

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 744/2019

Date of Institution ... 31.05.2019

Date of Decision ... 14.12.2021

Murad Ali S/O Gul Wali Khan R/O Bannu (FR), Ex-Junior Clerk Government High School, Kotka Habib Ullah, Sub Division Wazir Bannu.

... (Appellant)

VERSUS

District Education Officer at Sub Division Wazir Bannu, at Near Bannu Township, Bazen Khel Road, Bannu and five others.

... (Respondents)

Taimur Ali Khan,
Advocate

... For Appellant

Kabirullah Khattak,
Additional Advocate General

... For Respondents

SALAH-UD-DIN
ATIQU-UR-REHMAN WAZIR

...

...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant was initially appointed as Junior Clerk in Education Department in FR Bannu vide order dated 12-07-1989. The appellant availed earned leave with effect from 02-12-1994 to 27-05-1996 vide order dated 12-12-1994. His leave was further extended from 28-05-1996 to 31-01-1997 vide order dated 09-06-1996. After expiry of the leave neither the appellant was adjusted against his post nor any adverse order was issued against him. The appellant filed departmental appeal, which was not responded within the stipulated timeframe. The appellant filed Service Appeal No. 02/2017 in this Tribunal, which was decided vide judgment dated 15-02-2018 with direction to the appellate authority to

examine the case of the appellant and to decide his departmental appeal with speaking orders within a period of three months. The appellate authority in response, issued his termination order dated 27-02-2019 with retrospective effect and his services were dispensed with from 01-11-1997. The appellant filed the instant service appeal with prayers that the impugned order dated 27-02-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned order is against law, facts and norms of natural justice; that the appellant was terminated from service without assigning any reason, which is highly unjust and prejudicial to the rights of the appellant; that the word termination is alien to the disciplinary rules, as Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011 contains the provision of either dismissal or removal from service, hence such illegal order can be termed as void; that the impugned order does not provide any reason for termination from service and the appellant having long service at his credit and being a regular employee could not be thrown out illegally and without any process of law; that termination from service with retrospective effect is totally illegal as no penalty can be imposed with retrospective effect; that orders issued with retrospective effect is void ab initio; that issuance of termination order in 2019 admits the fact that since 1997, no termination/removal from service order in respect of the appellant has been issued until 2019; that the impugned termination order was issued without adhering to the prescribed manner as enshrined in the law; that in case of imposition of major penalty, regular inquiry is must, which however was not done by the respondents; that neither a regular inquiry was conducted nor the appellant was afforded appropriate opportunity to defend his cause; that the impugned termination order was passed in violation of law, rules and principle of natural justice and the same has got no sanctity to remain in field, as it has been held in 1992 SCMR 46 that

when law required a thing to be done in a particular manner, the same must be done accordingly and if the prescribed procedure was not followed, it would be presumed that same had not been done in accordance with law, as such illegality has been committed by the respondents, for which the appellant shall not suffer.

03. Learned Additional Advocate General for respondents has contended that as per judgment dated 15-02-2018 of this Tribunal passed in Service Appeal No. 02/2017, case of the appellant was re-examined and a committee to this effect was constituted, which examined his departmental appeal and recommended the appellant for major punishment of termination from service, hence the appellant was terminated vide order dated 27-02-2019; that there was no further need of any inquiry or service of show cause notice, as the appellant remained absent for longer time and guilt of the appellant was proved beyond any shadow of doubt, hence he was awarded with punishment he deserved.

04. We have heard learned counsel for the parties and have perused the record.

05. We have observed that in the first round of litigation, the appellant filed Service Appeal No. 02/2017. The issue under consideration was that the appellant after availing long leave, reported his arrival for his posting, which however was refused by the respondents inspite of the fact that no adverse order was issued except stoppage of his salary, but the appellant was still on the roll of Education Department. The allegations so leveled were absence from duty, but neither the appellant was permitted to join his duty nor any disciplinary proceedings were conducted against him and the issue lingered for years. Service appeal of the appellant was decided vide judgment dated 15-02-2018 and his case was remitted to the respondents with direction to examine his case in accordance with law and decide departmental appeal of the appellant with speaking orders within a period of three months. As per dictates of law, respondents were required to initiate disciplinary proceeding against the appellant, but the respondents failed to frame

proper charge and its communication to the civil servant alongwith statement of allegations explaining the charge and other relevant circumstances proposed to be taken in to consideration. Framing of charge and its communication alongwith statement of allegations was not merely a formality but it was mandatory prerequisite, which was to be followed. Reliance is placed on 2000 SCMR 1743. It otherwise is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, which however was not done in case of the appellant and the appellant was condemned unheard. Reliance is placed on 2009 PLC (CS) 650. The Supreme Court of Pakistan in another judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. We have noted that respondents neither conducted any inquiry nor afforded any opportunity to the appellant to defend his cause, rather a committee was constituted and the committee unilaterally and without associating the appellant decided his fate and the impugned order of his termination was issued in sheer violation of law and rule and on this score alone, the impugned order is liable to be set at naught. The impugned order provided for penalty to the appellant in terms of termination from service, which as rightly argued by the learned counsel for the appellant is not included in the list of penalties provided in the rules applied on the appellant. The order, therefore, having been passed in blatant disregard of law can only be termed as void.

06 In view of the foregoing discussion, the instant appeal is accepted. The impugned order dated 27-02-2019 is set aside with direction to the respondents to adjust the appellant against the post of Junior Clerk. The intervening period is

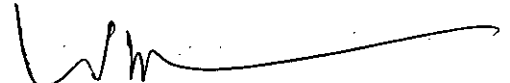
treated as leave without pay. Parties are left to bear their own costs. File be
consigned to record room.

ANNOUNCED

14.12.2021



(SALAH-UD-DIN)
MEMBER (J)



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

ORDER

14.12.2021


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

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned order dated 27-02-2019 is set aside with direction to the respondents to adjust the appellant against the post of Junior Clerk. The intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

14.12.2021


(SALAH-UD-DIN)
MEMBER (J)


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

07.12.2021

Bench is incomplete, as one of the learned Members is on official tour to Swat. Case to come up for the same on 14.12.2021 before the D.B.




Reader

744/19

24.02.2021

Junior to counsel for the appellant and Asif Masood, DDA for the respondents present.

The proposition regarding retrospectivity of penalty has not yet been decided by the Larger Bench of this Tribunal. The proceedings are, therefore, adjourned to 01.06.2021 for hearing before the D.B.


(Mian Muhammad)
Member(E)


Chairman

01.06.2021

Appellant present through counsel.

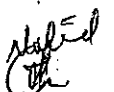
Javid Ullah learned Assistant Additional Advocate General for respondents present.

Bench is incomplete as learned Member Executive (Mian Muhammad) is on leave, therefore, case is adjourned to 28.09.2021 for hearing before D.B.


(Rozina Rehman)
Member(J)

28-9-21

DB is on ⁴leave case to come up
For the same on dated. 2-2-22


10/11/21


Rendez

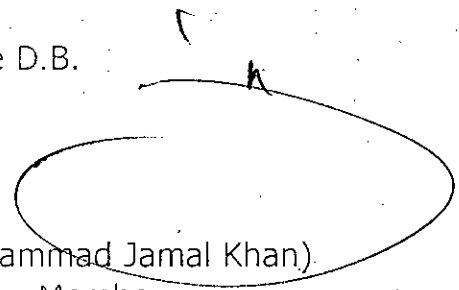
16.10.2020

Junior counsel for appellant present. Mr. Kabirullah Khattak learned Additional Advocate General for respondents present.

Former requests for adjournment as senior counsel for appellant is busy before Hon'ble Peshawar High Court Peshawar.

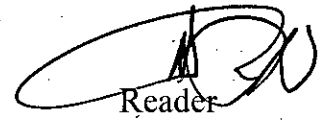
Adjourned to 12.11.2020 before D.B.


(Atiq-Ur-Rehman Wazir)
Member


(Muhammad Jamal Khan)
Member

12.11.2020


Proper D.B is not available, therefore, the case is adjourned for the same on 08.12.2020.


Reader

08.12.2020

Counsel for the appellant and Addl. AG for the respondents present.

Learned counsel states that the impugned penalty was awarded on 27.02.2019, however, it was given effect from 01.11.1997. He, therefore, requests for adjournment of instant matter to a date after the decision of proposition regarding retrospective effect of penalty by a Larger Bench of this Tribunal. Adjourned to 24.02.2021 for hearing but as last chance .


(Atiq-ur-Rehman Wazir)
Member(E)

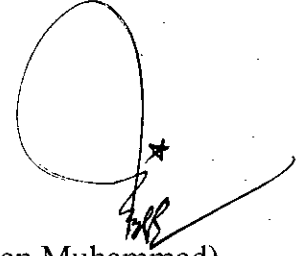

Chairman

13.07.2020

Appellant in person and Addl. AG alongwith Mr. Sajid, Supdt for respondent No.5 present.

Written reply on behalf of respondents 3,4 and 5 not submitted. Notices be issued to the respondents 3 and 4 for submission of written reply/comments. Last opportunity granted to them.

Adjourned to 14.09.2020 before S.B.



(Mian Muhammad)
Member(E)

14.09.2020

Junior to counsel for the appellant, Addl. AG for respondents No. 1, 2 and 6 and Sajid Superintendent for respondent No. 5 present. Nemo on behalf of respondents No. 3 & 4.

Respondent No. 5 relies on the joint comments submitted on 09.03.2020 on behalf of respondents No. 1, 2 & 6. Respondents No. 3 & 4 have not furnished reply/comments despite last opportunity. The matter is assigned to D.B for arguments on 16.10.2020. The appellant may furnish rejoinder to the joint comments of respondents 1, 2 & 6, within a fortnight, if so advised.



Chairman

09.03.2020

Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith M/S Fawad Afzal, Senior Clerk on behalf of respondents No. 1, 2 & 6 and Sajid, Superintendent on behalf of respondent No. 5 present. Representative of respondents No. 1, 2 & 6 submitted joint comments on behalf of respondents No. 1, 2 & 6. The same is placed on record. Representative of respondent No. 5 stated that he relies on the comments submitted by respondents No. 1, 2 & 6 on behalf of respondent No. 5. Neither written reply on behalf of respondents No. 3 & 4 submitted nor their representatives are present, therefore, notices be issued to them with the direction to direct the representatives to attend the court and submit written reply on the next date positively. Last opportunity is given to respondents No. 3 & 4 for filing of written reply/comments. To come up for written reply/comments on behalf of respondents No. 3 & 4 on 16.04.2020 before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

16.04.2020

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.


Reader

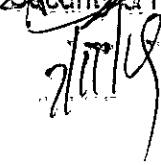
744/19

05.11.2019

Appellant present in person.

States that security and process fee have not been deposited due to misunderstanding and submitted an application for extension of time to deposit the same.

Application is accepted. The appellant is allowed to deposit the process fee and security within three working days from today. After the requisite deposit notices be issued to the respondents for submission of reply/comments on 18.12.2019 before S.B.

Appellant Deposited
Security & Process Fee


18.12.2019

Junior to counsel for the appellant and Addl. AG
alongwith Muhammad Yasin, DEO and Sajid
Superintendent for the respondents present.


Chairman

Representatives of respondents seek further time to
furnish reply/comments. Adjourned to 30.01.2020 on which
date requisite reply/comments shall positively be submitted
before S.B.


Chairman

30.01.2020

Appellant in person present. Written reply not submitted.
Muhammad Yasin DEO representative of respondent department
absent. Respondents as well as absent representative be put to notice
for reply. Adjourn. To come up for written reply/comments on
09.03.2020 before S.B.


Member

05.09.2019

Counsel for the appellant present.

Contends that the appellant was on extra-ordinary leave w.e.f 28.05.1996 to 31.01.1997 and upon expiry was not allowed to resume his duty. Ultimately, he had to resort to this Tribunal through Appeal No. 02/2017 which was decided on 15.02.2018. The Tribunal, while remitting the case of appellant to departmental appellate authority, required the decision of departmental appeal of appellant with speaking order within a period of three months from the receipt of copy of judgment. On the other hand, the concerned respondent decided the appeal on 27.02.2019 through an office order wherein no reason/ground whatsoever was provided for the termination/dispensing with the service of appellant, that too, with retrospective effect.

In view of arguments of learned counsel and available record, instant appeal is admitted for regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 05.11.2019 before S.B.



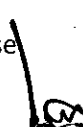


Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 744/2019


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/06/2019	<p>The appeal of Mr. Murad Aji resubmitted today by Mr. Farhan Ullah Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please</p> <p style="text-align: right;"> REGISTRAR 18/6/19</p>
2-	24/06/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/07/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	12.07.2019	<p>Clerk to ✓ Learned counsel for the appellant present and seeks adjournment. Adjourn. To come up for preliminary hearing on 05.09.2019 before S.B.</p> <p style="text-align: right;"> Member</p>

The appeal of Mr. Murad Ali son of Gul Wali Khan Ex-Junior Clerk GHS Kotka Habibullah Bannu received today i.e. on 31.05.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexure-A of the appeal is illegible which may be replaced by legible/better one.
- 2- The authority to whom the departmental appeal was made/preferred has not been arrayed a necessary party.
- 3- One more copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

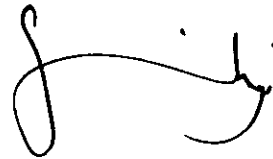
No. 1064 /S.T,

Dt. 11-6- /2019.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Farhanullah Adv. Pesh.

Needful has been done and Re-submitted
for further proceeding on 18/06
2019.



Farhan ullah Adv. Pesh.

BEFORE THE K.P.K SERVICES TRIBUNAL PESHAWAR.

Appeal No. 746 / 2019.

Murad Ali

Appellant.

VERSUS

District Education Officer & Others

Respondents.

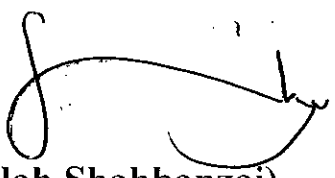
I N D E X

S/No	Description of Documents	Annexure	Page No. ^s
1	Memo of Appeal Along with Affidavit		1-5
2	Addressees of the Parties	-	6
3	Copy of appointment order	A	7-9
4	Copy of applications	B	10-11
	Copy of Departmental Appeal	C	12-13
5	Copy of judgment dated 15-02-2018 of this Hon'able Tribunal	D	14-16
6	Copy of impugned order dated: 27-02-2019	E	17
7	Waqalat Nama		18


APPELLANT.

Dated; 31/05/2019.

Through:-


(Farhan Uallah Shahbanzai)
Advocate High Court,
PESHAWAR

Cell-0321-9171522

Office: FF. 29, 5th Floor, Bilour Plaza, Peshawar Cantt:

(1)

BEFORE THE K.P.K SERVICE TRIBUNAL PESHAWAR.

Appeal No. 744 / 2019.

Murad Ali S/O Gul Wali Khan R/O Bannu (FR), Ex.- Junior Clerk
Government High School, Kotka Habib Ullah, Sub Division Wazir
Bannu.

Appellant.
Khyber Pakhtukhwa
Service Tribunal

VERSUS

Diary No. 829

31-5-2019

- ✓ 1) District Education Officer at Sub Division Wazir Bannu, at Near Bannu Township, Bazen Khel Road, Bannu.
- ✓ 2) Assistant Director, Directorate of Education Khyber Pukhtoonkhwa, Warsk Road, Peshawar.
- 3) Principal Government High School, Habib Ullah FR (Bannu).
- 4) The Secretary education (E & SE), Khyber Pukhtoonkhwa, Peshawar.
- Relief 5) Secretary Finance Khyber Pukhtoonkhwa, at AG office Peshawar Cantt.
- ✓ 6) Director (Edu.), Directorate of Education Khyber Pukhtoonkhwa, (E & SE) Warsk Road, Peshawar.

.....Respondents.

Filed to-day
Registrar
31/5/19.

APPEAL U/S 4 OF THE K.P.K SERVICES TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED: 27/02/2019, WHEREBY THE APPELLANT WAS TERMINATED/DISPENSED WITH (w.e.f 01-11-1997) WITH RETROSPECTIVE EFFECT FROM SERVICE WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT WAS DISMISSED.

Re-submitted to -day and filed.
Registrar
12/6/19.

PRAYER

On acceptance of this appeal, the impugned order dated: 27-02-109 of the respondent No.01 may kindly be set aside and the appellant may graciously be reinstated in service with all back benefits etc, with any other remedy which this August Tribunal deems fit and appropriate may also be awarded in favour of appellant.

Respectfully Sheweth:-

2

1) That the appellant was appointed as Junior Clark in the Education Department in FR Bannu on 12-07-1989, as such the appellant always worked hard with honesty and dedication in the department concern, and was lastly posted in GHS Kotka Habib Ullah, FR Bannu.

(Copy of appointment order is annexed as "A")

2) That appellant applied for extra Ordinary Leave w.e.f 02-12-1994 to 27-05-1996 which was allowed, vide office order dated: 12-12-1994, although leave of the appellant was extended from 28-05-1996 to 31-10-1997, vide office order dated: 04-06-1996.

3) That after expiry of leave the appellant eagerly wanted to join his duty but without assigning any reason by the respondents the appellant was not allowed to be adjusted to his post.

4) That the appellant visited many times to the office of the respondent No.01 through verbally as well as by submitting applications as to know about the authenticity of not adjusting of the appellant to his post but neither any notice nor any order from removal of service was provided to the appellant by the respondent.

(Copy of applications are annexed as "B")

5) That after some law & order situation of the locality was got worst, and as such appellant has to suffer all the miseries, because respondent kept the matter linger on, without any justified reasons.

6) That against such violation of rules & regulations on part of the respondent, the appellant file Departmental appeal on 13-09-2016, but the same was not responded by the respondents.

(Copy of Department Appeal is annexed as "C")

7) That after laps of statutory period the appellant approached this Hon'able forum through service appeal No.02/2017, which was disposed off, vide order dated: 15-02-2018 and case was remanded back to the respondent no.01 to decide the departmental appeal of the appellant within a period of 03 months after receipt of the judgment.

(Copy of judgment dated: 15-02-2018 is annexed as "D")

8) That despite of directions respondent No.01 fail to decide the pending departmental appeal of the appellant, hence the appellant file an execution petition No.402/2018 for implementation of the judgment of this Hon'able Tribunal.

(3)

9) That during execution proceeding respondent No. 01 file office order No.930-33 / Dated: 27-02-2019 vide which the appellant was terminated / dispensed with (w.e.f 01-11-1997) with retrospective effect, accordingly on 02-05-2019 the execution proceeding were consigned to the record room, while appellant removal from service order was communicated on 02-05-2019 during the execution proceedings to the appellant.

(Copy of impugned order dated: 27-02-2019 is annexed as "E")

10) That being aggrieved from the said order of the respondent No.01 the appellant now approaches this Hon, able forum for setting aside the above mentioned order and re-instatement of service on the following grounds amongst others.

GROUNDS.

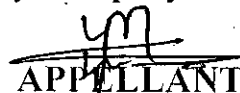
- A. That the order of the respondents is against law, facts, and violation of the procedure and the same is without any legal justification and against due course of law.
- B. That the respondents terminated the service of the appellant without assigning any reason, which is highly unjust and prejudicial to the rights of the appellant.
- C. That the appellant totally stand condemned unheard, the impugned orders doesn't provide any reason, and the appellant having long years of service to his credit, being a regular employee could not been thrown out illegally and without any process of law, such orders being void ab-initio could not be allowed to remain in field.
- D. That this fact has also been ignored by the respondents while passing the impugned termination from service order as there is not a solitary document exists that due to the absence of the appellant, any notice was issued to the appellant, nor thereafter any advertisement was published, hence appellant has not been treated in accordance with law, rules, & regulations, hence the impugned order is liable to be set-aside.
- E. That even removal from the retrospective effect is totally illegal, and without lawful authority, for the reason that respondents has admitted this fact, that since 1997 respondents has not issued any termination/ removal from service of order of the appellant till 27-02 2019, now when

4

respondent has not acted in accordance with law, rules & regulations, hence imposing major penalty from service is unwarranted under the law.


- F. That neither any proper inquiry has been conducted nor any justifying reasons was given before passing the impugned termination order.
- G. That the impugned termination order is violation of law, rules, principle of natural justice, and the same has got no sanctity to remain in filed, as it has been held in (1992 SCMR 46) **“that when law required a thing to be done in a particular manner, the same must be done accordingly and if the prescribed procedure was not followed, it would be presumed that the same had not been done in accordance with law”**, the Hon’ble Supreme Court of Pakistan has held in “Zia Ur Rehman v. Syed Ahmed Hussain and others” (2015. SCMR 1015) **“ that if the law requires a particular thing to be done in a particular manner it has to be done accordingly, otherwise it would not be in-compliance with the legislative intent”**, as such illegality has been committed by the respondents, and for the same appellant could not be suffered, hence the impugned termination from service order is without any justification and the same is liable to be set-aside.
- H. That on permission of this Hon, able court the Appellant reserves the right to urge other grounds at the time of arguments.

It is therefore most humbly prayed that On acceptance of this appeal the order of respondent No.01 dated:27.02.2019 communicated to the appellant on 02-05-2019, may kindly be set aside and the appellant be adjusted/reinstated in service with all back benefits, with any other remedy specifically not prayed for my also be granted.


APPELLANT

Dated: 31/05/2019

Through:-


(Farhan Ullah Shahbanzai)
Advocate High Court,
PESHAWAR

5

BEFORE THE KPK SEVICES TERIBUNAL PESHAWAR.

Appeal No. _____ / 2019.

Murad Ali

.....Appellant.

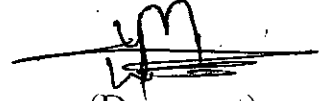
VERSUS

District Education Officer & Others


.....Respondents.

AFFIDAVIT

I, Murad Ali S/O Gul Wali Khan R/O Bannu (FR), Ex.- Junior Clerk Government High School, Kotka Habib Ullah, Sub Division Wazir Bannu. do hereby solemnly affirm and states on oath that the contents of accompanying appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon' able Court.


(Deponent)

Dated; 31 /05/2019


ATTESTED
KHALIDA RAHMAN
(ADVOCATE)
OATH COMMISSIONER
PESHAWAR

(6)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No. _____ / 2019.

Murad Ali
.....Appellant.

VERSUS

District Education Officer & Others
.....Respondents.

ADDRESSES OF THE PARTIES

**Murad Ali S/O Gul Wali Khan R/O Bannu (FR), Ex.- Junior Clerk
Government High School, Kotka Habib Ullah, Sub Division Wazir
Bannu.**
.....Appellant.

VERSUS

- 1) District Education Officer at Sub Division Wazir Bannu, at Near Bannu Township, Bazen Khel Road, Bannu.
 - 2) Assistant Director, Directorate of Education Khyber Pukhtoonkhwa, Warsk Road, Peshawar.
 - 3) Principal Government High School, Habib Ullah FR (Bannu).
 - 4) The Secretary education (E & SE), Khyber Pukhtoonkhwa, Peshawar.
 - 5) Secretary Finance Khyber Pukhtoonkhwa, at AG office Peshawar Cantt.
 - 6) Director (~~Edu~~), Directorate of Education Khyber Pukhtoonkhwa, (~~E & SE~~) Warsk Road, Peshawar.
-Respondents.


APPELLANT.

Dated; ___/05/2019.

Through:-


(Farhan Uallah Shahbanzai)
Advocate High Court,
PESHAWAR

(7)

Amend

A

D

OFFICE OF THE AGENCY EDUCATION OFFICER

APPOINTMENT OFFER

Mr. Murad Ali Khan Son of Mr. ...
herby appointed temporarily against ...
... the rules with effect from the
date of taking over charge in the Board.

Terms and Condition

1. Change report should be ...
2. ... should be checked before the ...
3. ...
4. ... etc is not allowed.
5. ... should produced ...

... if below 18 years of age ...

ATTACHED
[Signature]

569-70

12 7

PS

[Signature]
Agency Education Officer
I.S. Board

7-A

BETTER COPY

OFFICE OF THE AGENCY EDUCATION OFFICER FRONTIER REGION BANNU

APPOINTMENT ORDER

Mr. Murad Ali khan s/o Gul wali khan is hereby appointed temporarily against junior clerk post at GHS Jani khel F.R Bannu in BPS No. 5 Rs, (700-25-1200) plus usual allowances as admissible under the rules with effect from the date of taking over charge in the school.

Terms and Condition

1. Charge report should be submitted in duplicate to all
2. His/her appointment is being made purely on temporary base.
3. Sick..... F.R domicile certificate should be checked before the handing over the charge .
4. TA/DA etc is not allowed.
5. He/she should produced his/her health and age certificate from MS district headquarter Hospital Bannu.
6. He/she should not be handed over charge of the post if he/she is below 16 year of age or above 30 years of age is he/her fail to resume charge within 2 weeks his/her vacancy should be reported to this office at once .

Agency education officer

Frontier Region Bannu

Endst NO. 569-70 / _____ Dated : 12 -07 -1989

Copy forwarded for information to the :-

1. Head Master G.H.S Jani khel F.R Bannu.
2. D.A.O Bannu .
3. Office copy .

Attal
J

8

A 8

GRANT OF LEAVE

ATTESTED

Under the provision of leave Rules, 1978/1981, Article (5) sanction is hereby accorded to the Grant of earned leave w.e. from 2/12/1994 to 27/5/1996 (Both days inclusive) 512 days on half average pay in respect of Mr. ^{Muhammad} Muhammad Ali J/Clerk of GHS. Habibullah Khan FR. Bannu.

Necessary entry to this effect should be made in his Service Book and leave Account which are returned herewith.

He is likely to return to the ~~service~~ after the expiry of leave.

Ajan

(AQAL JAN)
AGENCY EDUCATION OFFICER,
F. R. BANNU.

Endst; No. 1139-40 dated FR. Bannu the 12/12/1994.

Copy of the above is forwarded to the Headmaster, GHS. Habibullah Khan FR. Bannu w/r to his office No. 37 dated 30/11/1994 for information and necessary action.

Ajan

AGENCY EDUCATION OFFICER,
F. R. BANNU

AGENCY EDUCATION OFFICER,
(FR) BANNU.

ATTESTED

J

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4

OFFICE OF THE AGENCY EDUCATION OFFICER, FRONTIER REGIONS, BANNU

EXTRA ORDINARY LEAVE

ATTESTED

Under the provision of Leave rules, 1978/1981, Article (12) Sanction is hereby accorded to the grant of Extra Ordinary Leave (with out pay) w.e. from 28/05/1996 to 31/01/1997 (249 days) (Both days inclusive in combination of earned leave (On half pay) up to 27/05/1996, sanctioned vide this office Endst; No. 1139-40 dt; 12/12/1994 in respect of Mr. Murad Ali, J/Clerk GHS. ~~Murad Ali, J/Clerk GHS. Murad Ali, J/Clerk GHS. Murad Ali, J/Clerk GHS.~~ Habibullah Khan, FR. Bannu.

Necessary entry to this effect should be made in his Service Book and Leave Account which are returned herewith.

He is likely to return to the same station after the expiry of leave.

Mohd Ali
AGENCY EDUCATION OFFICER,
(FR) BANNU

Endst; No. 55111-12

dated FR. Bannu the

11/6 /1996.

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

1. Headmaster, GHS. Habibullah FR. Bannu w/r to his No. _____ dt; _____ /1996
alongwith Service Book & Leave Account.

2. Official concerned.

Bu
AGENCY EDUCATION OFFICER,
(FR) BANNU.

ATTESTED

[Signature]

گورنمنٹ جی ایچ ایچ ایف آر سیکشن ایف آر سیکشن

(11)

درخواست برآر Adjust کیے گئے ہیں

تعداد مختلف "Extra Ordinary Leave"

جی۔۔۔ مال اسٹائل خبر دیکھ کر من رہا ہے۔

1۔۔۔ یاد من اسٹائل سونم 12/7/1989 کو بطور جوئینر ملکر ایچ ایف آر سیکشن ڈیپارٹمنٹ FR

بنوں میں ملازم ہوا اور اپنی ملازمت سے لے کر بحال اپنی فراغت سے ہی
ادا کرنا چلا آ رہا ہے۔

2۔۔۔ یاد من اسٹائل کو آپ جی۔۔۔ Leave Rules 1978 کے تحت 02/12/1994 سے 27/1/1996

تک Leave کا درخواست منظور کی جس میں سونم 4/6/1996 کو سونم 31/1/1997 تک توسیع
دی گئی۔

3۔۔۔ یاد من اسٹائل "Leave" تعداد توسیع کا وقت ختم ہوا تو من اسٹائل سے

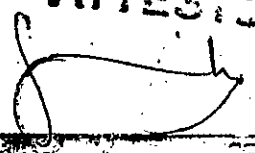
گورنمنٹ یا اسٹائل کیلے جی ایف آر سیکشن میں اپنی ڈیوٹی سے روکے گئے
تاکہ من اسٹائل پر نہیں مہاسبہ ڈیوٹی سراجیا دینے سے روک دیا۔

4۔۔۔ یاد من اسٹائل کے بعد من اسٹائل سے درخواست کرنا ہے اگلے سیر ڈیوٹی سراجیا

دینے کے اوقات چار من اسٹائل
آئیے اس لیے یہاں فاسٹ اسٹائل اسٹائل سٹوڈنٹوں کا۔

سٹائل : مراد علی وردگھل ولہ خان سڈن جوئینر ملکر GHS کو ٹیکہ جی ایف آر سیکشن

ATTEST



12

Amir

Handwritten marks and a signature.

To

DIRECTOR (FATA)
FATA SECRETARIAT
WARSAK ROAD PESHAWAR.

ATTESTED

Handwritten signature.

SUBJECT: DEPARTMENTAL APPEAL FOR THE ADJUSTMENT OF THE APPEALANT ON THE POST OF JUNIOR CLERK AND RELEASE OF SALARIES W.E.FROM 1.1.2001 TILL DATE

RESPECTED SIR:

That the appellant is working as junior clerk and lastly posted in GHS HabibUllah (FR.Bannu).

That the appellant applied for leave from 2.12.1994 to 27.5.1996 which was allowed vide office order dated 12.12.1994 and expiry of that leave, the appellant further applied for leave from 28.5.1996 to 31.1.1997 which was also allowed vide office order dated 4.6.1996.

That after expiry of leave, the appellant wanted to join his duty, but he was not adjusted till date without showing any reason and his salaries was also stopped w.e.from 1.1.2001, despite the fact that he is still on the strength of department as he was never removed or dismissed from service.

That now the appellant wants to file departmental appeal on the following grounds for his adjustment on the post of junior clerk and release of his salaries w.e.from 1.1.2001.

ATTESTED.

Handwritten signature.

13

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ATTESTED

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GROUNDS:

- A) That not adjusting the appellant on the post of junior clerk and not releasing his salaries w.e.from 1.1.2001 is against the law, facts, norms of justice.
- B) That the appellant was never removed or dismissed from service and is still on the strength of the department. Therefore it is the responsibility of the department to adjust him on the post of Junior Clerk and release his salaries.
- C) That not adjusting the appellant on the post of junior clerk and not releasing his salaries without showing any reason is the violation of law and rules.
- D) That the appellant is not treated according to law and rules and is deprive from his legal right of adjustment on the post of junior clerk and his salaries w.e.from 1.1.2001.

It is, therefore most humbly prayed that on the acceptance of this departmental appeal, the appellant may please be adjust on the post of junior clerk with all back and consequential benefits with release of monthly pay w.e.from 1.1.2001 till date and onwards.

[Handwritten signature]
Appellant
Murad Ali,
Junior Clerk, GHS
HabibUllah (FR) Bannu

[Handwritten signature]

[Handwritten signature]
18/9

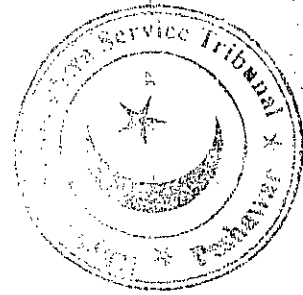
ATTESTED
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14
Ammer "D"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 02/2017

Date of Institution ... 26.12.2016
Date of Decision ... 15.02.2018



Murad Ali, Junior Clerk,
GHS, Habibullah, (FR) Bannu.

(Appellant)

VERSUS

The Secretary Education (E & SE) KPK, Peshawar & Three others.

(Respondents)

Mr. Ali Azim Afridi,
Advocate

For appellant.

Mr. Muhammad Jan,
Deputy District Attorney

For respondents.

MR. GUL ZEB KHAN

MR. MUHAMMAD HAMID MUGHAL

MEMBER
MEMBER

JUDGMENT

ATTESTE

MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

GUL ZEB KHAN, MEMBER. The aforesaid appeal dated 26.12.2016 has been lodged by Murad Ali, Junior Clerk hereinafter referred to as the appellant, under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, wherein the appellant has impugned the office order dated 01.01.2000 of respondents. The appellant preferred a departmental appeal on 13.09.2016 which was not responded within the statutory period of ninety days.

ATTESTED

2. Learned counsel for the appellant argued that the appellant was appointed as junior clerk in the year 1989 and has worked at different stations and was lastly posted in GHS Habibullah, (FR) Bannu. That the appellant applied for leave from 02.12.1994 to 27.05.1996 which was allowed vide office order dated 12.12.1994.

That leave was extended from 28.05.1996 to 31.01.1997 vide office order dated 04.06.1996. That after expiry of the said leave, the appellant wanted to join his duty, but he was not adjusted till date without showing any reason. Further argued that not adjusting the appellant on the post of junior clerk on return from leave, without showing any reason is the violation of law, rules, principles of justice and fair play. Further argued that the appellant preferred departmental appeal dated 13.09.2016 which was not responded. Learned counsel for the appellant stressed that the respondents may be directed to adjust the appellant and release his salary accordingly.

3. On the other side learned Deputy District Attorney argued that in this regard the AFOFFR Bannu has submitted a detail report to the Director Education PATA Warsak Road Peshawar. That the appellant was appointed as Junior Clerk vide order dated 12.07.1989. The appellant was also granted extra ordinary leave w.e.f. 02.12.1994 to 27.05.1996, 512 days vide order dated 02.12.1994 to also extended his leave w.e.f. 28.05.1996 to 31.10.1997. After this leave he has neither applied for leave nor adjusted since expiry of his leave. That the appellant has not performed his duty therefore according to rules invoke the appellant is not entitled for any benefits including his monthly pay as he has not performed his duty regularly.

4. We have heard arguments of the learned counsel for the appellant and Peshawar

learned District Attorney for the respondents and have gone through the record

available on file.

ATTESTED

RECORDED
Khyber Pakhtunkhwa
Service Tax

ATTESTED

(15)

conducted against the appellant for his unauthorized absence from duty. The respondents have also not taken any action on the departmental appeal of the appellant. Nothing found on the record that the departmental appeal of the appellant has been examined by the respondent department as on file there is no order of the appellate authority. In the stated circumstances this Tribunal is of the considered view to remit the case of the appellant to the appellate authority with the direction to examine the case of the appellant and to decide his departmental appeal with speaking order within a period of three (3) months of the receipt of this judgment. The present appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCE
15.02.2018

(Signature)
(Gul Zeb Khan)
MEMBER

(Signature)
(Muhammad Hamid Mughal)
MEMBER

Correct copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Payment 16-2-18
Number of 1200
Copying Fee
Urgent
Total
Name of
Date of 27-2-18
Date of 27-2-18

ATTESTED
(Signature)



(17)
Annex 'E'

Office of the
DISTRICT EDUCATION OFFICER, SUB: DIV: WAZIR BANNU
Near Bannu Township Bezen Khel road, Bannu
Ph: 0928-633255, Fax: 0928-633255

No. 930-33 /Dated: 27 / 12 / 2019

Office order

The services of Mr. Murad Ali Ex-J/C GHS Kotka Habibullah SDW Bannu (Erst While FR Bannu) is hereby terminated/ dispensed with wef 1.11.1997 with retrospective effect as per direction of the decision taken in minutes of departmental disposal committee meeting in service appeal no 2/2017 and execution petition No 402/2018

**District Education Officer
Sub Division Wazir Bannu**

Copy to:

- 1- Registrar Khyber Pakhtun Khwa Service Tribunal, Peshawar.
- 2- Director Elementary & Secondary Education Khyber Pakhtun Khwa, Peshawar.
- 3- Director Education Newly Merge Districts Khyber Pakhtun Khwa, Peshawar.
- 4- Mr. Murad Ali Ex-Joiner Clerk GHS Habibullah SDW Bannu.
- 5- Office File.

[Signature]
**District Education Officer
Sub Division Wazir Bannu**

ATTESTED

[Signature]

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No – 744 of 2019

Murad Ali.....Appellant

VERSUS

DEO SDW Bannu and othersRespondents

INDEX

S.No	Description of Documents	Annexure	page
1	Covering Letter		1
2	Para- Wise Comments		2, 3& 4
3	Affidavit		5
4	Copy of order dated 15-12-2018	A	6-8
5	Copy of Minutes of Appellate Committee	B	9

Note: (Copies attached to each set)

Dated: / / 2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal NO 744 of 2019

Murad Ali----- Appellant

Versus

District Education Officer SDW Bannu and others----- Respondents

Joint Comments on behalf of Respondent No:1,2, and 6

Preliminary Objections

1. That the Appellant has no cause of action, locus standi to file the instant Appeal.
2. That the appellant has concealed material facts from the Honorable Tribunal.
3. That the matter is badly time barred.
4. That the conduct of the Appellant stopped himself to bring this instant appeal.

On the facts.

- 1- It is correct to the extent that the appellant was Government Servant in Education Department as Junior Clark and lastly posted in GHS Habib Ullah SDW (EX FR Bannu) .
- 2- No Comment, pertains to record.
- 3- In Correct, after expiry of his sanctioned leave, the appellant was absent from his official duty for a long period.
- 4- In Correct, the appellant was absent from duty for many years continuously and his approach for readjustment was badly time barred and impossible under the rules.
- 5- In correct, the department has not lingered on his case due to any circumstances. However the appellant failed to report for duty after expiry of the leave
- 6- It is in correct. the Departmental appeal was time barred and was after long period of absences from his official duty without any application and any kind sanction of leave.
- 7- It is correct to the extent that the appellant approached to Honorable Service Tribunal through service appeal No 02/ 2017, the subject case remanded back to the respondent No 1 and the respondent No 1 DEO SDW referred the case to high ups for reasonable consideration.
- 8- In correct, the respondent No1 referred the case to High ups for legal opinion along with all relevant documents and during this period the appellant filed an execution petition No 402/2018 and Honorable tribunal directed the Appellate Authority in his Judgment dated 15-02-2018 "to examine the case of the appellant and to decide his departmental appeal with speaking order within a period of three (3) months of the receipt of this judgment"(Copy of order dated 15-12-2018 is annexed as Annexure A).

9- In correct, in the light of direction of Honorable Service Tribunal the Appellant was called for personal hearing and was provided an opportunity of hearing / defense and the appellate Authority recommended the termination of appellant with retrospective effect on the basis of available record and self-admission / confession of the appellant for his absence of duties for the long period of 19 years, without any sanctioned leave. (**Copy of Minutes of Appellate Committee is annexed as annexure B**).

10- In Correct, the appellant was absent from his duty without any sanctioned leave for a long period and has no right for reinstatement.

On Grounds:

(A) In correct ,the department had taken action against the appellant according to Rules and law and judgment of this Honorable Tribunal because he was absent from duty for a long period without any sanctioned leave.

(B) In correct, the termination of the appellant was legal reason and according to law.

(C) In correct, the appellate Authority/ department provided opportunity to the appellant for hearing/ and defense but the appellant failed to defense himself on legal grounds, after that the appellate Authority recommended the appellant for termination on reasonable grounds.

(D) In correct, the appellant was absent from his duty without any permission and sanction leave for the long period, which has never denied by appellant there for the appellant has no right to be reinstated according to law and rules.

(E) In correct, as mentioned above that the departmental/ Appellate Authority recommended the appellant for termination due to his absence from his duty for a long period without any sanctioned leave as he admitted in his statement before the appellate authority during his appearance for personal hearing.

(F) In correct, an opportunity was provided to the appellant for defense but he failed to defend himself on reasonable ground and to justify his absence from duty.

(G) In correct, the appellant was absent from duty for 19 years without any prior sanction of leave and he could not justify his absence from duty according to law and rules.

(H) In correct, the appeal of the appellant is baseless and has no legal ground.


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Pray

In the light of the above stated facts, it is humbly prayed that appeal of the appellants having no valid legal grounds may very graciously be dismissed with cost.

Respondent No 1


District Education Officer
Sub Division Wazir Bannu
(EX Agency Education Officer FR Bannu)

Respondent No 2


Assistant Director Education
Khyber Pakhtunkhwa

Respondent No 6


Director E& SE Khyber Pakhtunkhwa Peshawar

(5)

29

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service appeal NO. 744 of 2019

Murad Ali-----Appellant

Versus

DEO SDW Bannu and others-----Respondents

AFFIDAVIT

I, Mr. Muhammad Yasin Khan, District Education Officer SDW Bannu, do hereby solemnly affirm and declare on oath that accompanying Service Appeal reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.

Dated: / /2020

DEPONENT

M. Yasin Khan
**District Education officer
Sub Division Wazir Bannu**

IDENTIFIED BY

District Attorney General
Khyber Pakhtunkhwa Service Tribunal Peshawar

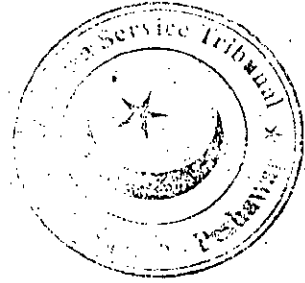
(6)

28

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 02/2017

Date of Institution 26.12.2016
Date of Decision 15.02.2018



Murad Ali, Junior Clerk,
GIS, Habibullah, (FR) Bannu.

(Appellant)

VERSUS

The Secretary Education (E & SE) KPK, Peshawar & Three others.

(Respondents)

Mr. Ali Azim Afridi,
Advocate

For appellant.

Mr. Muhammad Jan,
Deputy District Attorney

For respondents.

MR. GUL ZEB KHAN
MR. MUHAMMAD HAMID MUGHAL

MEMBER
MEMBER

ATTESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

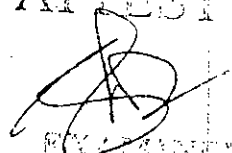
GUL ZEB KHAN, MEMBER. The aforesaid appeal dated 26.12.2016 has been lodged by Murad Ali, Junior Clerk hereinafter referred to as the appellant, under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, wherein the appellant has impugned the office order dated 01.01.2000 of respondents. The appellant preferred a departmental appeal on 13.09.2016 which was not responded within the statutory period of ninety days.

2. Learned counsel for the appellant argued that the appellant was appointed as junior clerk in the year 1989 and has worked at different stations and was lastly posted in GIS Habibullah, (FR) Bannu. That the appellant applied for leave from 02.12.1994 to 27.05.1996 which was allowed vide office order dated 12.12.1994.

(7)

That leave was extended from 28.05.1996 to 31.01.1997 vide office order dated 04.06.1996. That after expiry of the said leave, the appellant wanted to join his duty, but he was not adjusted till date without showing any reason. Further argued that not adjusting the appellant on the post of junior clerk on return from leave, without showing any reason is the violation of law, rules, principles of justice and fair play. Further argued that the appellant preferred departmental appeal dated 13.09.2016 which was not responded. Learned counsel for the appellant stressed that the respondents may be directed to adjust the appellant and release his salary accordingly.

3. On the other side learned Deputy District Attorney argued that in this regard the AEO FR Bannu has submitted a detail report to the Director Education FATA Warsak Road Peshawar. That the appellant was appointed as Junior Clerk vide order dated 12.07.1989. The appellant was also granted extra ordinary leave w.e.f 02.12.1994 to 27.05.1996, 512 days vide order dated 02.12.1994 to also extended his leave w.e.f 28.05.1996 to 31.10.1997. After this leave he has neither applied for leave nor adjusted since expiry of his leave. That the appellant has not performed his duty therefore according to rules invogue the appellant is not entitled for any benefits including his monthly pay as he has not performed his duty regularly.

ATTEST

 Attestor
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

4. We have heard arguments of the learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record available on file.


5. The respondent department has neither issued any sanction for further extension in the leave period nor any departmental proceedings have been

conducted against the appellant for his unauthorized absence from duty. The respondents have also not taken any action on the departmental appeal of the appellant. Nothing found on the record that the departmental appeal of the appellant has been examined by the respondent department as on file there is no order of the appellate authority. In the stated circumstances this Tribunal is of the considered view to remit the case of the appellant to the appellate authority with the direction to examine the case of the appellant and to decide his departmental appeal with speaking order within a period of three (3) months of the receipt of this judgment. The present appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCE
15.02.2018


(Muhammad Hamid Mughal)
MEMBER


(Gul Zeb Khan)
MEMBER

Certificate for true copy

MEMBER
Khyber Pakhtunkhwa
Services Tribunal,
Peshawar

Date of Issue 16-2-18
Number of Pages 1200
Copying ✓
Urgent ✓
Total 8
Name of [Signature]
Date of 27-2-18
Date of 27-2-18

- | | |
|--|----------|
| 1. Mr. Hanif Ur Rehman Addl: Director (Estab) | Chairmen |
| 2. Mr. Yaseen Khan District Education Officer FR Bannu | Member |
| 3. Mst. Shagufta Rani (Litigation) local Directorate | Member |

Brief facts of the case.

1. The appellant lodge service appeal no. 402 in Khyber Pakhtunkhwa Service Tribunal in impugned order dated 15.02.2018 of the respondents where he was further restrained due to his long absence from official duties.
2. Initially the appellant was appointed as Junior Clerk in Education Department FR Bannu in 1989 and applied for extra ordinary leave w.e.f 02.12.1994 to 27.05.1996 which was extended upto 31.10.1997. since expiry of his sanction leave the appellant become disappeared for a numbers of years and the filed the subject appeal for release of his salaries / adjustment. The subject appeal was converted into Departmental representation by the Honorable Service Tribunal vice dated 15.02.2018.
3. The appellant was called for personal hearing on 28.01.2019 and was provided an opportunity of hearing / defense following conclusion was drawn on the basis of available record and hearing of the appellant.
 - i. The appellant was willfully absent from his official duties since 1997, the day his leave expired. This contention was admitted by the appellant during the course of hearing.
 - ii. Action was taken by stopping his salary by the then District Education Officer
 - iii. There is a self admission / confession on the part of appellant for his absence of duties on the pretext of enmity which is a mere pretension because no such evidence was presented by the appellant ~~not~~ can be justified at this belated stage.
 - iv. The appellant has submitted application / appeal after long 19 years absence, therefore hit by principal of laches and does not entitled for any relief under the law.

Recommendation

1. The appellant services may be dispensed with/ penalty of removal of service may be imposed with retrospective effect.
2. District Education Officer may be circulated instructions regarding follow of proper procedure in cases of willful absence.

1. Mr Hanif- Ur- Rehman Addl: Director (Estab)

4/2/19

2. M. Yaseen Khan District Education Officer FR Bannu

[Signature]

3. Mst. Shagufta Rani (Litigation) local Directorate

[Signature]

لہذا جناب چیئرمین ریس ٹریبونل KPIK اپنے در

مرا علی بنی DFO ویرہ

درخواست ممبر اہلیت دینے پر
جمع کرنے میں نوٹسز برائے رپ نڈٹس

جناب سال اسٹیل اہلانہ حسب ذیل ممبروں سے۔

1۔ اسٹیل اہلانہ کی اپیل بعنوان بال ٹریبونل غذا میں زیر توجہ
مجموعہ 15 اگست 2019ء کو

2۔ اسٹیل اہلانہ کی نوٹسز میں جمع کرنا
جکی و اسٹیل نوٹسز کو نوٹس جاری نہ ہو سکے۔

3۔ اسٹیل اہلانہ کی نوٹسز میں جمع کرنا
میں۔

اسٹیل اہلانہ کی

درخواست غذا اہلانہ کو نوٹسز میں جمع کرنا
صرف 3 دن کی ہلکت عطا کی جائے۔

منشی

اہلانہ بنوریہ فرحان اللہ شہا تری اہلانہ

المرفوعہ: 11/1/2019

Respectfully Sheweth:-

2

1) That the appellant was appointed as Junior Clark in the Education Department in FR Bannu on 12-07-1989, as such the appellant always worked hard with honesty and dedication in the department concern, and was lastly posted in GHS Kotka Habib Ullah, FR Bannu.

(Copy of appointment order is annexed as "A")

2) That appellant applied for extra Ordinary Leave w.e.f 02-12-1994 to 27-05-1996 which was allowed, vide office order dated: 12-12-1994, although leave of the appellant was extended from 28-05-1996 to 31-10-1997, vide office order dated: 04-06-1996.

3) That after expiry of leave the appellant eagerly wanted to join his duty but without assigning any reason by the respondents the appellant was not allowed to be adjusted to his post.

4) That the appellant visited many times to the office of the respondent No.01, through verbally as well as by submitting applications as to know about the authenticity of not adjusting of the appellant to his post but neither any notice nor any order from removal of service was provided to the appellant by the respondent.

(Copy of applications are annexed as "B")

5) That after some law & order situation of the locality was got worst, and as such appellant has to suffer all the miseries, because respondent kept the matter linger on, without any justified reasons.

6) That against such violation of rules & regulations on part of the respondent, the appellant file Departmental appeal on 13-09-2016, but the same was not responded by the respondents.

(Copy of Department Appeal is annexed as "C")

7) That after laps of statutory period the appellant approached this Hon'able forum through service appeal No.02/2017, which was disposed off, vide order dated: 15-02-2018 and case was remanded back to the respondent no.01 to decide the departmental appeal of the appellant within a period of 03 months after receipt of the judgment.

(Copy of judgment dated: 15-02-2018 is annexed as "D")

8) That despite of directions respondent No.01 fail to decide the pending departmental appeal of the appellant, hence the appellant file an execution petition No.402/2018 for implementation of the judgment of this Hon'able Tribunal.

TESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(3)

9) That during execution proceeding respondent No. 01 file office order No.930-33 / Dated: 27-02-2019 vide which the appellant was terminated / dispensed with (w.e.f 01-11-1997) with retrospective effect, accordingly on 02-05-2019 the execution proceeding were consigned to the record room, while appellant removal from service order was communicated on 02-05-2019 during the execution proceedings to the appellant.


(Copy of impugned order dated: 27-02-2019 is annexed as "E")

10) That being aggrieved from the said order of the respondent No.01 the appellant now approaches this Hon, able forum for setting aside the above mentioned order and re-instatement of service on the following grounds amongst others.

G R O U N D S.

- A. That the order of the respondents is against law, facts, and violation of the procedure and the same is without any legal justification and against due course of law.
- B. That the respondents terminated the service of the appellant without assigning any reason, which is highly unjust and prejudicial to the rights of the appellant.
- C. That the appellant totally stand condemned unheard, the impugned orders doesn't provide any reason, and the appellant having long years of service to his credit, being a regular employee could not been thrown out illegally and without any process of law, such orders being void ab-initio could not be allowed to remain in field.
- D. That this fact has also been ignored by the respondents while passing the impugned termination from service order as there is not a solitary document exists that due to the absence of the appellant, any notice was issued to the appellant, nor thereafter any advertisement was published, hence appellant has not been treated in accordance with law, rules, & regulations, hence the impugned order is liable to be set-aside.
- E. That even removal from the retrospective effect is totally illegal, and without lawful authority, for the reason that respondents has admitted this fact, that since 1997 respondents has not issued any termination/ removal from service of order of the appellant till 27-02 2019, now when

ATTESTED

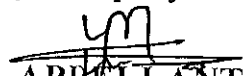

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

4

respondent has not acted in accordance with law, rules & regulations, hence imposing major penalty from service is unwarranted under the law.

- F. That neither any proper inquiry has been conducted nor any justifying reasons was given before passing the impugned termination order.
- G. That the impugned termination order is violation of law, rules, principle of natural justice, and the same has got no sanctity to remain in filed, as it has been held in (1992 SCMR 46) "that when law required a thing to be done in a particular manner, the same must be done accordingly and if the prescribed procedure was not followed, it would be presumed that the same had not been done in accordance with law", the Hon'ble Supreme Court of Pakistan has held in "Zia Ur Rehman v. Syed Ahmed Hussain and others" (2015. SCMR 1015) " that If the law requires a particular thing to be done in a particular manner it has to be done accordingly, otherwise it would not be in-compliance with the legislative intent", as such illegality has been committed by the respondents, and for the same appellant could not be suffered, hence the impugned termination from service order is without any justification and the same is liable to be set-aside.
- H. That on permission of this Hon, able court the Appellant reserves the right to urge other grounds at the time of arguments.


It is therefore most humbly prayed that On acceptance of this appeal the order of respondent No.01 dated:27.02.2019 communicated to the appellant on 02-05-2019, may kindly be set aside and the appellant be adjusted/reinstated in service with all back benefits, with any other remedy specifically not prayed for my also be granted.


APPELLANT

Dated: 31/05/2019

Certified to be true copy

Through:-


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


(Farhan Ullah Shahbanzai)
Advocate High Court,

31

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR .

Service Appeal NO 744 of 2019

Murad Ali----- Appellant

Versus

District Education Officer SDW Bannu and others----- Respondents

Joint Comments on behalf of Respondent No:1,2, and 6

Preliminary Objections

1. That the Appellant has no cause of action, locus standi to file the instant Appeal.
2. That the appellant has concealed material facts from the Honorable Tribunal.
3. That the matter is badly time barred.
4. That the conduct of the Appellant stopped himself to bring this instant appeal.

On the facts.

- 1- It is correct to the extent that the appellant was Government Servant in Education Department as Junior Clark and lastly posted in GHS Habib Ullah SDW (EX FR Bannu) .
- 2- No Comment, pertains to record.
- 3- In Correct, after expiry of his sanctioned leave, the appellant was absent from his official duty for a long period.
- 4- In Correct, the appellant was absent from duty for many years continuously and his approach for readjustment was badly time barred and impossible under the rules.
- 5- In correct, the department has not lingered on his case due to any circumstances. However the appellant filed to report for duty after expiry of the leave
- 6- It is in correct. the Departmental appeal was time barred and was after long period of absences from his official duty without any application and any kind sanction of leave.
- 7- It is correct to the extent that the appellant approached to Honorable Service Tribunal through service appeal No 02/ 2017,the subject case remanded back to the respondent No 1 and the respondent No 1 DEO SDW referred the case to high ups for reasonable consideration.
- 8- In correct, the respondent No1 referred the case to High ups for legal opinion along with all relevant documents and during this period the appellant filed an execution petition No 402/2018 and Honorable tribunal directed the Appellate Authority in his Judgment dated 15-02-2018 "to examine the case of the appellant and to decide his departmental appeal with speaking order within a period of three (3) months of the receipt of this judgment"(Copy of order dated 15-12-2018 is annexed as Annexure A).

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

9- In correct, in the light of direction of Honorable Service Tribunal the Appellant was called for personal hearing and was provided an opportunity of hearing / defense and the appellate Authority recommended the termination of appellant with retrospective effect on the basis of available record and self-admission / confession of the appellant for his absence of duties for the long period of 19 years, without any sanctioned leave. (**Copy of Minutes of Appellate Committee is annexed as annexure B**).

10- In Correct, the appellant was absent from his duty without any sanctioned leave for a long period and has no right for reinstatement.

On Grounds:

(A) In correct ,the department had taken action against the appellant according to Rules and law and judgment of this Honorable Tribunal because he was absent from duty for a long period without any sanctioned leave.

(B) In correct, the termination of the appellant was legal reason and according to law.

(C) In correct, the appellate Authority/ department provided opportunity to the appellant for hearing/ and defense but the appellant failed to defense himself on legal grounds, after that the appellate Authority recommended the appellant for termination on reasonable grounds.

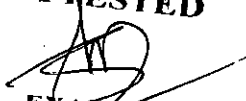
(D) In correct, the appellant was absent from his duty without any permission and sanction leave for the long period, which has never denied by appellant there for the appellant has no right to be reinstated according to law and rules.

(E) In correct, as mentioned above that the departmental/ Appellate Authority recommended the appellant for termination due to his absence from his duty for a long period without any sanctioned leave as he admitted in his statement before the appellate authority during his appearance for personal hearing.

(F) In correct, an opportunity was provided to the appellant for defense but he failed to defend himself on reasonable ground and to justify his absence from duty.

(G) In correct, the appellant was absent from duty for 19 years without any prior sanction of leave and he could not justify his absence from duty according to law and rules.

(H) In correct, the appeal of the appellant is baseless and has no legal ground.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

4

25

Pray

In the light of the above stated facts, it is humbly prayed that appeal of the appellants having no valid legal grounds may very graciously be dismissed with cost.

Respondent No 1

[Signature]
District Education Officer
Sub Division Wazir Bannu
(EX Agency Education Officer FR Bannu)

Respondent No 2

[Signature]
Assistant Director Education
Khyber Pakhtunkhwa

Respondent No 6

[Signature]
Director E& SE Khyber Pakhtunkhwa Peshawar

Date of Presentation of Application _____

Number of Words 1200

Copying Fee 14/-

Urgent _____

Total 14/-

Name of Copyist _____

Date of Completion of Copy _____

Date of Delivery of Copy _____

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

بجرت

سرورس ٹریڈ سول لیسٹ اور

صدا علی 2 پنجاب
صدا علی بیٹام حکمہ حکمہ

موردہ
مقدمہ
دعوی
جرم

باعث تحریر آئنگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام لیسٹ اور
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی نکل کاروائی کا کمال اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و اقرار ثبات و فیصلہ پر حلف دینے جواب دہی اور اقبال دعوی اور
بصورت ڈگری کرنے اجراء اور وصولی چیک در پیہ از رسمی دعوی اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے نکل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخے منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جائے التوائے مقدمہ کے
سب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھنا یا کہ سندر ہے۔

Accepted
Alleged

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الرقوم

والہ
دگ
والہ

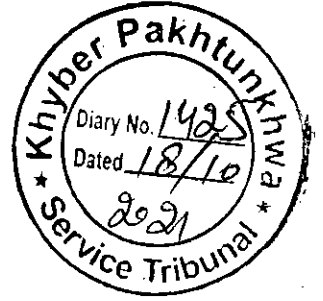
کے لئے منظور ہے۔

صدا علی

مقام

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service appeal No. 744/2019



Put up to the worthy chair-man
with relevant app-
18/10/21

Murad Ali

VS

Education Deptt:

APPLICATION FOR FIXING THE INSTANT APPEAL ON
EARLY DATE INSTEAD OF 02.02.2022.

Read.

Respectfully Sheweth:

1. That the appellant has filed the instant appeal against the order dated 27.02.2019 in this Honourable Tribunal, whereby the appellant was terminated/dispensed with effect from 01.11.1997.
2. That the instant appeal was fixed on 28.09.2021, however due to unavailability of the Divisional Bench of this Honourable Tribunal, the instant appeal was adjourned to 02.02.2022, which is too long.
3. That as the appellant is terminated from service and is jobless due to which his financial position is unbearable and his whole family is effecting financially badly
4. It is interest to of justice to the fix the instant appeal on any early date instead of 02.02.2022.

It is therefore most humbly prayed that on acceptance of this application the instant may kindly be fixed on any early date instead of 02.02.2022.

APPELLANT

THROUGH:

TAIMUR ALI KHAN
ADVOCATE HIGH COURT

Allowed
For in December

18/10/21

7-12-21



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 2591 /ST

Dated: 27/12 /2021

All communications should be
addressed to the Registrar KPK Service
Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262


To

The District Education Officer,
Government of Khyber Pakhtunkhwa
at Sub Division Wazir Bannu near Bannu Township, Bazen Khel
Road Bannu.

Subject: JUDGMENT IN APPEAL NO. 744/2019 MR. MURAD ALI.

I am directed to forward herewith a certified copy of Judgement
dated 14.12.2021 passed by this Tribunal on the above subject for strict
compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR