directed to report in circle office
with immediate effect.

Muhammad Riaz

Head Teacher

GPS Dotar Mansehra.

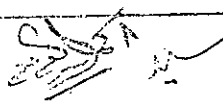
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Head Teacher
GPS Dotar
Mansehra

Head Teacher
GPS, Dotar
Mansehra

CERTIFICATE OF TRANSFER OF CHARGE

1. Certified that we have on the fore/afternoon of this day respectively made over and received charge of this office of the PST EM/ST: NO: 128.92-99/1170/sep 2015
PST Teacher GPS Dotar vide DEO (M) E+S e/o Manshehra
2. Particulars of cash and important secret and confidential documents handed over are noted on the reverse:-

Station	<u>GPS DOTAR</u>	Signature of relieved Government servant	<u>VACANT</u>
		Designation	<u>PST</u>
Dated	<u>01-11-2018</u>	Signature of relieving Government servant	
		Designation	<u>PST</u>

① Copy:-
 (1) DEO (M) Manshehra
 (2) S.D.E.O (M) Manshehra
 (3) A.S.D.E.O Circle Khaki

Handwritten notes:
 TMSH Sib
 → ↑
 2 DEO

→ want you want N handal w/pasm

16.03.2021

Nemo for petitioner.

Riaz Khan Paindakheil learned Assistant Advocate General alongwith Muhammad Touseef for respondents present.

Preceding date was adjourned on a Reader's note, therefore, notice be issued to appellant/counsel for 17/6 /2021 for arguments before S.B at Camp Court, Abbottabad.



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, A/Abad

Due to covid ,19 case to come up for the same on / /
at camp court abbottabad.

Reader

Due to summer vacation case to come up for the same on / 20
10 / 2020 at camp court abbottabad.




Reader

20.10.2020

Petitioner present through representative.

Usman Ghani, learned District Attorney for respondents present.

It was on 18.11.2019 that copy of de-novo inquiry report was handed over to the learned counsel for petitioner but till today arguments were not advanced. Lawyers are on general strike, therefore case is adjourned for arguments on 15.12.2020 before S.B at Camp Court Abbottabad.



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

15.12.2020 Due to Covid-19, case is adjourned
to 16.03.2021 for the same
as before



Reader

18.11.2019

Counsel for the petitioner present. Mr. Usman Ghani, District Attorney alongwith Mr. Hamid Mansoor, Assistant for respondents present. Representative of the respondents ^{submitted} de-novo enquiry report which is placed on file. A copy of the same was also handed over to the learned counsel for the petitioner. To come up for further proceedings on 18.12.2019 before S.B at Camp Court, Abbottabad.



Member
Camp Court Abbottabad

18.12.2019


Junior counsel for the petitioner and Mr. Usman Ghani, District Attorney for the respondents present. Junior counsel for the petitioner requested for adjournment on the ground that learned senior counsel is not available today. Adjourned to 17.02.2020 for further proceedings before S.B at Camp Court Abbottabad.



(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad


09.07.2019

None present on behalf of the petitioner. Mr. Muhammad Touseef, ADO (litigation) for the respondents present. Representative of the department submitted copy of implementation report dated 10.09.2018. Copy of the same is placed on record. Notice be issued to the petitioner and his counsel for attendance for 17.09.2019 before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

17.09.2019

Petitioner alongwith his counsel and Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith Mr. Muhammad Touseef, ADO for the respondents present. The Tribunal was informed by the learned Deputy District Attorney that the petitioner has already been reinstated in service however, the department has also conducted de-novo inquiry against the petitioner on the basis of which intervening period with effect from 04.11.2015 (the date of removal from service) to 10.09.2018 (the date of reinstatement) was treated as extraordinary leave without pay vide order dated 03.08.2019. Copy of the said notification dated 03.08.2019 is also placed on record. Representative of the department namely Muhammad Touseef is directed to furnish copy of de-novo inquiry on the next date. Adjourned to 18.11.2019 for further proceeding before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

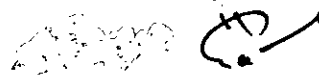
20.12.2018

Counsel for the petitioner present. Mr. Usman Ghani, District Attorney for respondents present. Fresh notices be issued to the respondents for submission of implementation report on 19.03.2019 before S.B at camp court, Abbottabad.

Member
Camp court A/Abad


19.03.2019

None present on behalf of the petitioner. Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith Mr. Muhammad Tousif, ADO for the respondents present and seeks time to furnish implementation report. Adjourn. To come up for implementation report on 22.05.2019 before S.B at Camp Court Abbottabad.


(Muhammad Hamid Mughal)
Member
Camp Court Abbottabad




22.05.2019

Counsel for the petitioner and Mr. Muhammad Bilal, Deputy District Attorney for the respondents present. Representative of the department is absent therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit implementation report on the next date positively. To come up for implementation report on 09.07.2019 before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. _ 254/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16.08.2018	<p>The execution petition of Syed Akmal Shah submitted by Mr. Afsar Shah Advocate, may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR 16/8/18</p>
2-	18/08/2018	<p>This execution petition be put before Touring S. Bench at A.Abad on <u>16-10-2018</u></p> <p> CHAIRMAN</p>
	16.10.2018	<p>Counsel for the petitioner present. Notice be issued to the respondents for implementation report for 20.12.2018 before S.B at camp court, Abbottabad.</p> <p> Member Camp court, A/Abad</p>

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Execution Petition No. 254 /2018
IN
Service Appeal No. 375/2016

Syed Akmal Shah son of Syed Israr ul Haq resident of New Muradpur, Tehsil & District Mansehra, Ex. PST, Government Primary School, Shani Tarli Circle Baffa, District Mansehra.

...PETITIONER

VERSUS

Govt. of Khyber Pakhtunkhwa, through the Secretary Elementary & Secondary Education Department, Peshawar.

...RESPONDENTS

EXECUTION PETITION

INDEX

S.#	Description	Page Nos.	Annexures
1	Execution Petition	1 to 4	
2.	Copy of order dated 19/03/2018	5 to 7	"A"
3.	Copy of the application	8	"B"
4.	Wakalatnama		



...PETITIONER

Dated: 13/08/2018

Through;


(AFSAR SHAH)
Advocate High Court, Abbottabad

Mujib Ullah
N.A(Pol.Sc)MA(Edu)LL.B
ADVOCATE
Distt. Bar Abbottabad

④

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Execution Petition No. 254 /2018

IN

Service Appeal No. 375/2016

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 891

Dated 16-8-18

Syed Akmal Shah son of Syed Israr ul Haq resident of New Muradpur, Tehsil & District Mansehra, Ex. PST, Government Primary School, Shani Tarli Circle Baffa, District Mansehra.

...PETITIONER

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through the Secretary Elementary & Secondary Education Department, Peshawar.
2. The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male), Mansehra.
4. ASDO Circle Baffa, Tehsil & District Mansehra.

...RESPONDENTS

EXECUTION PETITION FOR IMPLEMENTATION OF
JUDGMENT AND ORDER OF THIS HONOURABLE
SERVICE TRIBUNAL KPK CAMP COURT
ABBOTTABAD DATED 19/03/2018 PASSED IN
SERVICE APPEAL NO. 375/2016

PRAYER; ON ACCEPTANCE OF THIS PETITION, THE
RESPONDENTS MAY BE DIRECTED AND ORDERED

TO IMPLEMENT THE JUDGMENT/ DECISION IN
LATTER & SPIRIT AND RESTORE THE SERVICE OF
THE PETITIONER WITH ALL BACK BENEFITS WITH
OUT ANY FURTHER DELAY.

Respectfully Sheweth; -

The petitioner submits the execution petition based on the following facts and grounds; -

1. That the appellant was appointed as PST in BPS-9 in the KPK Education Department and posted at GPS Shani Tarli Tehsil & District Mansehra vide order of then Executive District Officer E&SE Education Mansehra bearing endorsement No. 5699-5710/Estt.(M) apptt. PST(M) 2071-12 dated 18/05/2012.
2. That the petitioner assumed his duty on 19/05/2012 accordingly.
3. That the petitioner developed severe pain in his left leg and reported in Ayub Medical Complex Abbottabad on 14/10/2015 for medical check-up. After detailed examination, the concerned doctor advised the petitioner complete bed rest. The medical certificate alongwith application for grant of leave on medical

grant was sent to ASDO Mansehra. Instead of sanctioning the leave of the petitioner respondent No. 3 removed the petitioner from his service, without observing codal formalities, illegally.

4. That the petitioner lodged a departmental appeal/representation which was not responded and thereafter, the petitioner lodged an appeal before this Honourable Tribunal bearing No. "Service Appeal No. 375/2016" on 07/04/2016. The respondents were summoned many a times. Even after receiving the summons, none of them appeared before this Honourable Tribunal. Ultimately, the service appeal was decided in favour of the petitioner on 19/03/2018. Attested copy annexed as Annexure "A".

5. That the petitioner submitted arrival report alongwith the copy of the order of this Honourable Tribunal, in application form, for further order in respect of petitioner as per decision of this Honourable Tribunal. Nonetheless, so far, no action has been taken by the respondents and the petitioner has not been restored on his service. Copy of the application is annexed as Annexure "B".

It is therefore, humbly prayed that respondents be ordered and directed to implement the judgment and order of this Honourable Tribunal dated 19/03/2018 and restore the petitioner in his service with all back benefits.

...PETITIONER

Dated: 13/08/2018

Through;

(AFSAR SHAH)

Advocate High Court, Abbottabad

Handwritten text and stamp: 13/08/2018, Advocate, Abbottabad.

AFFIDAVIT

I, Syed Akmal Shah son of Syed Israr ul Haq resident of New Muradpur, Tehsil & District Mansehra, Ex. PST, Government Primary School, Shani Tarli Circle Baffa, District Mansehra, do hereby affirm and declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been suppressed therein.

DEPONENT

Notarized stamp: NOTARIZED, SYED AILAYUB TANOLI, ADVOCATE HIGH COURT ABBOTTABAD, 13/8

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 375/2016

Date of Institution... 07.04.2016

Date of decision... 19.03.2018



Syed Akmal Shah son of Syed Israr-ul-Haq, resident of New Muradpur, Tehsil and District Manshra, Ex-PST, Government Primary School Shani Tarli, Circle Baffa. ... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through the Secretary, E&SE, Peshawar and 3 others. (Respondents)

MR. AFSAR SHAH,
Advocate

... For appellant.

MR. USMAN GHANI,
District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: Arguments of the learned counsel for the appellant heard and record perused.

FACTS

2. The appellant was removed from service on 04.11.2015, against which he filed departmental appeal on 24.11.2015 which was not responded to and thereafter he filed the present service appeal on 07.04.2016.

ARGUMENTS

3. The learned counsel for the appellant argued that defence of the respondents was struck off and it would be presumed that the department had accepted the factual allegations.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.

contained in the memorandum of appeal. He further argued that the appellant was issued only the final order of dismissal and nothing preceded the said order in the shape of show cause notice, charge sheet/statement of allegations, personal hearing, enquiry report etc. On merits he argued that the appellant applied for 10 days medical leave which was not accepted nor any rejection order was communicated to the appellant.


4. Since the defence of the respondents was struck off, the learned District Attorney submitted that he was not in a position to argue the appeal.

CONCLUSION.

5. This Tribunal noticed that an application for condonation of delay was submitted by the appellant alongwith the memo of appeal. The departmental appeal was filed by the appellant on 21.11.2015 and the present service appeal was filed on 07.4.2016 after 137 days. As per Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the maximum period for filing of such appeal is 120 days from the date of filing of departmental appeal but in view of Rule 19 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 as amended on 18.7.2012 such period in cases of disciplinary action has been extended to 150 days. This Tribunal is of the view that the learned counsel for the appellant was not aware about this amendment, therefore, he filed the present application for condonation of delay. The service appeal of the appellant is well within time and there was no need of filing of application for condonation of delay. This appeal is therefore, within time.

6. From record and final order of removal it is crystal clear that the procedural due processes as pointed out by the learned counsel for the appellant, were not complied with by the department. In view of such grave procedural lapses, the impugned order cannot be sustained in the eyes of law.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

7. Consequently, the present appeal is accepted and the appellant is reinstated in service. The department is however, at liberty to hold denovo proceedings within a period of ninety days from the date of receipt of this judgment. The issue of back benefits shall be subject to the final outcome of denovo proceedings, if any, and rules on the subject. Parties are left to bear their own costs. File be consigned to the record room.

(Handwritten signature)
(Ahmad Hassan)
Member

(Handwritten signature)
(Niaz Muhammad Khan)
Chairman
Camp Court, A/Abad

ANNOUNCED
19.03.2018

Certified to be true copy
(Handwritten signature)
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 29-6-18

Number of Words 1200

Copying Fee 800

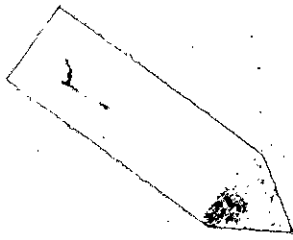
Urgent -

Total 800

Name of Copyist *(Handwritten signature)*

Date of Completion of Copy 02-07-2018

Date of Delivery of Copy 02-07-2018



محکمہ تعلیم سہیل پور ضلع

جناب عالی!

مورد بیانہ گزشتہ قضیہ کے سائل کو محکمہ عدالت نے مندرجہ ذیل
کی وجہ سے ڈپٹی سیکرٹری سے سیکرٹری کو دیا گیا جو کہ بطور (PST)
ڈیپٹی سیکرٹری کے لئے ہے۔

سراجم دیکھا گیا۔

جو کہ سائل مندرجہ ذیل کے دلائل میں سفید
بھیار تھا جو کہ ایک محبوس تھی۔ بعد ازاں سائل نے کورٹ
میں درخواست دی تھی۔ کورٹ نے سائل کی درخواست کو
قبول کرنے میں دوبارہ مورخ 19/05/83 کو سائل کا بحالی آرڈر

مبارک کر کے دیا ہے جو کہ درخواست کا ساتھ لیا ہے۔

ان جناب سے درخواست جو کہ کورٹ کے پاس

میں آئی ہے کارروائی کر کے سائل کو بحالی کے لئے

العارض۔

سربراہ ایس ایس ڈی ضلع سہیل پور

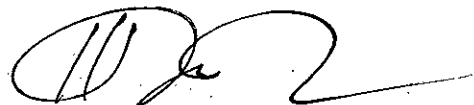
دیوانہ نادر محفلہ ضلع سہیل پور

Ex-PST-

گورنمنٹ ہائیڈرو گرافک سہیل پور

(سہیل پور)

Attested



Majid Ali Khan
MA (Pol. Sc) MA (Edu) LL.B
Distt. Bar Abbottabad

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
DISTRICT MANSEHRA

RE-INSTATEMENT:


In pursuance to the Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar vide No. 624/ST dated 26/03/2018 in respect of Service Appeal No. 375/2016 the Honorable Service Tribunal Camp Court Abbottabad Judgment Announced on 19-03-2018. Competent Authority E&SE (M) Mansehra please to reinstate Mr. Syed Akmal Shah Ex.PST (B-12) in to Govt: Service with immediate effect, against vacant PST post at GPS Bandi Gayan Circle Khaki & intervening period w.e.f 4/11/2015 to updated may be treated as leave without pay.

Sd/=
DISTRICT EDUCATION OFFICER
(MALE) MANSEHRA

Endst: No 12892-99 /IMU/ Sep-2015/ Dated 10/9 /2018.

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DY: DISTRICT EDUCATION OFFICER
(MALE) MANSEHRA

9/11