

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

In ref to Service Appeal No. 91/2023

Muntazir Mehdi
V E R S U S
Govt of KPK & others

I N D E X

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Respondents No 1 to 3
Through

Authorized Representative



MUHAMMAD NAWAZ
ADEO (Litigation) BPS-17

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR

SERVICE APPEAL No.91/2023

MUNTAZIR MEHDI.....APPELLANT.

VERSUS

GOVT. OF KHYBER PAKHTUNKHWA & OTHERS THROUGH SECRETARY ELEMENTARY &
SECONDARY EDUCATION DEPARTMENT & OTHERS.....RESPONDENTS.

PARA WISE COMMENTS ON BAHALF OF RESPONDENTS NO. 01, 02 & 03

That the Respondents submitted as under:-

Respectfully Sheweth

PRELIMINARY OBJECTIONS.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7191

Dated 28/8/2023

- I. That the appellant has got no cause of action / locus standi to file the instant Service Appeal, because neither any wrong has been done nor any vested right of the appellant has been infringed.
- II. The appellant is estopped by his own conduct to file the instant Service Appeal.
- III. The appellant has not come to this Hon'ble Tribunal with clean hands and deliberately concealed material facts from this Hon'ble Tribunal, hence disentitled for any relief whatsoever.
- IV. That the appellant is not an aggrieved person within the meaning of Article 212 of the Constitution of Islamic Republic of Pakistan 1973.
- V. That the instant Service Appeal is based on mala-fide intentions just to get unlawful service benefits from the Answering Respondents.
- VI. The present Service Appeal has been filed to entangle the Department in unnecessary litigation and to pressurize the Answering Respondents as well as waste precious time of this Hon'ble Tribunal.
- VII. That the appeal barred by law and limitation.

ON FACTS.

1. That Para-01 pertains to record.
2. That Para-02 pertains to record.
3. That Para-03 is incorrect / not admitted, strongly denied. That the appellant filed Departmental Appeal to the Competent Authority wherein he himself admitted in para No. 9 that he remained absent from his official duty for few days without prior permission and then approached Hon'ble Service Tribunal and filed Service Appeal No. 807/2011. Wherein the Hon'ble Service Tribunal passed judgment on dated. 12-08-2021, the operative part of the judgment is reproduced, "case is remitted to the Department with the direction to conduct de-novo inquiry in view of Rule-3(d) of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline Rules, 2011) within 30 days after the receipt of this judgment. Reinstatement and back benefits shall be subject to the outcome of de-novo inquiry". The Competent Authority on the direction of Hon'ble Tribunal conducted de-novo inquiry vide Notification dated. 10-09-2021, the inquiry committee unanimously recommended that, "removal of the appellant from the service vide order dated 15-02-2018, may be kept intact and the illegal drawl of salary during the absent period may be recovered from the appellant and deposit to the Govt;

treasury in the interest of public". (Copy of judgment and de-novo inquiry is attached as Annex-A)

4. That Para-04 is incorrect / not admitted, strongly denied and misleading. The appellant again submitted Departmental Appeal to the Appellate Authority i.e., Director Elementary & Secondary Education Khyber Pakhtunkhwa and the Director nominated Mr. Farid Ullah District Education Officer (Male) Orakzai an inquiry officer vide Notification dated. 20-05-2023 and the inquiry officer after thoroughly examined / perused the evidence on the record, and accordingly notified that, **"the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar being Appellate Authority after examined the evidence on record was pleased to accept the appeal under rule (17)(2) (C) E&D 2011, and to reinstate Muntazir Mehdi into service and the intervening period is converted into extra ordinary leave without pay subject to the approval of the competent authority & Finance Department as per Government Khyber Pakhtunkhwa E&D Rules, 2011 with immediate effect". (Copy of Notification and inquiry report as annexed as Annex-B)**
5. That Para-05 pertains to record. That proceeding against the appellant, was in accordance with law, rules and policy and no vested right of the appellant is violated due to the fact that Appellate Authority reinstated the appellant into service by conducted second inquiry with immediate effect after properly examined the evidence available on the record.
6. Incorrect, the appellant has been dealt an accordance with Law, Rules and laid down procedure, now at this bilateral stage the appellant have no right to approach this Hon'ble Tribunal. Hence, the instant Service Appeal is liable to be dismissed.

GROUND.

- A. Incorrect, the statement of the Appellant is against the facts and circumstances of the case, as the appellant have been treated as per Law & Rules. As explained in Para-3 of the Reply on Facts. In Departmental Appeal he himself admitted vide Serial No. 9 that the he remained absent from his official duty for few days without prior permission.
- B. Incorrect, that Para-B pertains to record. That what so ever has been done by the Department, was in accordance with law, rules and policy and no vested right of the appellant is violated.
- C. Incorrect, that what so ever has been done by the Department, was in accordance with law, rules and policy and no vested right of the appellant is violated.
- D. Incorrect & denied. That the appellant is not an aggrieved person within the meaning of Article 23 & 24 (1) of the Constitution of Islamic Republic of Pakistan 1973.
- E. Incorrect & denied. As explained in Para-04 of the Reply on Facts. Respondents departments have fully complied with the policy/ Law. The impugned Notification/ order of the Respondent is within legal sphere and is liable to be maintained.
- F. Incorrect and denied. As explained in Para-03 & 04 of the Reply on Facts.
- G. That the respondents also seek permission to raise additional grounds at the time of arguments.

In view of the above made submissions, it is therefore, most humbly prayed that this Hon'ble Tribunal may very graciously be pleased to dismiss the instant Service Appeal.

RESPONDENTS


1. **SECRETARY to GOVT;**

Elementary and Secondary Education Department, Khyber
Pakhtunkhwa, Peshawar.

Respondent No.1


2. **DIRECTOR**

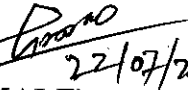
Elementary and Secondary Education Department, Khyber
Pakhtunkhwa, Peshawar.

Respondent No.02


3. **DISTRICT EDUCATION OFFICER (MALE)**

DISTRICT HANGU

Respondent No.03 


22/07/2023

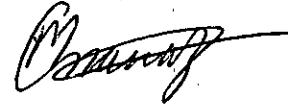
(4)
S.A No. 91/2022

Mr. Muntazir Mehdi.....Petitioner

Vs
The Director, Elementary and Secondary Education KPK and others.....Respondents

AFFIDAVIT

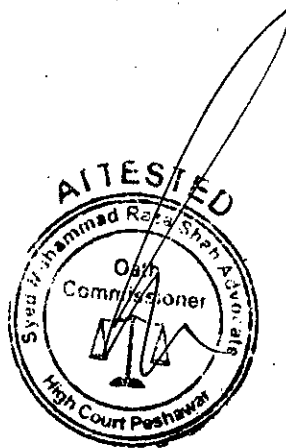
I, Mr. Muhammad Nawaz ADEO(Lit) BPS-17 Hangu on behalf of respondent No. 2 & 3 do hereby solemnly affirm and declare on oath that the contents of the accompanying **Comments** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Service Tribunal. It is further stated on oath that in this appeal the answering respondents have neither been place ex-parte nor their defense has been struck off. /cost



DEPONENT:-

CNIC#: 14101-6348419-7

Cell No. 0332-9615220



8 AUG 2023

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ANNEX A

Annex A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.807/2018

Date of Institution ... 01.06.2018
Date of Decision ... 12.08.2021



Muntazir Mehdi S/O Imran Ali R/O Lodhi Khel Tehsil & District Hangu.
(Appellant)

VERSUS

The Director Elementary & Secondary Education Department
Peshawar and two others.
(Respondents)

Qaiser Abbas Bangash,
Advocate ... For appellant.

Kabir Ullah Khattak,
Additional Advocate General ... For respondents.

AHMAD SULTAN TAREEN ... CHAIRMAN
ROZINA REHMAN ... MEMBER (J)

JUDGMENT

ROZINA REHMAN, MEMBER : The appellant has filed the present service appeal U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 15.02.2018 vide which major penalty of removal from service was imposed upon appellant.

02. Brief facts of the case are that appellant was appointed as A.T (Arabic Teacher) in a School at Hangu on 05.03.2010. Due to extreme militancy at Tarri Banda G.H.S Hangu, School was closed but the

Handwritten signature and date 12/8/21

ATTESTED
Handwritten signature
Khyber Pakhtunkhwa Service Tribunal
Peshawar

appellant was compelled to ensure attendance in the said School which was already closed and the teaching staff as well as students were also not in attendance. He was proceeded against departmentally and lastly he was removed from service vide impugned order. Feeling aggrieved, he filed departmental appeal which was not responded to, hence, the present service appeal.

03. Learned counsel for the appellant contends that the impugned order is against law and facts as the appellant was not treated in accordance with law. He submitted that the impugned order dated 15.02.2018 was passed in view of previous inquires and that no fresh inquiry was initiated before imposition of the major penalty. He submitted that surprise visit was paid by the authority on 07.02.2017, whereas, the impugned order shows the absence of appellant on 23.01.2017.

04. Conversely learned A.A.G submitted that the School was never closed as there was no militancy in the year 2015-16 and that the staff was performing duty regularly. He submitted that the inquiry was conducted against the appellant according to law and that proper show cause notice was issued to the appellant with direction to resume duty, where-after, he appeared before the District Education Officer and submitted judicial stamp paper that he will never remain absent in future.

05. Record shows that appellant was appointed as Arabi Teacher in School at Hangu on 05.03.2010. He was transferred to G.H.S Tarri Banda Hangu and he served in the said area till 01.10.2015; Perusal of impugned order would reveal that the District Education Officer paid a surprise visit to G.H.S Tarri Banda on 07.02.2017 at 9:00 AM but no inquiry was conducted in order to check the absence of the appellant

12/5/21
 ATTESTED
 [Signature]
 District Education Officer
 Hangu

(7)

Annex A

rather the inquiries conducted much before the surprise visit were mentioned in the impugned order. The contents of the impugned order show that the appellant was informed on 07.12.2016 with direction to fulfill the requisite in respect of the affidavit. Accordingly, he submitted his statement on a judicial stamp paper on 04.01.2017. He was found absent till 23.01.2017, therefore, he was issued absentee notices prior to the decision on 04.11.2016. All this shows previous closed transactions which have nothing to do with the surprise visit of the District Education Officer on 07.02.2017. As per Rule-3(d) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, a Government servant shall be liable to be proceeded against under these rules if he is guilty of habitual absenting himself from duty without prior approval or leave. In the instant case, if the appellant was not available in the school when surprise visit was paid on 07.02.2017, then the appellant was liable to be proceeded against Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and the initiation of proceedings as per Rule-5 of the Rules *ibid* has to be followed in letter and spirit. But in the instant case, his past conduct was taken into consideration while passing the impugned order of removal from service.

06. Keeping in view the above discussion, this Tribunal is left with no option but to partially allow this appeal. Accordingly, impugned order is set aside. Case is remitted to the Department with direction to conduct de-novo inquiry in view of Rule-3 (d) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 within 30 days after the receipt of this judgment. Reinstatement and back benefits

12/8/21
 ATTESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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Annex A

shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED.
12.08.2021

(Ahmad Sultan Tareen)
Chairman

(Rozina Rehman)
Member (J)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	13/8/21
Number of Words	2000
Copying Fee	22 -
Urgent	
Total	22 -
Name of Applicant	J
Date of Completion of Copy	9/9/21
Date of Delivery of Copy	9/9/21

TITLE OF ENQUIRY: DE-NOVO Inquiry Against Muntazir Mehdi AT
GHS Tari Banda Hangu

DATE: 24-09-2021

VENUE: District Education Office (M) Hangu.

AUTHORITY: District Education Officer (M) Hangu. Vide Endst: 9100 dated 10/9/2021

ENQUIRY COMMITTEE: Mr. Nisar Ahmad DDEO(M) Hangu *Chairman*
 Mr. Dost Muhammad ADEO (Sec) *Member*

TERM OF REFERENCE: The worthy District Education Officer Male Hangu appointed the above mentioned committee vide his Endst: No.9100 dated 10/9/2021, Service Tribunal decision vide service appeal No.807/2018 dated: 12/08/2021 (**Annexure-A**) to probe into the matter and submit facts and findings report as per TORs mentioned in the Charge Sheet and Statement of Allegations lodged against the accused Teacher. (**Annexure-B**)

PROCEEDING OF ENQUIRY:-

In compliance with District Education Officer Male Hangu vide Notification Endst: No. 9100 dated:10/09/2021, the Committee called Mr. Muntazir Mehdi AT GHS Tari Banda to the office of undersigned and handed over reinstatement order for the purpose of inquiry, Charge Sheet and Statement of Allegation on the spot by his own signature and thumb impression as a receipt dated:10/09/2021. He was confirmed to appear before the committee on fixed date, time and venue accordingly. (**Annexure-C**)

Mr. Muntazir Mehdi was called on to appear before the committee for detail investigation and interrogation to probe into the matter once for all. But he could not appeared before the committee. Second Notice was issued vide No.9183 dated:15/09/2021 through Registry on his home address to appear before the committee at the office of undersigned but he failed to do so. Third Notice was issued through Registry on his home address vide No.9247 dated:20/09/2021 to appear before the committee. Again he could not succeeded in the appearance before the committee. (**Annexure-D**)

Questionnaire was designed from the relevant record as per TORs provided by the Competent Authority to pick up the answers for the compilation of the inquiry report, but the accused teacher personally could not appeared before the committee and the committee evaluated/observed all the relevant documents i.e. Attendance Register, Payroll, EMA reports and the Minutes of District Steering Committee, which was chaired by the then Deputy Commissioner, Hangu etc. After evaluation and observation of all the relevant records, the De-novo inquiry committee noted the following findings. The detail is given below.

FINDINGS OF ENQUIRY: In view of the above procedure the following findings were determined.

1. The Attendance Registers of GHS Tari Banda were thoroughly checked and as per this school record Mr. Muntazir Mehdi AT was found willful absent in the given period already mentioned in the ToRs of the inquiry. i.e. w.e.f. 01/10/2015 to 31/12/2015, 03/01/2017 to 07/02/2017 and 02/05/2017 to 13/11/2017. (**Annexure-E**)
2. There was no record in the school as well as in the office, which shows that Mr. Muntazir Mehdi has performed his duty during the aforesaid period.
3. The accused Teacher was called again and again through telephone and official letters to appear before the inquiry committee to resolve his issue, but he showed no response to the committee, which shows that he has no interest in his job and academic activities.

4. This lack of interest of the accused Teacher is also inefficiency and misconduct on his part.
5. The Committee checked Payroll summary record of Mr. Muntazir Mehdi AT provided by the District Account Officer Hangu, which shows illegal drawl of his pay during his absent period as mentioned above. (Annexure-F)
6. Minutes of the District Steering Committee held under the Chairmanship of the then Deputy Commissioner Hangu, declared Mr. Muntazir Mehdi AT in the report of Sept, 2017 as a habitual absconder. Further it was also recommended that the Department take disciplinary action against habitual absconder (Annexure-G)

CONCLUSION/RECOMMENDATIONS:-

In the light of above facts and figures, the inquiry committee concluded that Mr. Muntazir Mehdi AT GHS Tari Banda Hangu remained willful absent from the school during the mentioned period, showed lack of interest to his job which is inefficiency on his part. Also he drawn illegal salary, which is the committing of corruption on his part.

Therefore, it is, recommended that removal of Mr. Muntazir Mehdi AT GHS Tari Banda Hangu, from the service vide this office Ednst: No.7657 dated:15/02/2018, may be intake and the illegal drawl of the salary during the absent period may be recovered to the Govt. treasury in the interest of public.

Muhammad
 Mr. Dost Muhammad
 (Committee Member)
 ADEO (Secy) Hangu
30/9/2021

Nisar Ahmad
 30/09/2021
 Mr. Nisar Ahmad
 (Chairman Enquiry Committee)
 Dy. District Education Officer (M) Hangu.

Attested by
[Signature]

ADEO (Litigation)
 DEO (M)
 Hangu

(11)

Annex B

**Directorate of Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar**

NOTIFICATION

1. WHEREAS, Mr. Muntazir Mehdi Ex-AT was appointed at GHS Tari Banda District Hangu vide No. 4864 Dated: 18-06-2007.
2. AND WHEREAS, he was proceeded under the rules on account of willful absence from duty by DEO (Male) Hangu and imposed the major penalty of "Removal from Service" upon Mr. Muntazir Mehdi vide Order No. 7657 Dated: 15-02-2018.
3. AND WHEREAS, he lodged an appeal before the Service Tribunal Court on 01-06-2018, wherein the court passed judgment on 12-08-2021 with the direction to conduct Denovo Inquiry, which was conducted accordingly.
4. AND WHEREAS, Upon the appeal of Mr. Muntazir Mehdi, Mr. Faridullah DEO (M) Orakzai was nominated as Inquiry Officer vide Order No. 2862-65 Dated: 24-11-2021 by Worthy Director E&SE Peshawar.
5. AND WHEREAS, the Inquiry Officer recommended to re-instate Mr. Muntazir Mehdi in Service w.e.f. 01-12-2017 with proposal to convert his absence period into Extra ordinary leave without pay.
6. NOW THEREFORE, in exercise of power conferred upon by the Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar, being appellate authority after having examined the evidence on record is pleased to accept the appeal under Rules (17)(2)(C) of E&D 2011, and to Re-Instate Mr. Muntazir Mehdi Into Service and the intervening Period is converted into Extra ordinary leave without pay subject to the approval of the competent authority (Finance) as per Govt. Khyber Pakhtunkhwa E&D Rules 2011 with immediate effect.

(Dr. Hafiz Muhammad Ibrahim)
DIRECTOR

Directorate of Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

5049-53
Endst: No: _____/PF: Muntazir Mehdi Ex-AT/Denovo Inquiry Dated Pesh: the 28/08/2022.

Copy forwarded for information to the:-

1. District Education Officer (Male) Hangu.
2. District Accounts Officer Hangu.
3. Mr. Muntazir Mehdi Ex-AT GHS Tari Banda District Hangu.
4. P.A. to Director Elementary & Secondary Education, Local Directorate, Peshawar.
5. Master File.

Dr. Hafiz Muhammad Ibrahim
Assistant Director (Estab-1)
Directorate of Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Attested by
[Signature]
ADEO (Litigation)
DEO (M)
Hangu

DA

The case may be
brought through HM
concerned

بندہ مست جناب ڈی ای او صاحب (مردانہ) ہنگو
عنوان اہلی اور خواست مراد لڑائی کی ہے

جناب عالی: مسائل آپ صاحبان کے ذیل عرض رہا ہے۔

- 1۔ گزارش کی جاتی ہے کہ مسائل (2007) سے گورنمنٹ ہائی سکول اعلیٰ پانڈہ میں بطور ٹیچر خدمات سر انجام دے رہا تھا۔ (ایچ اینٹ آرڈر لے ہے)
- 2۔ مسائل کو بحوریہ (18-2-15) صرف (17) دنوں کی غیر حاضری پر قانونی تقاضے پر رکنے بلکہ ملازمت سے درخواست کر دیا گیا۔ (لف ہے)
- 3۔ جناب والا اس وقت لڑائی لے لے (21-8-12) کو مسائل کے حق میں فیصلہ کر کے (De Novo) انکو ازی مقرر کیا۔ (لف ہے)
- 4۔ ڈائریکٹر صاحب نے بحوریہ (21-11-24) فریڈ اللہ خان صاحب کو انکو ازی آفیسر مقرر کیا۔ (لف ہے)
- 5۔ لڑ کو رو انکو ازی آفیسر نے انکو ازی مکمل کر کے اپورٹ ڈائریکٹوریٹ میں جمع کیا۔
- 6۔ جناب والا! اس کے بعد ڈائریکٹر صاحب نے بحوریہ (22-5-20) کو (Reinstatement) کا آرڈر جاری کیا۔ (لف ہے)
- 7۔ اس کے بعد ڈی ای او (مردانہ) منگولے مسائل کا ایڈجسٹمنٹ آرڈر بحوریہ (22-5-27) کو جاری کیا۔ (لف ہے)
- 8۔ مسائل نے اپنے مہذبے کا چارج (22-5-27) گورنمنٹ ہائی سکول اعلیٰ پانڈہ میں سنبھال لیا اور احسن طریقے سے اپنے فرائض سر انجام دے رہا ہے (لف ہے)
- 9۔ جناب والا آپ صاحبان نے بحالی ملازمت کا جو آرڈر جاری کیا ہے اس میں مسائل کا غیر حاضری کا عرصہ بغیر تنخواہ کے احکامات جاری کئے ہیں۔ اس میں مسائل کا کیا کتنا تھا کہ مسائل کو چند دنوں کی غیر حاضری پر درخواست کیا تھا اور مسائل اس دوران ایسے لاکھوں روپے مقرض ہو چکا ہے اور اہل خانہ کا واحد کھیل ہے۔

لہذا آپ صاحبان سے درخواست کی جاتی ہے کہ مسائل کا بحوریہ (17-12-1) سے (22-5-27) تک کا عرصہ Withpay میں Convert کر کے

منگولہ فرمائیں۔ مسائل تاحیات دعا گو وہ ممنون و مشکور رہے گا۔

میں نوادش حوگی



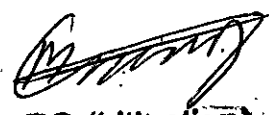
منقر محمدی (ایس ٹی)

العارض

جی ایچ ایس اعلیٰ پانڈہ

بحوریہ 22-8-15

Attested by



ADEO (Litigation)
DEO (M)
Hangu


13)

AUTHORITY

Mr. Muhammad Nawaz ADEO(Lit) of this office is hereby authorized to attend the court of Hon'able Service Tribunal, Peshawar in connection with

Mushtaqi v Medhi S/A No 91/023 vs DEO, M. Hangu v others

on dated 23/08/023 on behalf of undersigned.


District Education Officer
(Male) District Hangu

D.E.O (M)
Hangu