

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 711/2019

Date of Institution ... 30.05.2019

Date of Decision ... 26.01.2022

Nadar Khan S/o Fawas Khan, Ex-C.T (BPS-15), R/o Vill Jano. P.O & Tehsil Khwaza
Khela District Swat. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary
Education, Peshawar and others. ... (Respondents)

Ansar Ullah Khan
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are

that the appellant was appointed as PTC Teacher on 24-09-1987 and was promoted as CT on 01-04-1990. The appellant availed 365 days leave without pay with effect from 01-10-2014 to 30-09-2015 sanctioned vide order dated 01-10-2014. Upon return from leave, the appellant reported arrival on 19-11-2015, but the appellant was removed from service vide order dated 01-12-2015. The appellant filed departmental appeal followed by Service Appeal No 212/2016, which was decided vide judgment dated 18-12-2017 with direction to the respondents to conduct de-novo inquiry. The appellant filed execution petition, which was disposed of vide judgment dated 17-01-2019, as the respondents produced the impugned order dated 04-05-2018 and informed that a result of de-

novo proceedings, the appellant was awarded with minor punishment of treating his absence and intervening period as without pay and one annual increment was stopped without cumulative effect. Feeling aggrieved, the appellant filed departmental appeal dated 11-02-2019, which was not responded, hence the instant service appeal with prayers that the impugned orders dated 04-05-2018 communicated to the appellant vide order dated 17-01-2019 may be set aside and the appellant may be allowed all financial back benefits with effect from the date of his removal dated 01-10-2015 till 20-02-2018.

02. Learned counsel for the appellant has contended that the impugned order being ultra vires of the law and rules, discriminatory, arbitrary, malafide and without lawful authority is liable to be set aside; that the appellant was initially re-instated in service on acceptance of his service appeal, which was notified vide order dated 21-02-2018; that de-novo inquiry was conducted and the inquiry officer recommended in favor of the appellant but the respondents reacted otherwise; that the impugned order is arbitrary, discriminatory, against the principle of equity, law, justice and propriety calling for interference by this honorable tribunal.

03. Learned Additional Advocate General for the respondents has contended that the appellant was serving abroad and someone on his behalf has submitted application for extra-ordinary leave without pay, which was granted mistakenly, as the appellant was absent from duty since 2012; that when the matter of service abroad came into the notice of the authorities, notice of his absent was taken; that even after expiry of his leave, the appellant remained absent from duty, hence a showcause notice was served upon the appellant, despite the appellant did not join his duty, hence he was removed from service; that upon judgment of this tribunal, a de-novo inquiry was conducted and upon recommendation of the inquiry officer, the appellant was re-instated in service but was awarded with minor punishment of treating his absence as well as

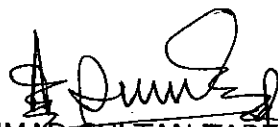
intervening period as without pay and was awarded with minor punishment of stoppage of an increment without cumulative effect.


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

05. Record reveals that the appellant was granted extra-ordinary leave without pay for one year with effect from 01-10-2014 to 30-09-2015 sanctioned vide order dated 01-10-2014. The appellant after availing the leave reported his arrival but he was not adjusted, rather was proceeded on the charges of absence and was dismissed from service dated 01-12-2015. Upon interference of this tribunal, de-novo inquiry was conducted and the appellant was re-instated dated 04-05-2018, but was awarded with minor punishments. Placed on record is inquiry report, which in fact is a fact finding inquiry as the inquiry officer further recommended to the respondents to ascertain his stay abroad and if his stay abroad was confirmed, then minor penalty of stoppage of increment may be imposed upon him, but the respondents without ascertaining such fact, imposed minor penalty of stoppage of increment, which however was illegal, as no penalty can be imposed merely on assumption, which requires solid proof.

06. In view of the foregoing discussion, we are inclined to partially accept the appeal. The impugned order dated 04-05-2018 is set aside to the extent of minor penalty of stoppage of annual increment. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
26.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

ORDER

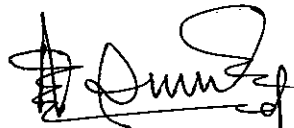
26.01.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondent present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, we are inclined to partially accept the appeal. The impugned order dated 04-05-2018 is set aside to the extent of minor penalty of stoppage of annual increment. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

26.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



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

25.01.2022

Appellant in person present. Mr. Muhammad Adeel Butt, Addl. AG for respondents present.

Arguments heard. To come up for order before the D.B on 26.01.2022

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

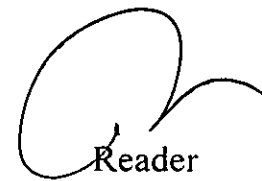
Chairman

q

31.12.2020 Due to summer vacation, case is adjourned to 12.04.2021 for the same as before.


Reader

12.04.2021 Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 26.07.2021 for the same as before.


Reader

26.07.2021 Junior to counsel for appellant present.

Muhammad Adeel Butt learned Additional Advocate General alongwith Muhammad Siddique Litigation Officer for respondents present.

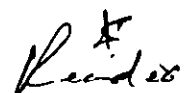
Former made a request for adjournment as senior counsel is not available today. Request is accorded. To come up for arguments on 15.12.2021 before D.B.


(Rozina Rehman)
Member (J)


Chairman

15-12-21

DB is on Tour case can't come up? For the same on Dated. 25-1-22


Reader

10.03.2020 Appellant in person present. Mr. Usman Ghani learned District Attorney alongwith Zahidullah DEO for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourn. To come up for arguments on 13.05.2020 before D.B.


Member


Member

13.05.2020 Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 17.08.2020 before D.B.

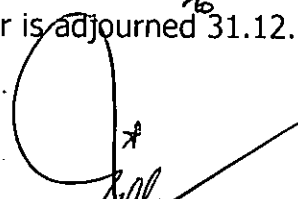

Reader

17.08.2020 Due to summer vacations, the case is adjourned to 19.10.2020 for the same.


Reader

19.10.2020 Junior to counsel for the appellant and Addl. AG alongwith Abdul Wali, Superintendent for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned ^{to} 31.12.2020 for hearing before the D.B.


(Mian Muhammad)
Member


Chairman

29.10.2019

Appellant in person present, Mr. Kabir Ullah Khattak learned Additional Advocate General for respondents present. At this stage, notices be issued to respondents No.1, 2 & 3 for written reply/comments. Adjourn. To come up for written reply/comments on behalf of respondents No.1 to 3 on 19.11.2019 before S.B.


Member

19.11.2019

Appellant in person and Addl. AG alongwith Zahidullah, DEO for respondents No. 1 to 3 present and seeks further time to furnish the requisite reply. Nemo for respondent No. 4.

Fresh notice be issued to respondent No. 4. To come up for written reply/comments on 03.01.2020 as last chance.


Chairman

03.01.2020

Counsel for the appellant and Addl. AG alongwith Zahidullah, DEO for the respondents present.

Representative of the respondents has furnished parawise comments on behalf of respondents No.1, 2 & 3. Placed on record. The appeal is assigned to D.B for arguments on 10.03.2020. The appellant may furnish rejoinder, within one month, if so advised.


Chairman

06.09.2019

Petitioner alongwith counsel present.

Instant application is with the prayer for restoration of Appeal No. 711/2019 dismissed for non-prosecution on 07.08.2019. It is provided in the application that the petitioner could not reach in time from District Swat due to heavy traffic while his learned counsel was engaged before the Honourable High Court in number of cases.

The application has been preferred on 09.08.2019 while the grounds noted therein warrant favourable consideration. The application is therefore, allowed on payment of cost of Rs. 1000/-. The appeal shall be restored to its original number and shall come up for written reply/comments of the respondents on 02.10.2019. Requisite notices be issued to the respondents for the date fixed.


Chairman

02.10.2019

Counsel for the appellant present. Addl: AG alongwith Mr. Hussain Ahmad, Litigation Officer for respondents present.

Learned counsel for the appellant requests for adjournment as the cost could not be deposited due to non-availability of the appellant. The representative of respondent no. 4 has submitted para-wise reply wherein he requests for exemption of respondent no.4 from submission of a ^{proper} reply. To come up for further proceedings on 29.10.2019 before S.B.

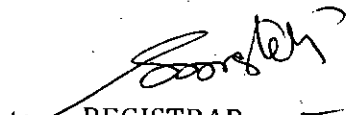


Chairman

Form-A

FORM OF ORDER SHEET

Court of _____

Appeal's Restoration Application No. 304/2019

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	09.08.2019	<p>The application for restoration of appeal No.711/2019 submitted by Mr. Anwarullah Advocate, may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	19/08/19	<p>This restoration application is entrusted to S. Bench to be put up there on <u>06/09/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>

711/2019

07.08.2019

Nemo for appellant.

It is already past 2.00 P.M and the case has been called several times. Despite, no one is in attendance on behalf of the appellant.

Dismissed for non-prosecution. File be consigned to record room.



Chairman

Announced:
07.08.2019


03.07.2019

Counsel for the appellant Nadar Khan present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant is serving as Certified Teacher in Education Department. He was imposed major penalty of removal from service on the allegation of absence. The appellant filed service appeal which was partially accepted vide judgment dated 18.12.2017, the impugned order was set-aside and the appellant was reinstated in service with the direction to the respondent-department to conduct de-novo inquiry in the mode and manner prescribed by law. It was further contended that again de-novo inquiry was conducted and the appellant was imposed penalty of withholding of increment etc vide order dated 04.05.2018. It was further contended that the same was communicated to the appellant on 17.01.2019. The appellant filed departmental appeal on 11.02.2019 which was not responded hence, the present service appeal. It was further contended that neither de-novo inquiry was conducted in accordance with law nor it was conducted as per direction of the judgment of this Tribunal therefore, the impugned order is illegal and liable to be set-aside.

Appellant Deposited
Security & Process Fee

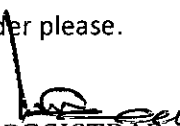

8/1-8-19

The contentions raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 07.08.2019 before S.B.


(Muhammad Amin Khan Kundi)
Member

Form- A
FORM OF ORDER SHEET

Court of _____
Case No.- _____ 711/2019 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	30/05/2019	<p>The appeal of Mr. Nadir Khan presented today by Mr. Muhammad Zafar Tahirkheli 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 30/5/19</p>
2-	31/05/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>03/07/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 711 /2019

Nadar Khan

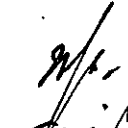
VERSUS

Secretary Education etc

I N D E X

S.No	Particulars	Annexure	Pages
1	Memo of Appeal		1-4
2	Order dated 04-05-2018	"A"	5
3	Execution petition	"B"	6
4	Departmental Appeal	"C"	7
5	Service appeal	"D"	8-11
6	Order dated 21-02-2018	"E"	12
7	Inquiry Report	"F"	13-14
8	Vakalatnama		15

Peshawar, dated
29 May, 2019


(Muhammad Zafar Tahirkheli)
Advocate


(Ansar Ullah Khan)
Advocate

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 711 /2019

Nadar Khan s/o Fawas Khan,
Ex-C.T. (BPS-15),
r/o Vill Jano, P.O & Tehsil Khwaza Khela,
District Swat

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 826

Dated 30/5/2019

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Director Elementary and Secondary Education (Male), Government of Khyber Pakhtunkhwa, Peshawar
3. District Education Officer (Male), Kohistan
4. District Education Officer (Male), Swat Respondents

=====
Service Appeal U/S 4 of NWFP Service Tribunal Act, 1974, against the impugned order dated 04-05-2018, (Communicated to the appellant vide order dated 17-01-2019 in petition No. 63/2018 in S.A No 212/2016) wherein the departmental appeal of the appellant dated 11-02-2019 has not been decided till the statutory period of limitation"

(Copies annexed "A" "B" & "C")

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PRAYER IN APPEAL

- a. By accepting this appeal and setting aside the impugned order dated 04-05-2018 (communicated to the appellant vide order dated 17-01-2019 in petition No. 63/2018 in S.A No. 212/2016), wherein 03 different penalties were imposed upon the appellant.
- b. Directing the respondents to allow all financial back benefits/consequential benefits to the appellant w.e.f date of his removal 01-10-2015 till 20-02-2018.
- c. And other relief deemed appropriate may also be allowed.

.....

RESPECTFULLY SHEWETH

1. The Appellant was initially appointed as PTC Teacher (BPS-07) on 24-09-1987. The appellant was promoted as CT (BPS-09) on 01-04-1990.
2. That an Extra Ordinary Leave of 365 days without pay w.e.f 01-10-2014 to 30-09-2015 was sanctioned by the competent authority vide sanction order dated 01-10-2014. That the appellant on completion of his sanctioned leave, submitted his arrival report on 19-11-2015, to which he was informed that his services would be adjusted later on.

Filed to-day

Registrar

30/5/19

3. That on 02-12-2015, on his inquiry, the office of DEO (Male) Kohistan informed the appellant that he has been removed from service vide impugned order dated 01-12-2015.
4. That the appellant submitted his departmental representation followed by service appeal No. 212/2016 which was accepted vide judgment dated 18-12-2017.

“The Hon’ble Tribunal however observed that the department is at liberty to conduct de-novo inquiry in the mode and manner prescribed by law within a period of 03 months from the date of receipt of the judgment.”
(Annex “D”)

5. The appellant filed implementation petition No. 63/2018, wherein he was informed through Hon’ble Tribunal on 17-01-2019 that an adverse order dated 04-05-2018 imposing minor penalty on four counts has been passed against him.
(Annex “B”)

The execution petition was disposed of vide order dated 17-01-2019. The appellant preferred a departmental appeal dated 11-02-2019 against the impugned order dated 04-05-2018, which has not been replied till the statutory period of limitation. (Annex “C”)

6. Feeling aggrieved and finding no other remedy, the appellant has been constrained to approach the Hon’ble Service Tribunal for the redress of his grievance inter alia on the following;

GROUND:

- a. The impugned action being ultra-vires of the law and the rules, discriminatory, arbitrary, malafide and without lawful authority is liable to be set right by the Hon’ble Service Tribunal.
- b. That the appellant was initially reinstated in service on acceptance of his service appeal No. 212/2016, which was notified vide order dated 21-02-2018 conditionally for the purpose of de-novo inquiry. (Copy annexed “E”)
- c. The de-novo inquiry was conducted by the department, wherein Mr. Muhammad Naseem, Principal BPS-19 GHSS Behali Mansehra was appointed as Inquiry Officer, who submitted his Inquiry Report dated 15-03-2018 with the recommendations as under:

Recommendations:

1. The Hon’ble Service Tribunal Peshawar order to reinstate the concerned teacher in service may be implemented in letter and spirit.
2. The teacher concerned may be treated on earned leave for the intervening period i.e, from the date he had been removed from service till he had been reinstated into the services.

3. Mr. Nadir Khan illegal abroad stay w.e.f. 27-09-2012 to 13-11-2015, requires documentary proof: in this regard the competent authority may approach the concerned federal agency in writing to get authentic information. If it proves that he had stayed abroad without NOC/Ex-Pak leave minor punishment of increment stoppage may be imposed on him under Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules 2011.
4. The period w.e.f 27-09-2012 to September 2014 he had received pay during his illegal stay abroad, if it proves, may be treated as extra-ordinary leave and recovery of pay may be made in monthly installments from his regular pay.
(Copy annexed "F")
- d. While acting on the recommendations of the Inquiry Committee, the respondent department passed the impugned order dated 04-05-2018, while imposing the penalties mentioned below:
1. The absent period wef 27-09-2012 to 30-09-2014 (733 days) is treated as extra ordinary leave without pay and DDO is hereby directed to recover the pay of absent period from his regular pay.
 2. And intervening period wef 01-10-2015 to 20-02-2018 (874 days) is treated as extra ordinary leave without pay.
 3. One annual increment is hereby stopped without accumulative effect.
- e. The Inquiry Officer has frankly conceded in para 2 (iii) that Nadar Khan CT was not provided sufficient opportunity to defend himself as no codal formalities and laid down procedure prescribed in KP Civil Servant E&D Rules 2011.
- In such circumstances imposing penalties mentioned in the impugned order dated 04-05-2018, are absolutely illegal, unlawful and liable to be set aside by this Hon'ble Tribunal.
- f. In addition to above, the IO categorically stated that there is no proof on record regarding the appellant's stay abroad wef 27-09-2012 to 30-09-2014. If such allegation is proved then the minor punishment of stoppage of increments may be imposed upon him.
- The department without honoring the directions of the learned IO, imposed the penalty upon the appellant arbitrarily, which is illegal and void ab initio.
- g. That the IO recommended that the intervening period between the date of appellant's removal till his reinstatement may be treated as earned leave.
- The respondent department however deviated from such recommendations and treated the same as extra ordinary leave without pay, which is liable to be set right by this Hon'ble Tribunal.
- h. That the impugned order dated 04-05-2018, communicated on 17-01-2019 is thus arbitrary, discriminatory, against the principles of equity, law, justice and propriety, calling for interference by the Hon'ble Tribunal.

In view of the above it is most humbly requested that,

- a. By accepting this appeal the impugned order dated 04-05-2018 (communicated to the appellant vide order dated 17-01-2019 in petition No. 63/2018 in S.A No. 212/2016), wherein 03 different penalties were imposed upon the appellant, may kindly be set aside while allowing the appellant the benefits of continuous service.
- b. And the respondents may be directed to allow all financial back benefits/consequential benefits to the appellant w.e.f date of his removal 01-10-2015 till 20-02-2018.
- c. And other relief deemed appropriate may also be allowed.


Appellant

Through,

Peshawar, dated
24 May, 2019


(Muhammad Zafar Tahirkheli)
Advocate


(Ansar Ullah Khan)
Advocate



5

ANNEXURE 'A'

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) KOHISTAN

⑤

OFFICE ORDER

Whereas Mr. Nadar Khan EX CT GMS Bela Rustum Khail Tehsil Pattan District Kohistan submitted his service, appeal No.212/2016 Dated 03/11/2016 before honorable service tribunal Khyber Pakhtunkhwa Peshawar. The Honorable service tribunal Peshawar accepted his appeal, the appellant was Re-instated into service in the case was returned to department for denovo proceeding/inquiry in accordance with the rules as per judgment announced on 18/12/2017.

Whereas the Department submitted the case to law Department for getting opinion for filling CPLA.

Whereas the meeting of the scrutiny Committee was held on 07/02/2018 in the office of Secretary Law department. It was decided with consensus by the scrutiny committee that the subject case was not fit for CPLA and the department was advised to conduct denovo enquiry against the appellant vide No. So (Lit/LD/ 9-5(12) E&SED /2018/11904-07/ W.E Dated 12/02/2018.

Whereas worthy Director appointed Mr, Muhammad Naseem Principal BPS-19 GHSS Behali Mansehra as inquiry officer for denovo inquiry vide. No. 1263/F.No.34/KC/Denovo inquiry dated 08/02/2018. Inquiry officer submitted his report with the recommendation that the concerned teacher may be re-instated in to service as per judgment of Honorable Service Tribunal, the teacher concerned may be treated on earned leave for the intervening period i.e from the date he had been removed from service till he had been re-instated into the service. If he abroad without NOC/Ex-Pakistan leaves minor punishment of increment stoppage may be imposed on him and period w.e.f 27/092012 to 30/092014, he had received pay during his illegal stay abroad may be treated as extra ordinary leave without pay and recovery of pay may be made in monthly installments from his regular pay.

In view of the above facts, Mr. Nadar Khan EX CT GMS Bela Rustum Khail Tehsil Pattan is hereby Re- Instated into service at GMS Khour Khandia against vacant post of CT on his own pay and grade in the light of judgment of Honorable Service Tribunal w,e,f 21/02/2018, after impose the following minor penalties as recommended by inquiry officer vide.No. 67 dated 015/03/2018.

- ✓ 1. The absent period wef 27/09/2012 to 30/09/2014 (733-days) is treated as extra ordinary leave without pay and DDO is hereby deducted to recover the pay of absent period from his regular pay.
- ✓ 2. An intervening period w.e.f 01/10/2015 to 20/02/2018 (874-days) is treated as extra ordinary leave without pay.
- ✓ 3. One annual increment 2018 is hereby stop without accumulative effect.

Note:

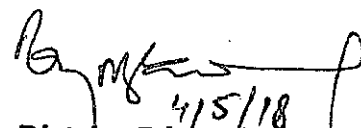
1. No TA/DA is Allowed
2. Charge Report should be submitted to all concerned.

District Education Officer
Male) Kohistan

Endstt: No. 4095-4103 DEO (M) KH Dated Dassu the 04/05/2018

Copy of the above is forwarded to the

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
2. Registrar Khyber Pakhtunkhwa service tribunal Peshawar
3. Advocate General Khyber Pakhtunkhwa Peshawar.
4. Deputy Commissioner Kohistan
5. Deputy District Education Officer (M)kohistan.
6. District Accounts Officer, kohistan
7. ADEO (litigation) local office
8. PA to District Education Officer Male Kohistan.
9. Official concerned


4/5/18
District Education Officer
Male) Kohistan

(6)

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

Petition No. 63 / 2018
in
Service Appeal No. 212 / 2016

(6)

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 255
Dated 06/03/2018

Nadar Khan s/o Fawas Khan,
Ex-C.T. (BPS-15),
r/o Vill Jano, P.O & Tehsil Khwaza Khela,
District Swat



..... Petitioner

VERSUS

1. Government of Khyber Pakhtunkhwa
through Secretary Elementary & Secondary
Education, Peshawar.
 2. Director Elementary and Secondary
Education (Male), Government of Khyber Pakhtunkhwa,
Peshawar
 3. District Education Officer (Male) Kohistan
- Respondents

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PETITION FOR IMPLIMENTATION OF DECISION DATED 13-08-2015

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17.1.2019

Petitioner alongwith counsel and Addl. AG for the respondents present.

Learned counsel for the petitioner states that in pursuance to judgment under implementation passed on 18.12.2017 the petitioner was reinstated into service against whom denovo enquiry was concluded on 15.03.2018. There-after, an adverse order imposing minor penalty on four counts was passed against the appellant on 04.05.2018. It was also stated that the passing of order dated 04.05.2018 came to the knowledge of petitioner today when learned AAG provided copy thereof at the bar. The petitioner would, therefore, pursue his remedy under the law against the said order which provided fresh cause of action in his favour. Consequently, a request for consignment of instant appeal is made.

In view of the fore-noted developments instant execution proceedings are consigned to record room. The same may be restored upon application of petitioner in case any part of relief granted to him on 18.12.2017 remained unsatisfied.

Chairman

Date of Presentation of Appeal: 17.1.2019
Number of Copies: 1
Copies: 1

APPEAL BEFORE WOERTHY DIRECTOR ELEMENTARY AND SECONDARY EDUCATION KHYBER PAKHTOONKHWA PESHAWAR FOR ALLOWING PAYMENT OF SALARY FOR THE INTERVENING PERIOD FROM 1/10/2015 TO 20/2/2018(874 DAYS) INSTEAD OF EXTRA ORDINARY LEAVE WITHOUT PAY AS ORDERED BY DEO KOHISTAN ORDER NO. 4096-4103/DEO(M) KH DATED 4/5/2018. IN THE LIGHT OF DIRECTIVES OF HONORABLE SERVICE TRIBUNAL K.P. DATED 17/1/2019.

It is humbly prayed that in the light of Judgment of honorable Khyber Pakhtoonkhwa Service Tribunal arrived on 18/12/2017 (copy attach as annexure-I) de-novo enquiry was conducted against me by the Enquiry Officer appointed by the authority. On completion of enquiry the Enquiry Officer it his recommendations recommended the intervening period i.e. 1/10/2015 to 20/2/2018 to be treated as Earned Leave as is evident from the contents inserted at SNo.2 of de-novo enquiry (copy attaché as annexure II)

The enquiry was sent to Authority for his final decision, which beside imposition of other penalties treated the intervening period as extra ordinary leave without pay. The decision of the authority is not only contrary to recommendation of de-novo enquiry officer, but also against the decision of Service Tribunal. In case there is no leave in my credit, then the same may be granted against leave not due strictly in accordance to the provision of leave rules 1981 and do not put me in financial Burdon.

It is therefore requested to kindly consider my request on humanitarian ground and allowed the intervening period referred as earned leave on full pay and release my salary to the above period enabling me to avail financial relief and feed my family members. For your this act of kindness I shall be pray for your long long life and prosperity of the home please.

Obediently Yours



(Nadar Khan)

CT. GMS Khorwar Kandia Kohistan
(Now GHS Jano District Swat.

ADDE
11/02/19



TRUE COPY

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD.**

SERVICE APPEAL NO. 212/2016

Date of institution 03.11.2016
Date of judgment ... 18.12.2017



Nadar Khan S/o Fawas Khan,
Ex-C.T (BPS-15),
R/o Village Jano, P.O & Tehsil Khawaza Khela,
District Swat.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Director Elementary and Secondary Education (Male), Government of Khyber Pakhtunkhwa, Peshawar.
District Education Officer (Male) Kohistan.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE N.W.F.P SERVICE TRIBUNAL ACT, 1974, FOR MODIFICATION OF ORDER DATED 24.02.2016 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT DATED 15.12.2015 WAS PARTIALLY ACCEPTED AND MAJOR PENALTY OF REMOVAL FROM SERVICE WAS CONVERTED INTO COMPULSORY RETIREMENT.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Mr. Ansar Ullah Khan, Advocate.
Mr. Muhammad Bilal, Deputy District Attorney

.. For appellant.
.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. GUL ZEB KHAN

.. MEMBER (JUDICIAL)
.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER:- Appellant with
counsel present. Mr. Muhammad Bilal, Deputy District Attorney alongwith Mr.
Muhammad Alam, ADO for the respondents also present. Arguments heard and
record perused.

TRUE COPY

from October 2012 to August 2014 (23 months). It was further contended that the impugned order of removal from service being retrospective is illegal and void therefore, the impugned order is liable to be set-aside on this score alone. It was further contended that the appellant was issued show-cause notice on the allegations allegedly occurred prior to his sanction of leave with effect from 01.10.2014 to 30.09.2015 by the competent authority, therefore, it was contended that the alleged allegation clearly indicate that the same was the result of malafide and personal grudges. It was further contended that neither charge sheet was framed nor statement of allegation was served upon the appellant nor any proper inquiry was conducted, therefore, the impugned order is illegal and liable to be set-aside.

4. On the other hand, the learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was granted extra ordinary leave with effect from 01.10.2014 to 30.09.2015. It was further contended that the appellant did not attend the duty in time: It was further contended that a final show-cause notice was issued to the appellant and after issuance of show-cause notice the competent authority has rightly passed the impugned order and prayed for dismissal of appeal.

5. Perusal of the record reveals that the appellant was serving in Education Department and during service he applied for extra ordinary leave through application which was accepted by the competent authority and the appellant was granted extra ordinary leave with effect from 01.10.2014 to 30.09.2015 (365 days) vide order dated 01.10.2014. The record further reveals that when the appellant submitted arrival report on 19.11.2015 he was served with show-cause notice on the allegations mentioned in the show-cause notice. The record further reveals that the impugned order of removal from service of the appellant has been passed by the competent authority retrospectively i.e 31.08.2014 therefore, the impugned order is void ab-initio. In this regard reliance is made to 1985-SCMR-1178. Furthermore, neither charge sheet was framed against the appellant nor statement of allegation was served on the appellant nor a proper inquiry was conducted but the appellant

18.12.2017

MAHARAJA
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL,
PESHAWAR

ATTACHED

M. Khan
TRUE COPY

11

was removed from service by the competent authority retrospectively on the allegations which was allegedly occurred before granting extra ordinary leave to the appellant by the competent authority. Moreover, neither opportunity of personal hearing was afforded nor opportunity of defence was provided to the appellant which has rendered the impugned order illegal and liable to be set-aside. Therefore, we accept the present appeal and reinstate the appellant in service. However, the respondent-department is at liberty to conduct de-novo inquiry in the mode and manner prescribed by law within a period of three months from the date of receipt of this judgment. In case the de-novo inquiry is conducted the issue of back benefits of intervening period will be decided subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
18.12.2017

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD

Gul Zeb Khan
(GUL ZEB KHAN)
MEMBER (EXECUTIVE)
CAMP COURT ABBOTTABAD

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Khan Zeb Khan
Secretary
Feshawar

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M Amin
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ANNEXURE

8 (12)
E

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) KOHISTAN

OFFICE ORDER

Whereas Mr. Nadar Khan EX CT GMS Bela Rustum Khail Tehsil Pattan District Kohistan submitted his service, appeal No.212/2016 Dated 03/11/2016 before honorable service tribunal Khyber Pakhtunkhwa Peshawar. The Honorable service tribunal Peshawar accepted his appeal, the appellant was Re-instated into service in the case was returned to department for denovo proceeding/inquiry in accordance with the rules as per judgment announced on 18/12/2017.

Whereas the department submitted the case to law department for getting opinion for filling CPLA.

Whereas the meeting of the scrutiny committee was held on 07/02/2018 in the office of Secretary Law department. It was decided with consensus by the scrutiny committee that the subject case was not fit for CPLA and the department was advised to conduct denovo enquiry against the appellant vide No. So (Lit/LD/ 9-5(12) E&SED /2018/11904-07/ W.E Dated 12/02/2018.

In view of the above facts, Mr. Nadar Khan EX CT GMS Bela Rustum Khail Tehsil Pattan is hereby Re-instated into service conditionally for the purpose of denovo inquiry as per direction of Honorable service tribunal Khyber Pakhtunkhwa at GMS Khowr Kandia against vacant post as CT on his own pay and grade with immediate effect.

Note:

1. No TA/DA is Allowed
2. Charge Report should be submitted to all concerned.

[Signature]
District Education Officer
(Male) Kohistan

Endstt: No. 1287-95 DEO (M) KH Dated Dassu the 21/2 /2018

Copy of the above is forwarded to the

- ① Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- ② Registrar Khyber Pakhtunkhwa service tribunal Peshawar
- ③ Advocate General Khyber Pakhtunkhwa Peshawar.
4. Deputy Commissioner Kohistan
5. Deputy District Education Officer (M) Kohistan.
- ⑥ District Accounts Officer, Kohistan
- ⑦ ADEO (litigation) local office
8. PA to District Education Officer Male Kohistan.
9. Official concerned

[Signature]
21/2/18
District Education Officer

[Signature]
TRUE COPY

OFFICE OF THE PRINCIPAL GHSS BAHALI MANSEHRA

NO:67 Dated:15.03.2018

To,

The District Education Officer Male,

Kohistan.

SUBJECT: DENOVO INQUIRY IN R/O MR. NADIR KHAN, CT/GMS ORDERED BY HONOURABLE SERVICES TRIBUNAL KPK PESHAWAR

Reference DOE Male Kohistan NO: 1296/DEO (M)Kh, dated the 21/02/2018

The undersigned has visited the DEO male Kohistan and conducted the subject inquiry on March 09; 2018. The inquiry report is submitted as under:

Findings of the inquiry

1. Mr. Nadir Khan's reply

- i. He replies to the questionnaire that he was on earned leave w.e.f 15/03/2014 to 14/07/2014 vide NO 1205-8 dated 06/03/2014 and 1/10/2014 to 30/09/2015 he was on extra ordinary leave vide order NO: 1130-32 dated 1/10/2014; for the remaining period from 27/09/2012 to 30/09/2015 he claims that he performed his duty in the school.
- ii. He says that he could not report back to his duty in time because his mother was admitted in Ziauddin Hospital Karachi.
- iii. He says that he had not received show cause notice issued on 13/10/2015 by the department; hence no reply.
- iv. He denies that he had travelled abroad; hence no NOC and Ex- Pakistan leave required for the period from 27/09/2012 to 13/11/15 which according to official claim he spent in Saudi Arabia. (ANNEXURE 1)

2. Official Record Examination and Interview of Mr. Abdussalam ADO (Estab:) Secondary Kohistan

- i. As per official record Mr. Nadir Khan remained absent from duty w.e.f 27.09.2012 to 13.11.2015 and he had received his salary w.e.f 27.09.2012 to September, 2014; he stayed in Saudi Arabia w.e.f 27.09.2012 to 13.11.2015.
- ii. He travelled to Saudi Arabia by flight NO: SV 793 from Peshawar airport on 27.09.2012 and returned back through flight NO: SV 724 on 13.11.2015 at Islamabad airport ;as per verbal statement of Mr. Abdussalam ADO(Estab:) Secondary Kohistan this information of his abroad travel and return journey and stay in Saudi Arabia has been obtained by telephonic contact with some officer of FIA and no documentary proof had been provided to the inquiry



officer in this regard as the same was not available in the office of DEO(M) Kohistan.

- iii. Mr. Nadir Khan, CT, has not been provided sufficient opportunity to defend himself as no codal formalities and laid down procedure in Khyber Pakhtunkhwa Civil Servants (Efficiency and Discipline) Rules 2011 for proceeding against any civil servant had been followed which led to the decision of Honourable Service Tribunal Peshawar to set aside the impugned order and reinstate the concerned teacher in service.
- iv. while removing from service the concerned teacher the period he had been granted earned leave and extra-ordinary leave by the competent authority had not been taken into consideration; this period cannot legally be treated as absent period.
- v. The removal from service from retrospective date, i.e., from 31.08.2014 had been declared illegal by the Honourable Service Tribunal Peshawar.(ANNEXURE 2 AND 3)

Recommendations

- 1. The Honourable Service Tribunal Peshawar order to reinstate the concerned teacher in service may be implemented in letter and spirit.
- ① ✓ 2. The teacher concerned may be treated on earned leave for the intervening period, i.e., from the date he had been removed from service till he had been reinstated into the service.
- ③ ✓ 3. Mr. Nadir Khan Illegal abroad stay, w.e.f 27. 09.2012 to ^{20.9.24} 13.11.2015, requires documentary proof; in this regard the competent authority may approach the concerned federal agency in writing to get authentic information. If it proves that he had stayed abroad without NOC/ex-Pakistan leave minor punishment of increment stoppage may be imposed on him under Khyber Pakhtunkhwa Civil Servants (Efficiency and Discipline) Rules 2011.
- ④ ✓ 4. The period w.e.f 27.09.2012 to September, 2014 he had received pay during his illegal stay abroad, if it proves, may be treated as extra-ordinary leave and recovery of pay may be made in monthly installments from his regular pay.

March 13, 2018

Nadir Khan
 Inquiry Officer
 Principal
 GHSS Bahali Mansehra
 15/3/18

M.A.
TRUE COPY

VAKALATNAMA

In the Court of

Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No. _____ of 2018

Petitioner
Plaintiff
Applicant
Appellant
Complainant

Nadar Khan

Decree-Holder

VERSUS

Respondent
Defendant
Opponent
Accused

Govt. of KP etc

Judgment-Debtor

I / We **Nadar Khan** the above noted **Appellant** do hereby appointed and constitute, **Muhammad Zafar Tahirkheli & Ansar Ullah Khan Advocates High Court**, to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.



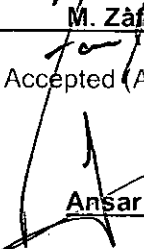
I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.

The

be

Dated 29/05/2019

Office **ATIQU LAW ASSOCIATES,**
87, Al-Falah Street, Besides State Life Building,
Peshawar Cantt, Phone: 091-5279529
E-mail : zafartk.advocate@gmail.com


Client

M. Zafar Tahir

Attested & Accepted (Advocates)
29/5/2019
Ansar Ullah Khan

**BEFORE THE HONORABLE REGISTRAR KHYBAER PAKHTUN KHWA SERVICE
TRIBUNAL PESHAWAR**

Nadar Khan S/O Fawas khan, Ex-C.T. (BPS-15), R/O village Jano, P.O & Tehsil Khwaza khella

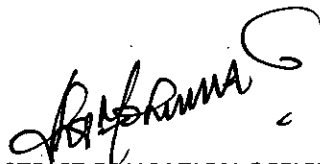
S.A.No: 711/2019

SUBJECT: Parawise reply of the Appeal on behalf of the respondent No.4

Respected Sir,

1. That The Appellant transferred to District Swat *vide Endst No. 7915-18/F.No.1035/Vol:IV/Transfer CT/DM(M)General dated Peshawar the 11/09/2018,* hence the ^{impleadment}impairment of Respondent No.4 is irrelevant at this stage.
2. That Respondent No.4 (District Education Officer male, Swat) has no record of the instant case of the Appellant.
3. That The reply of Respondent No.3 (District Education Officer male, Kohistan) will be more appropriate.

Therefore, it is requested that the Respondent No.4 may please be exempted from submission of reply.


DISTRICT EDUCATION OFFICER (M)
SWAT AT GULKADA

OFFICE OF THE DIRECTOR ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR. (1)

OFFICE ORDER.

Mr. Nadar Khan CT(BPS-15)GMS Khor Kandia District Kohistan is hereby transferred against the post of CT(BPS-15) at GHS Jano District Swat on his own pay and BPS in the interest of public service with effect from the date of taking over charge.

Note:-

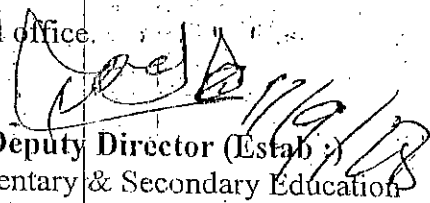
1. Charge report should be submitted to all concerned.
2. No TA/DA etc is allowed.
3. District Education Officer (M) concerned is directed to check his original service documents before making payment of salary.
4. His Seniority will be determined at the bottom of the seniority list under the rules.


DIRECTOR

Endst: No. ⁷⁹¹⁵⁻¹⁸ /F.No.1035/Vol:IV/Transfer CT/DM(M)General. Dated Peshawar the 11/9/2018.

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

1. District Education Officer (M) Kohistan & Swat.
2. District Accounts Officer Kohistan & Swat.
3. Teacher concerned.
4. Master File.
5. P.A. to Director Elementary and Secondary Education local office.


Deputy Director (Estab :)
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar


Headmaster,
Govt. High School,
JANO, Distt: Swat


CT Distt: F.M. Chitral
(Main) Kohistan



**DIRECTORATE OF ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA.**

No. 1289 /F.No.1035/Vol:VI/Transfer
case/DM/CT(M) General.

Dated Peshawar the 7-11 /2018.

To,

The District Education Officer (M)
Swat.

Subject:-

VERIFICATION OF TRANSFER ORDER.

Memo:-

I am directed to refer to your letter No.4597 dated 27.10.2018 on the subject noted above and to inform you that the transfer order of Mr. Nadar Khan CT(BPS-15)GMS Khor Kandia District Kohistan to GHS Hano District Swat vide Endst: No.7915-18 dated 11.09.2018 has been checked and found correct.

[Signature]
Deputy Director (Estab.)
Elementary & Secondary Edu.
Khyber Pakhtunkhwa Peshawar.

[Handwritten signature]
[Handwritten date: 12-11-18]

[Handwritten date: 12-62]
[Handwritten date: 12/11/18]

**BEFORE THE HONORABLE REGISTRAR KHYBAER PAKHTUN KHWA SERVICE
TRIBUNAL PESHAWAR**

Nadar Khan S/O Fawas khan, Ex-C.T. (BPS-15), R/O village Jano. P.O & Tehsil Khwaza khella

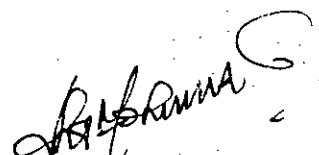
S.A.No: 711/2019

SUBJECT: Parawise reply of the Appeal on behalf of the respondent No.4

Respected Sir,

1. That The Appellant transferred to District Swat vide *Endst No. 7915-18/F.No.1035/Vol-IV/Transfer CT/DM(M)General dated Peshawar the 11/09/2018*, hence the ^{impleadment} implementation of Respondent No.4 is irrelevant at this stage.
2. That Respondent No.4 (District Education Officer male, Swat) has no record of the instant case of the Appellant.
3. That The reply of Respondent No.3 (District Education Officer male, Kohistan) will be more appropriate.

Therefore, it is requested that the Respondent No.4 may please be exempted from submission of reply.


DISTRICT EDUCATION OFFICER (M)
SWAT AT GULKADA

OFFICE OF THE DIRECTOR ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR. /1

OFFICE ORDER

Mr. Nadar Khan CT(BPS-15)GMS Khor Kandia District Kohistan is hereby transferred against the post of CT(BPS-15) at GHS Jano District Swat on his own pay and BPS in the interest of public service with effect from the date of taking over charge:

Note:-

1. Charge report should be submitted to all concerned.
2. No TA/DA etc. is allowed.
3. District Education Officer (M) concerned is directed to check his original service documents before making payment of salary.
4. His Seniority will be determined at the bottom of the seniority list under the rules.

DIRECTOR

Endst. No. ⁷⁹¹⁵⁻¹⁸ /F.No.1035/Vol.IV/Transfer CT/DM(M)General. Dated Peshawar the 11/9/2018.

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

1. District Education Officer (M) Kohistan & Swat.
2. District Accounts Officer Kohistan & Swat.
3. Teacher concerned.
4. Master File.
5. P.A. to Director Elementary and Secondary Education local office.

[Signature]
Deputy Director (Estab.)
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar
11/9/18

[Signature]
Teacher Master
Govt. High School
JANO, Dist. Swat

[Signature]
DT DIST. EDUC. OFFICER
(M) Kohistan



**DIRECTORATE OF ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA.**

No. 12-89 / F.No.1035/Vol:VI/Transfer
case/DM/CT(M) General.
Dated Peshawar the 7-11 /2018.

To,

The District Education Officer (M)
Swat.

Subject: **VERIFICATION OF TRANSFER ORDER.**

Memo:-

I am directed to refer to your letter No.4597 dated 27.10.2018 on the subject noted above and to inform you that the transfer order of Mr. Nadar Khan CT(BPS-15)GMS Khor Kandia District Kohistan to GHS Hano District Swat vide Endst: No.7915-18 dated 11.09.2018 has been checked and found correct.

Deputy Director (Estabn)
Elementary & Secondary Edu.
Khyber Pakhtunkhwa Peshawar.
6/11/18

12-11-18

12-62
12/11/18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

APPEAL NO. 711/2019

Nadir Khan Appellant

VERSUS


1. Government of Khyber Pakhtunkhwa through Secretary Elementary Secondary Education Peshawar
2. Director Elementary & Secondary Education KPK Peshawar
3. District Education Officer (Male) Kohistan

Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENT NO. 1, 2 & 3.

INDEX

S#	Particulars of documents	Annexure	Pages
1	Comments along with affidavit		1-5
2	Copy of the reinstatement order	"A"	6


District Education Officer,
(Male) Kohistan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

APPEAL NO. 711/2019

Nadir Khan: Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary Secondary Education Peshawar
2. Director Elementary & Secondary Education KPK Peshawar
3. District Education Officer (Male) Kohistan

Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENT NO. 1, 2 & 3.

Respectfully Sheweth:

1. That the appellant did not come to this Honorable Court with clean hands.
2. That the appellant has got no cause of action / locus standi to file the instant appeal.
3. That the appellant is estopped to sue through his own conduct.
4. That the present appeal is not maintainable due to non-joinder and mis-joinder of necessary parties.
5. That the appellant has concealed the material facts from this Honorable Tribunal, hence appeal is liable to be dismissed without any further proceeding.
6. That the appellant has already been reinstated into Service in compliance with the court judgment vide order Endstt: No.4095-4103 dated 04-05-2018; hence appeal is liable to be dismissed.
7. That the appeal is time bared hence not maintainable and liable to be dismissed

Factual Objections:

1. Para No.1 of the appeal is pertain to appellant service record. Hence no comments.
2. Reply of Para No.2 of appeal is that appellant was not present in Pakistan someone filed application on behalf of the respondent for EOL. Further stated that the appellant was remained absent since 2012, but due to mistake and misguided by the appellant his absent period was sanctioned wrongly, and his EOL without pay with effect from 01-10-2014 to 30-09-2015 (365 days) was sanctioned due to mistake and cancelling facts of the appellant but later on when this matter comes into the notice of the competent authority then on account of his long absence period, he had not adjusted on his application. Appellant applied for the EOL w.e.f 01-10-2014 to 30-09-2015, which was sanctioned at that time but after the completion of EOL the appellant remained absent and did not submit any arrival report. The appellant was reported absent by school staff, field staff and local community from his school duties since September 2012.
3. Para No.3 of the appeal is correct to the extent that the appellant did not perform his duties since September 2012. The appellant remained out of the country with effect from 27-09-2012 to 13-11-2015 and therefore a show cause notice was served to the appellant vide this office Endstt: No. 12207 dated 13-10-2015 but the appellant neither joined school duty nor submitted any convincing reply. A chance of personal hearing was given to the appellant, the appellant appeared before the competent authority for personal hearing on 18-19/11/2015 but could not defend himself.
4. Reply of Para No.4 of the appeal is that after passing the Honorable Tribunal judgment respondent constituted the de-novo inquiry in compliance with Tribunal order dated 18-12-2017.
5. Reply of Para No. 5 is that appellant was reinstated vide letter No. 4095-4103 dated 04-05-2018, which has presented before his Honorable Tribunal in Execution Petition No.63/2018, due to which execution was disposed off 17-01-2019.

6. Para No. 6 is incorrect hence denied. Appellant is not aggrieved person, appellant has already been re-instated in service and treated as per rules and law. The instance service appeal may be dismissed on the following grounds.

GROUNDS

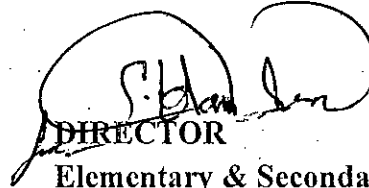
- a. Para No. "a" of the ground is incorrect strongly denied that the appellant has been treated in accordance with law. Further stated that after the Judgment dated 18-12-2017, respondent act in accordance with the order of Honorable Tribunal and conduct De-novo inquiry. Inquiry officer submitted their emendations to reinstate the appellant vide Notification No. 4095-4103 dated 04-05-2018. On the recommendation of inquiry report his intervening period w.e.f 01-10-2015 to 20-02-2018 (874 days) is treated as extra Ordinary leave without pay. Appellant was treated as per rules and law.
- b. Para No. "b" of the ground is correct to the extent that appellant was resisted on his service for the purpose of de-novo inquiry. Respondent conduct inquiry on the recommendations of the inquiry Notification is issued with conditions. Appellant has treated as per rules and law.
- c. Reply of Para No. "c" of the ground is that appellant is treated as per rules and law in accordance with the recommendation of the inquiry report.
- d. Para No. "d" of the ground is incorrect appellant was treated as per rules and law. The act of the respondent in accordance with law.
- e. Para No. "e" of the ground is incorrect and strongly denied that the act of the respondent is as per rules and law and the appellant is treated as per rules and law. The opportunity of personal hearing has also provided to the appellant but he could not defend his case. After that removal from service order was issued which is in accordance with rules.
- f. Reply of Para No. "f" of the ground is that the reply of appellant willful absence has been brought in the notice of this Honorable Tribunal in respondents reply in main appeal.

- g. Para No "g" of the ground is incorrect. Detail reply has already been given in above. Appellant was treated as per rules and law.
- h. Para No "h" of the ground is incorrect. Detail reply has been given in above paras. Appellant was treated as per rules and law.

In view of the above made submissions, this Honorable Tribunal may very graciously be requested to dismiss the instant appeal in favor of the respondents in the interest of equity and justice.



SECRETARY
Government of Khyber Pakhtunkhwa
Elementary & Secondary Education Deptt:
Peshawar.
(Respondent No.3)



DIRECTOR
Elementary & Secondary Education
Peshawar.
(Respondent No.2)



District Education Officer,
(Male) Kohistan
(Respondent No.1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 711/2019

Nadir Khan ----- Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary Secondary Education Peshawar
2. Director Elementary & Secondary Education KPK Peshawar
3. District Education Officer (Male) Kohistan

Respondents

AFFIDAVIT

I, Mr. Zahid Ullah Khan DEO (Male) Kohistan do hereby solemnly affirm and declare that the contents of Para wise reply in the above titled Case are true and correct to the best of my knowledge and belief, and that nothing, material has been suppressed from this Honorable court.


Deponent

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) KOHISTAN

OFFICE ORDER

Whereas Mr. Nadar Khan EX CT GMS Bela Rustum Khail Tehsil Pattan District Kohistan submitted his service, appeal No.212/2016 Dated 03/11/2016 before honorable service tribunal Khyber Pakhtunkhwa Peshawar. The Honorable service tribunal Peshawar accepted his appeal, the appellant was Re-instated into service in the case was returned to department for denovo proceeding/inquiry in accordance with the rules as per judgment announced on 18/12/2017.

Whereas the Department submitted the case to law Department for getting opinion for filling CPLA.

Whereas the meeting of the scrutiny Committee was held on 07/02/2018 in the office of Secretary Law department. It was decided with consensus by the scrutiny committee that the subject case was not fit for CPLA and the department was advised to conduct denovo enquiry against the appellant vide No. So (Lit/LD/ 9-5(12) E&SED /2018/11904-07/ W.E Dated 12/02/2018.


Whereas worthy Director appointed Mr, Muhammad Naseem Principal BPS-19 GHSS Behali Mansehra as inquiry officer for denovo inquiry vide. No. 1263/F.No.34/KC/Denovo inquiry dated 08/02/2018. Inquiry officer submitted his report with the recommendation that the concerned teacher may be re-instated in to service as per judgment of Honorable Service Tribunal, the teacher concerned may be treated on earned leave for the intervening period i.e from the date he had been removed from service till he had been re-instated into the service. If he abroad without NOC/Ex-Pakistan leaves minor punishment of increment stoppage may be imposed on him and period w.e.f 27/092012 to 30/092014, he had received pay during his illegal stay abroad may be treated as extra ordinary leave without pay and recovery of pay may be made in monthly installments from his regular pay.

In view of the above facts, Mr. Nadar Khan EX CT GMS Bela Rustum Khail Tehsil Pattan is hereby Re- Instated into service at GMS Khour Khandia against vacant post of CT on his own pay and grade in the light of judgment of Honorable Service Tribunal w,e,f 21/02/2018, after impose the following minor penalties as recommended by inquiry officer vide.No. 67 dated 015/03/2018.

1. The absent period wef 27/09/2012 to 30/09/2014 (733-days) is treated as extra ordinary leave without pay and DDO is hereby detracted to recover the pay of absent period from his regular pay.
2. And intervening period w.e.f 01/10/2015 to 20/02/2018 (874-days) is treated as extra ordinary leave without pay.
3. One annual increment 2018 is hereby stop without accumulative effect.


Note:

1. No TA/DA is Allowed
2. Charge Report should be submitted to all concerned.


District Education Officer
(Male) Kohistan

Endstt: No. 4095-4103 DEO (M) KH Dated Dassu the 04/05/2018
Copy of the above is forwarded to the

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar .
2. Registrar Khyber Pakhturkhwa service tribunal Peshawar
3. Advocate General Khyber Pakhtunkhwa Peshawar.
4. Deputy Commissioner Kohistan
5. Deputy District Education Officer (M)kohistan.
6. District Accounts Officer, kohistan
7. ADEO (litigation) local office
8. PA to District Education Officer Male Kohistan.
9. Official concerned


District Education Officer
(Male) Kohistan

مصدق

کوالہ آرڈر سے 02/10/2019 جوٹان

مبلغ 1000/- روپیہ کیلئے 11/9

ٹاڈر خان نیچم حکم تعلیم سے واپس
لے کر بیورو صاپس سے واپس لے کر

الان

Date: 9/10/2019

ٹاڈر خان

Refused
9/10/19



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 954 /ST

Dated: 15-4- /2022

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 Male,
Government of Khyber Pakhtunkhwa,
Kohistan.

Subject: JUDGMENT IN APPEAL NO. 711/2019 MR. NADIR KHAN.

I am directed to forward herewith a certified copy of Judgement dated 26.01.2022 passed by this Tribunal on the above subject for compliance please.

Encl: As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR