

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7074/2021Jan Muhammed..... Appellant

Versus

The Govt. of KPK and others..... Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY FILED BY RESPONDENTS.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. Appellant has got a strong cause of action and for that matter locus standi to file the instant appeal. The instant appeal being filed within time.

Facts:

- 1-3. Incorrect hence not admitted. Appellant performed his duty during Talibanization erra vide Page-7&8 of the Service Appeal. Moreover, inquiries were also conducted by the Respondent Department in respect of non-payment of due salaries of the appellant wherein the request of the appellant was considered to be genuine vide Page 20-21. Likewise inquiry report dated 17.08.2021 (*Annex:-Rj/1*).
- 4-7. Incorrect hence not admitted. While detailed assertions have made in the memo of the Service Appeal.

Grounds:

- A-F. Incorrect, the grounds as mentioned in Reply are not upto the mark as contended by the answering Respondents while the grounds

embodied in the writ petition are well reasoned based upon prevailing laws.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Appellant
Through
Muhammad Amin Ayub
&
Muhammad Ghazanfar Ali
Advocates, Peshawar

Dated: 7/02/2023

Verification

Verified that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Advocate

Ghafa
for mk. - 317
Jan 18/21 - 3 -

INQUIRY REPORT

BACKGROUND OF THE CASE

Salaries of the following Class-IV employees of Elementary & Secondary Education Department, Khyber were stopped during the militancy at Bara District Khyber formerly Agency by the then DEO, Khyber w.e.f the dates mentioned against each employee:-

S. No.	Name & Designation	Place of posting	Date of stoppage of salary
1.	Mohammad Jan. Sweeper	GMS, Yara Jan, Bara	01.01.2011
2.	Sar Meer Khan. N/Qasid	GMS, Yara Jan, Bara	01.01.2011
3.	Gul Hareena. Caller	GGPS, Mughal Baz, Bara	01.12.2015
4.	Jan Mohammad. Chowkidar	GGPS, Mughal Baz, Bara	01.12.2015

Their salaries were released in compliance of the Judgment dated 15.05.2019 of the Hon'ble Peshawar High Court, Peshawar from the month of August, 2019(F/A). However, the remaining due salaries from the date of stoppage to July, 2019 are still not paid to them. They are claiming their pending salaries to be paid to them.

Before paying them the stopped salaries, the Directorate of Education Merged Areas, Khyber Pakhtunkhwa, Peshawar desired for knowing reasons for stoppage of their salaries, lest there be any legal hurdles and release of the pending salaries to them may result in an illegal action. To avoid any such action, the matter needs to be probed properly, therefore, the Directorate constituted the following Inquiry Committee, vide Notification No. 4042-46/E-1/C(General file/Khyber dated 30.03.2021):-

1. Mr. Muhammad Usman
V.Principal, GHSS, Painsi Lalma
District Khyber.
2. Mr. Muhammad Ihsan Shah
Principal, GHS, Muhammad
Khan Kaly, LKL, District Khyber.

PROCEEDINGS OF THE INQUIRY

The Inquiry Committee visited the schools of posting of the employees concerned and checked their respective service record available in the schools. Relevant record at the D.E.O Khyber was also consulted. All the four employees were also heard in person. Judgment of the Hon'ble Peshawar High Court (PHC), Peshawar was seen in detail F/A.

PERSONAL HEARING

The said employees were called upon for personal hearing used questionnaires and interview as inquiry tools. The mentioned employees were personally heard on dated 29/05/2021 at DEO Khyber at Jamrud. Their respective stations were also visited for further verification. The written statements in the form of questionnaires are attached (F/B).

FINDINGS OF THE INQUIRY COMMITTEE

Based on the above available record position and procedure adopted the Inquiry Committee, the Committee recorded the following findings:-

1. All the four employees are regular / permanent employees of the department. Their initial dates of entry into service are as under:-

Name & Designation	Date of entry into service
Mohammad Jan	19.09.1998
Sar Meer Khan	19.09.1998
Gul Hareena	11.02.2008
Jan Mohammad	11.02.2008

2. They were / are regular in attendance of their duties in their respective schools and no complaint against any of them has been raised or received during their service. Their salaries had been stopped w.e.f the dates mentioned above without any reason.
3. Upon their appeals to the authorities, though needless under the then prevailing circumstances, their salaries could not be released.
4. They approached the Hon'ble PHC, Peshawar for release of their salaries. The PHC allowed their writ petition based on statement of the concerned ADEO, Bara, Khyber, Mr. Waheed Ullah in the court declaring them as regular employees and payment of salaries to them.
5. Despite judgment of the Hon'ble PHC, Peshawar in their favor, they could not be paid salaries. On this, they filed CoC proceeding in the same court, whereupon, receiving orders from the court, their salaries were released from the month of Aug, 2019 but again the remaining stopped salaries were not paid to the officials concerned.
6. Prior to this inquiry, two other inquiries have also been conducted (I/C) by the inquiry committee comprised of Mr. Muhammad Zahid V.P GHS koi Sher Haider. An another inquiry was conducted by Mr. Sher Zaman HM GHS Badshah Mir Killi BZK landi kotal where under, the non-payment has been declared illegal and immediate payment of pending salaries to the above mentioned employees has been recommended.

RECOMMENDATION OF THE INQUIRY COMMITTEE

Based on the above findings of the Inquiry Committee, the Committee strongly recommends payment of remaining pending salaries to the above named four employees, being their due right in all respects and in the eyes of law without any further delay as the facts on record disagrees with the stoppage of salaries and non-payment of remaining salaries.

1. Mr. Muhammad Ihsan Shah
Principal, GHS, Muhammad
Khan Killi, Landi Kotal, District Khyber

Member _____

2. Mr. Muhammad Usman
V.Principal, GHSS, Painsi Lalma
District Khyber

Member _____

3. Additional Director (Estab.)
Merged Areas Peshawar

Chairman _____

Dated: __ / __ / 2021