

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1264/2016

Date of Institution... 29.12.2016

Date of decision... 26.12.2017

Mst. Neelam Aman, PST (BPS-12) GGPS Barkat Ullah Kalay Landikotal, Khyber Agency. ... (Appellant)

Versus

1. The Additional Chief Secretary (FATA) FATA Secretariat, Warsak Road, Peshawar and 2 others. ... (Respondents)

MR. Noor Muhammad Khattak, Advocate. ... For appellant.

MR. Muhammad Jan, Deputy District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. GUL ZEB KHAN, ... MEMBER

JUDGMENT

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

FACTS

2. The appellant was removed from service on 24.10.2014 against which she filed departmental appeal on 17.12.2014 which was rejected on 14.11.2016 and communicated to the appellant on 30.11.2016 and thereafter she filed the present service appeal on 29.12.2016.

ARGUMENTS

3. The learned counsel for the appellant argued that the appellant had been performing her duty in GGPS Barkatullah Kalay whereas the whole proceedings of

absence of the appellant were conducted in GGPS Aqil Shah Jamrud. In this respect he referred to the show cause notice and advertisement in the newspaper as well as removal order dated 24.10.2014. He argued that the appellant had been performing her duty in GGPS Barkatullah Kalay regularly.

4. On the other hand, the learned Deputy District Attorney argued that mentioning of name of wrong school was a clerical mistake. That the appellant herself admitted in para-5 of the departmental appeal that she was transferred from GGPS Aqal Shah to GGPS Barkatullah Kalay. That the whole proceedings were taken in accordance with law and all the codal formalities were fulfilled.

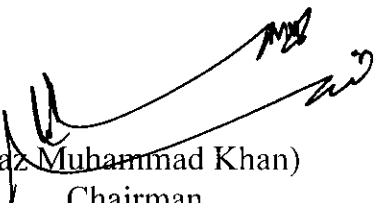
CONCLUSION

5. The arguments of the learned counsel for the appellant are that the appellant had been performing her duty in GGPS Barkatullah Kalay at the relevant time. In this respect he relied upon the attendance register of the said school. After perusing of the record this Tribunal reaches the conclusion that mentioning of GGPS Aqal Shah is not a typographical mistake because in the advertisement of willful absence notice the name of school was mentioned as GGPS Aqal Shah, Jamrod. Similarly in the removal order, name of the school was mentioned as GGPS Aqal Shah. This led us to the conclusion that this Tribunal cannot presume the service of any notice including the advertisement to the appellant due to wrong mention of her school. The period of absence was shown in the school other than the one in which the appellant was serving at the relevant time. No limitation shall run against the appellant as all the notices and order of removal were communicated to the appellant in GGPS Aqal Shah and not GGPS Barkatullah Kalay.

6. In view of such situation, the whole proceedings are illegal. The instant appeal is therefore, accepted and the appellant is reinstated in service. However, the

department is at liberty to hold denovo proceedings if they so wish within a period of 60 days from the date of receipt of this judgment. The issue of back benefits shall be decided in accordance with law and rules on the subject. Parties are left to bear their own costs. File be consigned to the record room.


(Gul Zeb Khan)
Member


(Niaz Muhammad Khan)
Chairman

ANNOUNCED
26.12.2017

12.10.2017

Counsel for the appellant present. Mr. Zia Ullah,
Deputy District Attorney for the respondents present. Counsel
for the appellant submitted rejoinder which is placed on file.
To come up for arguments on 26.12.2017 before D.B.


Member
(Judicial)



Member
(Judicial)

26.12.2017

Counsel for the appellant and Mr. Muhammad
Jan, Deputy District Attorney for the respondents present.
Arguments heard and record perused.

This appeal is accepted as per our detailed
judgment of today. Parties are left to bear their own costs.
File be consigned to the record room.


Member


Chairman

ANNOUNCED
26.12.2017


22.03.2017

Counsel for the appellant, and Asstt. AG for the respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 20.04.2017 before S.B.


Chairman

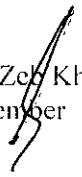
20.04.2017


Counsel for the appellant and Mr. Ihsan Shah, Principal alongwith Addl. AG for the respondents present. Written reply submitted. To come up for rejoinder and final hearing on 31.05.2017.


(Muhammad Amin Khan Kundi)
Member

31.05.2017

Counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondent present. Counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for arguments on 04.09.2017 before D.B:



(Gul Zeh Khan)
Member

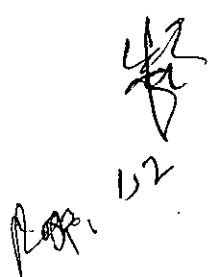

(Muhammad Amin Khan Kundi)
Member

04.09.2017

Since 4th September, 2017 has been declared as Public Holiday on account of Eid-UI-Azha. Therefore the case is adjourned for the same on 12.10.17 before D.B. Parties be informed accordingly.


Counsel


(Reader)


12
12

12.01.2017

Learned counsel for the appellant argued that the appellant was serving as PST at GGPS Barkatullah Kalay Khyber Agency when removed from service vide impugned order dated 24.10.214 where-against she preferred departmental appeal on 17.12.2014 which was rejected on 14.11.2016 communicated to the appellant on 30.11.2016 and hence the instant service appeal on 29.12.2016.

That the appellant was regularly attending her school and had never absented herself. That no codal formalities were ever adopted and appellant condemned unheard.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days notices be issued to the respondents. To come up for written reply/comments on 15.02.2017 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

15.02.2017

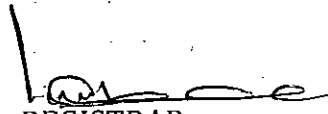

Clerk to counsel for the appellant and Mr. Daud Jan, Supdt. alongwith Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 22.03.2017 before S.B.


(AHMAD HASSAN)
MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1263/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	29/12/2016	<p>The appeal of Mst. Neelam Aman presented today by Mr. Noor Muhammad Khattak 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</p> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12-1-17</u></p> <p style="text-align: right;"> CHAIRMAN</p>

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal NO. 1264 /2016

NEELAM AMAN

VS

EDUCATION DEPTT:

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S.NO.	DOCUMENTS	ANNEXURE	PAGE
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4.	Service book	B	6- 9.
5.	Impugned order	C	10.
6.	Attendance register	D	11- 17.
7.	Departmental appeal	E	18- 21.
8.	Rejection order	F	22- 25.
9.	Vakalat nama	26.

APPELLANT

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1264 /2016

Khyber Pakhtukhwa
Service Tribunal

Diary No. 1325

Mst: Neelam Aman, PST (BPS-12),
GGPS Barkat Ullah Kalay Landikotal, Khyber Agency

Dated 29-12-2016

..... APPELLANT

VERSUS

- 1- The Additional Chief Secretary (FATA), FATA Secretariat, Warsak Road, Peshawar.
- 2- The Director Education (FATA), FATA Secretariat, warsak road, Peshawar.
- 3- The Agency Education Officer, Khyber Agency at Jamrud.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 24.10.2014 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED ON THE APPELLANT AND AGAINST THE APPELLATE ORDER DATED 14-11-2016 COMMUNICATED TO THE APPELLANT ON 30-11-2016 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD/SOLID GROUND

PRAYER:

That on acceptance of this appeal the impugned orders dated 24.10.2014 & 14-11-2016 communicated to the appellant on 30.11.2016 may very kindly be set aside and the respondents be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Filed to-day

Brief facts giving rise to the present appeal are

as under:

Registrar

29/12/16

- 1- That appellant is the employee of the respondent Department and has served the respondent Department as PST for quite considerable time efficiently and up to the entire satisfaction of her superiors. Copies of appointment order & service book are attached as annexure A & B.

- 2- That appellant while serving as PST at GGPS Aqil shah Jamrud was transferred to GGPS Bakhtullah Killi Landi kotal Khyber Agency. That appellant in response to the said order submitted her arrival report and started performing her duty at the concerned station.
- 3- That appellant while serving as PST at GGPS Bakhtullah kali, Landi kotal the impugned order dated 24.10.2014 was issued against the appellant whereby major penalty of removal from service was imposed on the appellant on the wrong pretext that she had failed to performed her duty at GGPS Bakhtullah kali. That though appellant after her transfer to GGPS Bakhtullah kali submitted her arrival report and was regularly performing her duties but inspite of that the respondents issued the impugned order dated 24.10.2014. Copies of the impugned order and attendance register copy are attached as annexure **C & D.**
- 4- That appellant feeling aggrieved from the impugned order dated 24.10.2014 preferred departmental appeal but the same was rejected by the appellate authority after considerable delay of two years vide order dated 14.11.2016 communicated to the appellant 30.11.2016. Copies of Departmental Appeal and rejection are attached as annexure **E & F.**
- 5- That appellant having no other remedy prefer the present appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned order dated 24.10.2014 & reply on departmental appeal communicated to the appellant on 30.11.2016 is against the law, facts, norms of natural justice and materials on the record hence not tenable in the eye of law and liable to be set aside.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 & 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That no charge sheet and statement of allegation has been served ~~to~~ the appellant before issuing the impugned orders dated 24.10.2014 & 14-11-2016.
- D- That no show cause notice has been served on the appellant while issuing the impugned order dated 24.10.2014.

- E-** That no chance of personal hearing personal defense has been given to the appellant before issuing impugned order dated 24-10-2014.
- F-** That no regular inquiry has been conducted in the matter which is as per Supreme Court judgments is necessary in such like matters.
- G-** That no publication has so far been issued by the respondents before issuing the impugned order against the appellant.
- H-** That the respondents acted in arbitrary and malafide manner while issuing the impugned order dated 24-10-2014 as is evident from the attendance register that the appellant was on duty at the time of issuance of the said order.
- I-** That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 28-12-2016

APPELLANT

Neelam Aman

Neelam Aman

THROUGH:

NOOR MOHAMMAD KHATTAK

&

**MUHAMMAD MAAZ MADNI
ADVOCATES**

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal NO. _____/2016

NEELAM AMAN

VS

EDUCATION DEPTT:

APPLICATION FOR CONDONATION OF
DELAY IN FILING THE ABOVE NOTED
APPEAL

R.SHEWETH:

- 1- That the appellant has filed an appeal along with this application in which no date has been fixed so for.
- 2- That the appellant prays for the condonation of delay in filing the above noted appeal inter alia on the following grounds:

GROUND OF APPLICATION:

- A- That valuable rights of the appellant are involved in the case hence the appeal deserve to decide on merit.
- B- That it has been the consistent view of the Superior Courts that cases should be decided on merit rather on technicalities including the limitation. The same is reported in 2004 PLC (CS) 1014 and 2003 PLC (CS) 76.

It is therefore prayed that on acceptance of this application the delay in filing the above noted appeal may please be condoned.

APPELLANT

Neelam Aman

NEELAM AMAN

THROUGH:

[Signature]
NOOR MOHAMMAD KHATTAK
ADVOCATE

A-(5)

OFFICE OF THE AGENCY EDUCATION OFFICER MOHMAND AGENCY AT GHALLANAI.

OFFICE ORDER.

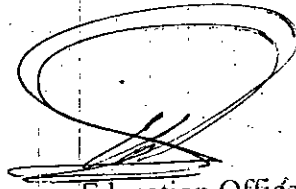
Appointment order issued vide this office Endst:No.3795-3800 dated 29.03.2007 is hereby renewed for Nelam Aman D/O Malik Aman at S.No.2477/02. She is directed to report her arrival with in 15 days after the issuance of this order otherwise her appointment will be deemed as cancelled.

(HAJI HASHAM KHAN)
Agency Education Officer,
Mohmand Agency at Ghallanai.

Endst:No. 5406-11 / Dated 29-5-2007.

Copy of the above is forwarded to the :-

1. Director of Education (FATA) NWFP, Peshawar.
2. Political Agent Mohmand Agency at Ghallanai.
3. Agency Accounts Officer Mohmand Agency at Ghallanai.
4. AAEO concerned.
5. Accountant/Pay Clerk local office.
6. Teacher concerned.



Agency Education Officer,
Mohmand Agency at Ghallanai.

ATTESTED



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				Leave			
				Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is debitabale to another Government		
		Period	Government to which debitabale	Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure or praise of the Government Servant.		
A.E.O. Mohmands.	30/6/07	Division 2007	A.E.O. Mohmands.				
A.E.O. Mohmands.	30/11/07	A/Mer.	A.E.O. Mohmands.				
A.E.O. Mohmands.	30/6/08	Division 2008	A.E.O. Mohmands.				
A.E.O. Mohmands.	30/11/08	A/Mer.	A.E.O. Mohmands.				
A.E.O. Mohmands.	30/11/09	A/Mer.	A.E.O. Mohmands.				
A.E.O. Mohmands.	30/11/2010	A/Mer.	A.E.O. Mohmands.				
A.E.O. Mohmands.	30/6/2011	Division 2011	A.E.O. Mohmands.				

Appointed as PTE against newly created post at Gops Kote Trap Teh: Ambet, in BPS, No. 9 (2770-165-7720) plus usual allowances, under the Rules w. ed. The date of taking over chet

with this ch. order: No. 3795-3800 and appointment order, is hereby renewed with this ch.

order: No. 5406-11 dt: 29/5/2007.

① Services verified w.e.f. 29/5/2007 to 30/11/2007 from Aeq: Roll and other record of the office.

② Services verified w.e.f. 01/12/2007 to 30/11/2008 from Aeq: Roll and other record of the office.

③ Services verified w.e.f. 01/12/2008 to 30/11/2009 from Aeq: Roll and other record of the office.

④ Services verified w.e.f. 01/12/2009 to 30/11/2010 from Aeq: Roll and other record of the office.

ATTESTED

Agency Education Officer, Mohmand Agency at Ghallana

Agency Education Officer, Mohmand Agency at Ghallana

Agency Education Officer, Mohmand Agency at Ghallana

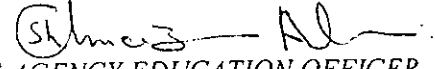
Agency Education Officer, Mohmand Agency at Ghallana

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.B.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "p"	Date of appointment	Signature of Government Servant.
<i>P.T.C</i>	<i>off. Temp</i>	<i>11/11/2011</i>	<i>P.P.S</i>	<i>11/11/2011</i>	<i>80000</i>	<i>1.7.2011</i>	<i>Neelan Aman</i>
<i>Govt: Girls P.T.Y. School, Koda Road Ambal.</i>	<i>d.</i>	<i>11/11/2011</i>	<i>11/11/2011</i>	<i>11/11/2011</i>	<i>80000</i>	<i>1.7.2011</i>	
ATTESTED				<i>[Signature]</i>			

SERVICE CERTIFICATE

9

Certified that Mst" Neelam Aman D/O Malik Aman has been working in Education Department (FATA) Khyber Agency at GGPS Aqal Shah Killi Jamrud Khyber Agency since 29.05.2007 up to date.


AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD

Asst: Agency Edu: Officer (F)
Tehsil Bara
Khyber Agency at Jamrud

ATTESTED



C-10

NOTIFICATION-

→ 1. **WHEREAS** the Assistant Agency Education Officer reported that Miss Neelam Aman PST GGPS Aqil shah Jamrud Khyber Agency was absent from her duty, using substitute vide AAEO visit report dated 19/03/2014. She was not doing her duties in her school at Jamrud so she was transferred to GGPS Bakhtullah killi Ikl but she failed to perform her duties there

2. **AND WHEREAS** a committee was appointed consisting of Mr Saleem Khan Wazir Head Master GHS Hasham Abad as Chairman and all AAEOs as members to dig out the cases of those who were willfully absent. Detailed report and documentary proof to proceed further into the matter in accordance with the rules vide notification No.6153 dated 18/07/14.

3. **AND WHEREAS** the committee after having examined the record has submitted its report after conducting a deep and detailed scrutiny of papers from all the relevant aspects and reported that Miss Neelam Aman PST GGPS Aqil shah Jamrud Khyber Agency was absent from duty using substitute.

→ 4. **AND WHEREAS** Miss Neelam Aman PST GGPS Aqil shah Jamrud Khyber Agency was proceeded against under Khyber Pakhtunkhwa Govt: Servant (Efficiency & Discipline) Rules 2011, for the charge of "willful absence from her duty using her sister as substitute as mentioned in the show cause notice served upon her under registered post at her home address vide AEO No. 3650-56 dated 28/04/2014.

5. **AND WHEREAS** the accused official did not submit her reply to the show cause notice.

6. **AND WHEREAS** absentee notices were served upon Miss Neelam Aman PST GGPS Aqil shah Jamrud Agency through print media in daily newspapers "MASHRIQ" and "Aaj" on 30/06/2014 to attend the office and explain her absence from school but she remained absent and did not report for duty in response to the above mentioned notices.

7. **AND WHEREAS** the competent authority, the Agency Education officer Khyber, after having considered the charges, evidence on record, enquiry report, and facts of the case, is of the view that the charge of willful and unauthorized absence against the accused official has been proved.

8. **NOW THEREFORE**, In exercise of the Powers conferred under Rules-4 (b) iii of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, the competent Authority, Agency Education officer Khyber, is pleased to impose major penalty of " removal from service " upon Miss Neelam Aman PST GGPS Aqil shah Jamrud Khyber Agency with immediate effect, on account of her willful absence and using substitute.


(Atiq-ur-Rahman,)
Agency Education Officer,
khyber Agency at Jamrud

Endstt No.8192-8200 dated 24/10/2014

1. Additional Chief Secretary FATA Secretariat Peshawar
2. Secretary (AI&C) FATA Secretariat.
3. Deputy Secretary (Services) FATA secretariat Peshawar.
4. Director Education FATA
5. Agency Account officer Khyber Agency at Jamrud.
6. AAEO concerned.
7. Superintendent/ Accountant
8. Official Concerned.
9. Pay clerk local office for stoppage of her pay.

ATTESTED




Agency Education Officer,
khyber Agency at Jamrud

رجسٹر حاضری مدرسہ سین جی بی

(11) 11

نام	محمد راز / محمد انور	محمد امیر
عہدہ	پ. س. ت	پ. س. ت

تاریخ	آمد	دستخط	رواگی	آمد	دستخط	رواگی	آمد	دستخط	رواگی
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ATTESTED

دستخط ہذا ماسٹر

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ **وَجِسْتَر حَاضِرِی مَدْرِسِیْن** لغز و لغز

نام	حمید افشار	زینب امان
عہدہ	P.S.T	P.S.T

تاریخ	آمد	دستخط	رواگی	دستخط	آمد	دستخط	رواگی	دستخط	آمد	دستخط	رواگی	دستخط
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ATTESTED

[Handwritten Signature]

[Handwritten Signature] دستخط ہیڈ ماسٹر

3

رجسٹر حاضری مدرسین جی بی پی

2014ء

بابت ماہ جون

نام	محمد انار	نام	محمد انار
عہدہ	P.S.T	عہدہ	P.S.T

تاریخ	آمد	دستخط	رواگی	دستخط	آمد	دستخط	رواگی	دستخط	آمد	دستخط	رواگی	دستخط
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ATTESTED

(Signature)

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	میزان											

(Signature) دستخط ہیڈ ماسٹر

بنت اللہ کے پروفیشنل رجسٹر جاضری مدرسین

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استحقاقی						
بیماری						
میزان						

ATTESTED

[Signature]

رجسٹر ماضی مدد سہین جی ایچ ای - اڈہ

2014 ستمبر بابت ماہ

نام		حیران		نیم امان		P-S-T		P-S-T		عہدہ	
تاریخ	آمد	دستخط	رواگی	دستخط	آمد	دستخط	رواگی	دستخط	آمد	دستخط	رواگی
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قسم	رقعت	حال	سابقہ	میزان	حال	سابقہ	میزان	حال	سابقہ	میزان

ATTESTED

دستخط ہیڈ ماسٹر

بیت اللہ کے سرخول رجسٹر حاضری مدرسین جی۔ جی۔ سی۔ ایس

نام	گھرانہ نمبر	نیک نام
عہدہ	PST	PST

تاریخ	آمد	دستخط	رواگی	دستخط	آمد	دستخط	رواگی	دستخط	آمد	دستخط	رواگی	دستخط
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دستخط ہیڈ ماسٹر

TESTED

رجسٹر حاضری مدرسین

(17)

(4)

2014ء

بابت ماہ نومبر

نام		تعمیر انار گڑھ		نام		تعمیر انار گڑھ	
		P-S-T				P-S-T	
تاریخ	آمد	دستخط	رواگی	آمد	دستخط	رواگی	دستخط
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قسم رخصت	حال	سابقہ	میزان	حال	سابقہ	میزان	حال	سابقہ	میزان	حال	سابقہ	میزان
اتفاقیت												
استحقاق												
بیماری												
میزان												

ATTESTED

Hiraj دستخط ہیڈ ماسٹر

To

E-18

**The Hon'ble Director FATA (E&SE) Department,
Khyber Pakhtunkhwa, Peshawar.**

**SUBJECT: Departmental appeal against the order dated
24.10.2014 communicated to the appellant on
11.12.2014 whereby the appellant was removed
from service under the E&D Rules 2011**

R/SHEWETH:

ON FACTS:

- 1- That appellant was appointed as PST in the Education Department vide order dated 29.5.2007. That in response to the appointment order dated 29.5.2007 the appellant submitted her charge report started performing her duty quite efficiently and up to the entire satisfaction of her superiors.
- 2- That lastly the appellant was transferred to GGPS Aqil Shah Kali Jamrud Khyber Agency vide order dated 29.3.2012. That appellant submitted her charge report on the very next day and started performing her duty at the concerned station.
- 3- That appellant during the course of duty at GGPS Aqil Shah Kali an anonymous complaint was filed against the appellant with the contention that appellant does not perform duty efficiently. That on the said anonymous complaint the concerned Assistant Agency Education Officer (F) visited the school of appellant and inquired in to the matter. That it is pertinent to mention that appellant was present when the said AAEO (F) visited the concerned school.
- 4- That the concerned AAEO (F) in her report clearly stated in her report that appellant is efficient and hard working teacher and she had never been absented herself from duty, the concerned AAEO further stated in her report that the anonymous complaint is baseless.
- 5- That inspite of the clear report of the AAEO (F) Khyber Agency the concerned authority I.e. Agency Education Officer Khyber Agency transferred the appellant to GGPS Bakhtullah Kali Landi Kotal on the basis of that baseless compliant vide order dated 8.4.2014. That being obedient servant the appellant submitted her charge report at the concerned station and started performing her duty at the concerned station.

ATTESTED



- (19)
- 6- That astonishingly the Agency Education Officer Khyber Agency issued another order against the appellant vide order dated 24.10.2014 whereby the appellant was removed from her service without any clear justification and reason. That it is very pertinent to mention that the said impugned order dated 24.10.2014 was not communicated to the appellant in time.
- 7- That feeling aggrieved and having no other remedy the appellant filed the present Departmental appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned order dated 24.10.2014 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the education Department in accordance with law and rules and as such the concerned authority violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That according to Esta Code instructions no action has to be taken on the anonymous/ pseudonymous complaints but inspite of that the concerned authority took action on the said complaint without conducting regular inquiry in the matter.
- D- That the concerned AAEO (F) in her report clearly stated in her report that appellant is efficient and hard working teacher and she had never been absented herself from duty, the concerned AAEO further stated in her report that the anonymous complaint is baseless.
- E- That no charge sheet and statement of allegation has been served against the appellant by the concerned authority before issuing the impugned order dated 24.10.2014.
- F- That no chance of personal hearing/defense has been given to the appellant by the concerned authority before issuing the impugned order dated 24.10.2014.
- G- That no Show cause notice has been served by the concerned authority on the appellant.
- H- That the impugned order dated 24.10.2014 has been issued by the concerned authority without any clear justification and reason.

ATTESTED



It is therefore most humbly prayed that on acceptance of this Departmental appeal the impugned order dated 24.10.2014 communicated to the appellant on 11.12.2014 may very kindly be set aside and the appellant may kindly be re-instated into service with all back benefits.

Dated: 17.12.2014

APPELLANT

Neelam Aman

**Mst: Neelam Aman, PST,
GGPS Bakhtullah Kali Khyber Agency**

ATTESTED





Agency Education Office
Khyber Agency at Jamrud

PHONE. 091-5820584 FAX 091-5820023

Ref 11968

Date 17/03/2015

21

To

The Director Education,
FATA, Peshawar.

Subject:

**DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 24/10/2010
COMMUNICATED TO THE APPELLANT ON 11/12/2014 WHEREBY THE
APPELLANT WAS REMOVED FROM SERVICE UNDER THE E&D RULES
2011.**

Reference your letter NO.512 dated 19/01/2015

Para wise Reply

Respected sir,

1. Correct
2. Correct

- 3. Incorrect, the AAEO female visited the concerned school on 19/03/2014, where in: Mst. Neelam Aman PST GGPS Aqal Shah Killi was absent from duty, therefore, she was transferred to GGPS Bakhtullah Killi LKL, but she failed to perform her duties there as will resorting to absenteeism.
4. Incorrect, a committee was appointed consisting of Mr. Slacem Khan Wazir H/M GHS Hashim Abad as chairman and all AAEOs is members (the committee report vide the notification No. 6153 dated 18/07/2014 is attached).
5. Incorrect, as stated above in para No.3, she was absent from duty and was transferred to GGPS Bakhtullah Killi LKL on 08/04/2014 vide No.2016-20 dated 08/04/2014.
6. Incorrect, the inquiry committee found out that Mst. Neelam Aman PST was using substitute and she remained willfully absent from duty. Therefore, the competent authority charged her for "willful absence from duty" and proceeded against her under KPK Government Servant (Efficiency and Discipline) Rules 2011. Absentee notices were served upon Mst. Neelam Aman PST under registered post at her home address vides. AEO No. 3650-56 dated 28/04/2014, but she failed to reply afterwards 2 other notices were served upon Mst. Neelam Aman PST through print media in daily newspapers "Mashriq" and "Ajj" on 30/06/2014 to attend the office and explain her absence from school but she remained absent and didn't report for duty in response to above mentioned notices. Therefore, the competent authority AEO Khyber Agency after having considered the charges, evidence on record, inquiry report and facts of the case, exercised the powers conferred upon him vide Rule 4 (B)iii of Khyber Pukhantunkhwa Government Servant (E & D) Rules 2011, and imposed major penalty of removal form service" upon Mst. Neelam Aman PST on 24/10/2014.

7. Legal

Agency Education Officer,
Khyber Agency at Jamrud.

17/3/15
ATTESTED



**MINUTES OF THE MEETING REGARDING APPEAL REMOVED/DISMISSED
TEACHERS IN KHYBER AGENCY.**

F-22

1. Meeting on the subject appeals held on 13.04.2016 and on 14-10-2016 respectively in the office of the chairman.
2. The following committee was constituted for disposal of subject appeals;-
 - i. Mr.Hashim Khan Director Education FATA, (Chairman).
 - ii. Mohib Ur Rehman Deputy Director (Estab) Member
 - iii. Abdul Malik, Asstt Director (Litigation) Member
 - iv. Mr. Abdur Rauf Shah, AEO Khyber Agency (Member)
3. The appellants were called for personal hearing one by one keeping in view principal of natural justice. The Ex-Agency Education Officer Attiq-Ur-Rehman and Assistant Agency Education Officer Mst.Waheeda Shinwari were also called for hearing and for provision of relevant Record.
4. **History of the cases**

The Ex-Agency Education Officer Khyber Agency had dismissed /removed from service various teachers male/female on various pretexts. The aggrieved teachers filed appeals to the Director Education FATA against the impugned dismissal/removal orders by the then Agency Education Officer.

Appeal No.1 Uzma Anjum DM

After perusal of the record, and hearing of the appellant, it was revealed, that the appellant performed duty with effect from October to December 2013, thereafter she went to "Umrah" in the Month of February, although she properly informed Agency Education Officer, through an application, but her leave application was not submitted for proper sanction and she went to Umra without getting leave admissibility report for sanction of leave from agency Account office, when question of leave admissibility report was asked from appellant, she frankly conceded, that she was totally ignorant of such legal formality, as "ignorance of law is no excuse and she should have complied with the legal formality but it is worth to be noted the sanctioned authority did not bother to allow or reject her application nor informed the appellant of such legal formality which amount to an implied/tacit approval, therefore her appeal is accepted, subject to the condition, that she will not be entitle for back benefits and her absence period is converted into leave without pay. The appeal is disposed on the above terms and conditions.

ATTESTED

Appeal No.2 Neelam Aman PST.

23

The appellatant was transferred from GGPS Aqal Shah to GGPS Barkatullah. The appellatant concerned was found absent with effect from 8-4-2014, she was served various notices and explanations, but no reply was tendered by the appellatant. The appellatant were asked to produce evidence/proof for her being performed the duty, but badly failed to provide any documentary evidence in support of her appeal, therefore committee was left with no option but to regret / reject her appeal and order to maintain the status quo i.e. the removal order will remained intact.

Appeal No.3 Mst.Shahnaz Shah PTC.

The Agency Education Officer Khyber Agency has dismissed the appellatant on the grounds of direct induction into the service on 5-9-2009, and bogus signature of Agency Education Officer in her service Book. The appellatant was appointed by Agency Education Officer on 5-9-2009 without advertisement, but still it was a practice during the previous years, where there were dearth of female teachers in FATA, and Agency Education Officer was appointing authority, moreover, when removing authority was asked about bogus signatures of the then Agency Education Officer, that whether he had verified these signatures or not, the answer was no so the order was passed on mere ground of direct induction into the system which makes liable not only the appellatant but the appointing authority as well but as discussed above the appointing authority may did in good faith as being a tribal area where previously female education was not on sound footing and there were shortage of female teachers so keeping in view such fact her appointment at that time seems to be justified. Keeping in view the above observations, the appeal is accepted, without any back benefits.

Appeal No.4 .Balqees PST, GGMS Sultan Killi.

The appellatant was initially appointed in 2004 while removed from service on 25.04.2014 her absence was shown since 2007. The teacher concerned has stated that she has done her duty till April 2014. The committee has noticed that she had joined GECT Jamrud for her B.ED and she has been given proper leave by AEO vide No.4845-50 dated 7.10.2009 which cannot be converted into absence, After perusal of the record and statement of the AAEO (F) the teacher concerned had deployed substitute in her place, which is an illegal practice and undue advantage at the cost of national exchequer such practice need to be checked on harsh basis, therefore her appeal is stand rejected/regretted.

ATTESTED

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(24)

Appeal No.5&6 Mst. Naeema Gul & Shumaila PST GGPS BaghKilli.

The applicants concerned were dismissed from services on the ground of absenteeism and using substitutes. The perusal of the record and hearing proceeding reveals the fact, that, the Malik Makan had pressurized the appellant and unduly influenced them for payment out of their salaries to him in lieu of absence from duty.

The teachers concerned when confronted to other quarries reveals other facts, like accommodation problem and ill-treated behavior of Malak Makan, which the appellants concerned reported to Agency education Officer concerned who had not bothered to resolve the issue but rather keep himself MUM on the issue being female and stationed in far flung area were compelled to resort to such illegal practice, the school where the appellants were working is a legal possession of the Government and Agency Education officer being public Functionary and agent of the government should have refer the matter to authorities i.e to Director FATA or Political Agent who can take action under frontier crime Regulation Act against all those who try to illegally occupy the government building or premises no such report was submitted by the agency education officer against Malik -e - makan but the appellant were made responsible they were redeployed GGHS Landi kotal and the concerned principal has issued a performance certificate to them on 9-10-2015 which is a documentary proof that they had performed their respective duty . .

The Committee records that being non locals and females were in weak position, therefore slight punishment/penalties has to be imposed rather strict penalty .They will be awarded penalty of forfeiture 03 increments and their appeals is accepted without back benefits.

Appeal No.8 Pervez Khan PST.

He has been dismissed from services on ground of his absence from duty with effect from 16.02.2013. The absence period had shown with effect from 16.02.2013, whereas AEO has already sanctioned three months leave from 16.09.2013 to 16.12.2013 and the absence period had converted into leave. Afterwards, the winter vacations had started. His dismissal order was issued in 2015.

Committee after perusal of the record observed, that the Agency Education Concerned had sanctioned 03 months leave only, but still the appellant remained absent for 6 months consecutively, more over appellant could not support his claim, but frankly admitted the fact, that he remained absent from duty on the pretext, that his father was ill, as, he did not produce any plausible reasons/proof, therefore his appeal is stand rejected.

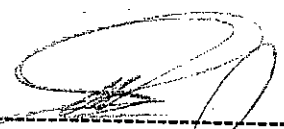
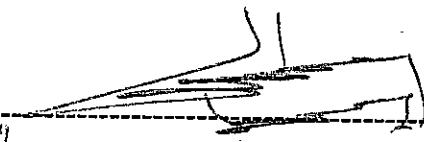
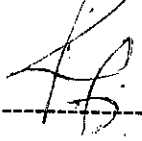
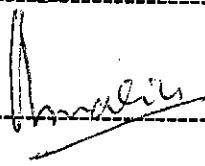
ATTESTED

Appeal No.9 Mohammad Umar PST.

The appellant services were dismissed on ground of willful absence from duty as he remained absent from duty i.e. 12-8-2013 to 28-10-2016 without any leave or prior approval.

His appeal is recommended to be rejected as he showed indifferent towards his case and produce a lame excuse, and admitted that he applied for leave but was not allowed and as a re-action he remained absent from duty, which is a gross negligence. So, his appeal is rejected/regretted.

Recommendation of the committee.


- 1. 
- 2. 
- 3. 
- 4. 


(Hashim Khan)
Director Education FATA

Endst. No. 14860-61 / Dated 14/11 2016

Copy to:-

- 1. Agency Education Officer Khyber Agency.
- 2. PA to Director Education FATA.


Deputy Director (Estab)

ATTESTED


VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar
1264 OF 2016

Neelam Aman

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Neelam Aman

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2016

Neelam Aman
CLIENT



ACCEPTED
NOOR MOHAMMAD KHATTAK
(ADVOCATE)



Muhammad Maq Madni
Advocate

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391
Mobile No.0345-9383141

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

SERVICE APPEAL No. 1264/2016

Neelam Aman.....Appellant

VERSUS

Director Education FATA.....Respondent 1

Agency Education Officer.....Respondent 2

Parawise reply on behalf of respondents No.1&2.

Respectfully Sheweth,

Preliminary objections:

1. That the appellant has got no cause of action / locus standi to file the instant appeal.
2. That the appeal is not maintainable in its present form.
3. That the appellant has not come to this tribunal with clean hands.
4. That the appellant has been estopped by his own conduct to file the appeal.

Objection on facts

1. Incorrect, the appellant has not performed his duty efficiently and his superiors were not satisfied from the performance of the appellant being defaulter in his official and legal obligations.
2. Incorrect, the appellant was transferred from GGPS Kota Trap Mohmand Agency to GGPS Aqil Shah killi Jamrud Khyber Agency and due to complaint of absenteeism the appellant was transferred to GGPS BakhtUllah killi landikotal because the appellant was not performing her duty regularly and affected the education of FATA. Copy of transfer order is attached as annexure "A".

3. Incorrect, the respondent department pursues cases of absenteeism which badly affected the FATA education. The appellant was one of the defaulters and remained absent from duty w.e.f her transfer to GGPS Bakhtullah killi landikotal for a long period. The respondent department issued a notice to the appellant on 28/04/2014 and also issued a show cause notice in daily newspapers. Photocopies attached as annexure "B", but the appellant did not bother to appear before the respondent department or to report for his duty.
4. Incorrect. That the respondent department before proceedings to impose major penalty against the appellant conducting fair regular inquiry under the rules to probe whether the appellant is present or otherwise. The inquiry reports also find that the appellant is defaulter. Consequently after fulfilling of all codal formalities the respondent department proceeded against the appellant vide order dated 24/10/2014. Photocopy attached as annexure "C".
5. The appeal of the appellant is not maintainable being defaulter in the eye of law therefore liable to be dismissed.

Grounds

- A. Incorrect, hence denied. The order letter dated 24/10/2014 has been issued by the competent authority after fulfillment of all codal formalities therefore valid and legal in the eye of the law. The appellant being defaulter has no right to challenge the validity of order dated 24/10/2014.
- B. Incorrect, respondent department have treated the appellant as per law / rules.
- C. Incorrect, the respondent department upon the report of AAEO (F) conducted a fair regular inquiry into the matter of the absenteeism of appellant thereafter issued notice and show-cause notice vide daily Ajj and Mashriq dated 30/06/2014 which were sufficient codal formalities on the part of the respondent department and have been done by the respondent department in case of the appellant as was required by the law.
- D. Incorrect, show-cause notices have been served on the appellant vide daily newspapers. Photocopy is attached as annexure "B".

E. Incorrect, the appellant did not bother to appear before the respondent department even after repeated notices served upon the appellant by the respondent department.

F. Incorrect, inquiry into the matter had been done by the respondent department. Photocopy is attached as annexure "D".

G. As elucidated in para 3 above.

H. Incorrect, hence denied. As replied above.

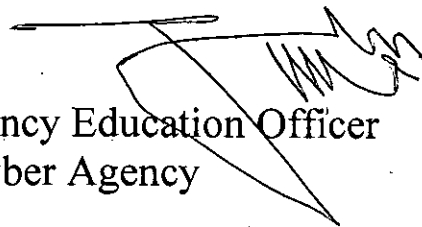
I. The respondents also seek permission to raise additional grounds at the time of arguments.

It is therefore humbly prayed that the appeal of the appellant may kindly be dismissed with cost.



Director Education FATA

Respondent No (1)



Agency Education Officer
Khyber Agency

Respondent No (2)

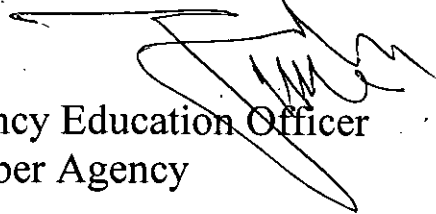
AFFIDAVIT

We, the respondents do hereby solemnly affirm and declare that the contents of the Para wise reply are correct to the best of our knowledge and belief and nothing has been concealed from this honorable Service Tribunal.



Director Education FATA

Respondent No (1)



Agency Education Officer
Khyber Agency

Respondent No (2)



Annexure "A"

①

**FATA SECRETARIAT
DIRECTORATE OF EDUCATION**

NWFP, WARSAK ROAD PESHAWAR, PAKISTAN
PHONE. 091-9210166 FAX 091-9210216

No. / File E-7NWA
Date Pesh: the / / 2012

TRANSFER

Mst. Neelam Aman PTC Govt Girls Primary School Kota Trap Mohmand Agency is hereby transferred in her own pay/scale with effect from the date of her taking over charge against the vacant PTC Post at Govt Girls Primary School Aqal Shah Killi Qadam Jamrud Khyber Agency in the interest of public service.

NOTE:

1. Charge report should be submitted to all concerned.
2. No TA /DA is allowed.
3. Her seniority will be placed at the bottom of seniority list of Khyber Agency.
4. The order should be effective subject to the condition that if she is not involved in census duty.

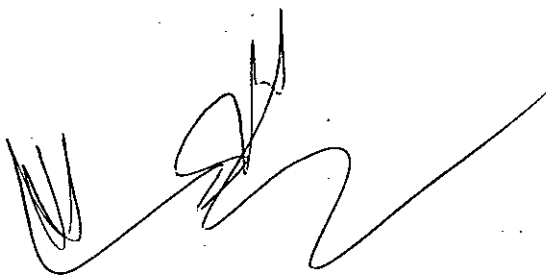
(FAZLE MANAN)
Director Education FATA

Endst; No. 3033-38 / Dated 13 2012.

Copy forwarded to:-

1. Agency Education Officer, Mohmand Agency.
2. Agency Education Officer Khyber Agency with the instructions that her pay will not be released till verification of her service documents i.e. original Service Book/service record etc.
- ✓ 3. Agency Accounts Officer Mohmand Agency.
4. Agency Accounts Officer Khyber Agency.
5. PS to Secretary A&C FATA Secretariat Peshawar.
6. P.A to Director Education FATA.


Additional Director (Estab)



TRANSFER.

Consequent upon the proposal of AAEO (F) Tehsil Jamrud/Landi Kotal Khyber Agency, on dated 07/04/2014, the following female PST/CT teachers of Tehsil Jamrud/Landi Kotal Khyber Agency are hereby transferred to the schools noted against their names in their own pay and scale with effect from the date of their taking over charge in the interest of public service.

S#	Name & Designation/School.	Transferred to.	Remarks.
1.	Mst. Humira Naz PST GGPS BakhtUllah Killi LKL	GGPS Aqal Shah Killi Jamrud	(Local) Vice S. No. 02
2.	Mst. Neolam Aman PST GGPS Aqal Shah Killi Jamrud	GGPS PST GGPS BakhtUllah Killi LKL	Under Complaint Vice S. No. 01
3.	Mst. Nargis CT GGMS Yar Afzal Killi Jamrud	GGPS Sadqeen Killi Jamrud	Under Complaint (Vacant post)
4.	Mst. Rubab Shah CT GGMS Yar Afzal Killi Jamrud.	GGMS Ahmad Khan Killi Jamrud	Under Complaint (Vacant post)
5.	Mst. Dilshad PST GGMS Yar Afzal Killi Jamrud	GGPS Kabal Khan Jamrud	Under Complaint Vice S. No. 06
06.	Mst. Ulfa PST GGPS Kabal Khan	GGMS Yar Afzal Killi Jamrud	Vice S. No. 05

Note:

1. Charge report should be submitted to all concerned.
2. No TA/DA is allowed.

(ATIQ-UR-RAHMAN)
 AGENCY EDUCATION OFFICER
 KHYBER AGENCY AT JAMRUD.

Endst: No 2016-20 Trans: file dated 03/04/ 2014.

Copy forwarded to the:

1. Director Education FATA at Peshawar.
2. Agency Accounts Officer Khyber Agency at Jamrud.
3. AAEO Concerned local Office.
4. Superintendent local office.
5. Officials concerned.

AGENCY EDUCATION OFFICER
 KHYBER AGENCY AT JAMRUD

M Saldar Khan



Annexure B

AGENCY EDUCATION OFFICE
KHYBER AGENCY AT JAMRUD.

WILFUL ABSENCE NOTICE FILE

3

WILFUL ABSENCE NOTICE:-

You, Miss Neelam Aman PST GGPS Aqal Shah Jamrud Khyber Agency had been absent from your duty since your posting using substitute as reported by AAEO (F) Jamrud/Landi Kotal Khyber Agency during the course of her visit to your school dated 19/03/2014.

I, Atiq-ur-Rahman Agency Education Officer Khyber Agency in the capacity of the competent authority do hereby issue this notice, through a registered acknowledgement, on your home address directing you to resume your duty with in fifteen days of issuance of this notice. It must be noted that if this notice is received back as undelivered or no response is received from you, with in the stipulated time period, another notice would be published in two leading newspapers daily Aaj and daily Mashriq for directing you to resume your duty with in another fifteen days of the publication of that notice, failing which an ex-parte decision would be taken against you.

On the expiry of that stipulated period in the notice, major penalty of removal from service will be imposed upon you.

(Atiq-ur-Rahman)
Agency Education Officer
Khyber Agency at Jamrud.

Endst: No.3650-56 Dated 28/04/2014

Copy of the above is forwarded to the:-

1. PS to Secretary Social Sector FATA Secretariat Peshawar
2. Director Education FATA at Peshawar.
3. Political Agent Khyber Agency at Peshawar.
4. Agency Accounts Officer Khyber Agency.
5. AAEO concerned local office.
6. Superintendent local office.
7. Official Concerned.

D No. 2167
30/4/14

Agency Education Officer
Khyber Agency at Jamrud

Annexure "C" (5)

NOTIFICATION-

1. **WHEREAS** the Assistant Agency Education Officer reported that Miss Neelam Aman PST GGPS Aqil shah Jamrud Khyber Agency was absent from her duty, using substitute vide AAEO visit report dated 19/03/2014. She was not doing her duties in her school at Jamrud so she was transferred to GGPS Bakhtullah Killi Iki but she failed to perform her duties there

2. **AND WHEREAS** a committee was appointed consisting of Mr Saleem Khan Wazir Head Master GHS Hasham Abad as Chairman and all AAEOs as members to dig out the cases of those who were willfully absent. Detailed report and documentary proof to proceed further into the matter in accordance with the rules vide notification No.6153 dated 18/07/14.

3. **AND WHEREAS** the committee after having examined the record has submitted its report after conducting a deep and detailed scrutiny of papers from all the relevant aspects and reported that Miss Neelam Aman PST GGPS Aqil shah Jamrud Khyber Agency was absent from duty using substitute.

4. **AND WHEREAS** Miss Neelam Aman PST GGPS Aqil shah Jamrud Khyber Agency was proceeded against under Khyber Pakhtunkhwa Govt: Servant (Efficiency & Discipline) Rules 2011, for the charge of "willful absence from her duty using her sister as substitute as mentioned in the show cause notice served upon her under registered post at her home address vide AEO No. 3650-56 dated 28/04/2014.

5. **AND WHEREAS** the accused official did not submit her reply to the show cause notice.

6. **AND WHEREAS** absentee notices were served upon Miss Neelam Aman PST GGPS Aqil shah Jamrud Agency through print media in daily newspapers "MASIRIQ" and "Aaj" on 30/06/2014 to attend the office and explain her absence from school but she remained absent and did not report for duty in response to the above mentioned notices.

7. **AND WHEREAS** the competent authority, the Agency Education officer Khyber, after having considered the charges, evidence on record, enquiry report, and facts of the case, is of the view that the charge of willful and unauthorized absence against the accused official has been proved.


8. **NOW THEREFORE**, In exercise of the Powers conferred under Rules-4 (b) iii of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, the competent Authority, Agency Education officer Khyber, is pleased to impose major penalty of "removal from service" upon Miss Neelam Aman PST GGPS Aqil shah Jamrud Khyber Agency with immediate effect, on account of her willful absence and using substitute.


Saleem Khan

(Atiq-ur-Rahman,)
Agency Education Officer,
khyber Agency at Jamrud

Endstt No.8192 8200 dated 24/10/2014

1. Additional Chief Secretary FATA Secretariat Peshawar
2. Secretary (AI&C) FATA Secretariat.
3. Deputy Secretary (Services) FATA secretariat Peshawar.
4. Director Education FATA
5. Agency Account officer Khyber Agency at Jamrud.
6. AAEO concerned.
Superintendent/ Accountant
8. Official Concerned.
9. Pay clerk local office for stoppage of her pay.




Agency Education Officer,
khyber Agency at Jamrud



**MINUTES OF THE MEETING REGARDING APPEAL REMOVED/DISMISSED
TEACHERS IN KHYBER AGENCY.**

1. Meeting on the subject appeals held on 13.04.2016 and on 14-10-2016 respectively in the office of the chairman.
2. The following committee was constituted for disposal of subject appeals;
 - i. Mr. Hashim Khan Director Education FATA, (Chairman).
 - ii. Mohib Ur Rehman Deputy Director (Estab) Member
 - iii. Abdul Malik, Asstt Director (Litigation) Member
 - iv. Mr. Abdur Rauf Shah, AEO Khyber Agency (Member)
3. The appellants were called for personal hearing one by one keeping in view principal of natural justice. The Ex-Agency Education Officer Attiq-Ur-Rehman and Assistant Agency Education Officer Mst. Waheeda Shinwari were also called for hearing and for provision of relevant Record.
4. **History of the cases**

The Ex-Agency Education Officer Khyber Agency had dismissed /removed from service various teachers male/female on various pretexts. The aggrieved teachers filed appeals to the Director Education FATA against the impugned dismissal/removal orders by the then Agency Education Officer.

Appeal No.1 Uzma Anjum DM

After perusal of the record, and hearing of the appellant, it was revealed, that the appellant performed duty with effect from October to December 2013, thereafter she went to "Umrah" in the Month of February, although she properly informed Agency Education Officer, through an application, but her leave application was not submitted for proper sanction and she went to Umra without getting leave admissibility report for sanction of leave from agency Account office, when question of leave admissibility report was asked from appellant, she frankly conceded, that she was totally ignorant of such legal formality, as "ignorance of law is no excuse and she should have complied with the legal formality but it is worth to be noted the sanctioned authority did not bother to allow or reject her application nor informed the appellant of such legal formality which amount to an implied/tacit approval, therefore her appeal is accepted, subject to the condition, that she will not be entitle for back benefits and her absence period is converted into leave without pay. The appeal is disposed on the above terms and conditions.

No 2035
17/11/16

Shahin
16/11/16

6

3. Mst. Robina Begum PST GGPS

Appellant appointment order was issued by the Agency Education Officer concerned vide No.9053-59 dated 11-11-99. Her dismissal was issued on the ground of her direct induction in the system/bogus appointment order. After perusal of record no other charge was found against the applicant. The removing authority has not bothered for verification of her initial appointment order, therefore the order dated 3-11-2015 (dismissal) is set aside subject to verification of order dated 11-11-1999 by the Agency Education Officer concerned. Appeal is disposed in the above terms.

The period during which she had not performed her duty after dismissal will be converted into leave without pay.

4. Mst. Syeda Hassan PST GGPS Ayub Killi Khyber Agency.

Her services were dismissed by the Agency Education Officer on the ground of absence from duty. After hearing and checking of the record, it was noted by committee that the schools in Bara were closed due to militancy/operation and teacher concerned was re-deployed to Ali Masjid on 7-5-2012. She was again redeployed to Jalozai Camp (IDPs) by the Agency Education Officer Khyber Agency on the approval of Director Education FATA where she has worked up to 6/2014. The appellant was initially appointed in GGPS Ayub Killi Bara where by charges of absenteeism against her was framed. Though Bara Tehsil was remain closed and she was re-deployed initially to Ali Mashid and then to Jalozai camp on 7-5-2012 and had delivered services up to 6/2014. Show cause was issued against her on 30-6-2014 and the applicant concerned submitted application to the Agency Education Officer on 12/11/2014, regarding factual position and releasing of her salaries. The Agency Education Officer and AAEO remarks were recorded on the note sheet side passing order for releasing of pay without arrear on 13/11/2014, which means that the order dated 24-10-2014 have been indirectly with-drawn in the light of order of 13-11-2014 by then Agency Education Officer. The removal from service has been made in hast manner and without proper inquiry into the matter, therefore the said appeal is allowed in the above terms on the condition that the period against which she had not performed will be converted into leave without pay.

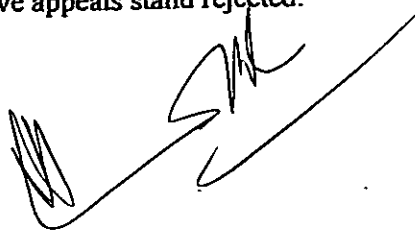
5. Mr. Jalal Abad Chowkidar

The appellant namely Jalal Abad of GGMS Yar Afzal Killi has been charged with absence from duty as he was abroad in Dubai. On his behalf his Father was appeared and admitted the facts that he is performing duty in place of his son as he is abroad as such practice is not allowed under the law and permission of such practice will be at the cost of national exchequer which need to be check with more harsh measures, therefore the committee feels no hesitation in rejecting the said appeal.

6. The following were not appeared before the committee.

- (i) Mst. Riffat Jabeen Ex-CT
- (ii) Mst. Nabila Nawaz Ex-PST.
- (iii) Mr. Zeenat Gul, Mr. Naeema Raza, and Mr. Khyal Mohd Ex-Chowkidar

They have been informed properly vide No.5496 dated 13-5-2016 but they did not respond nor bothered to come for personal hearing therefore strong presumption can be drawn, that they were defaulters in discharging their duties so their respective appeals stand rejected.



Appeal No.2 Neelam Aman PST.

The appellant was transferred from GGPS Aqal Shah to GGPS Barkatullah. The appellant concerned was found absent with effect from 8-4-2014, she was served various notices and explanations, but no reply was tendered by the appellant. The appellant were asked to produce evidence/proof for her being performed the duty, but badly failed to provide any documentary evidence in support of her appeal, therefore committee was left with no option but to regret / reject her appeal and order to maintain the status quo i.e. the removal order will remained intact.

Appeal No.3 Mst.Shahnaz Shah PTC.

The Agency Education Officer Khyber Agency has dismissed the appellant on the grounds of direct induction into the service on 5-9-2009, and bogus signature of Agency Education Officer in her service Book. The appellant was appointed by Agency Education Officer on 5-9-2009 without advertisement, but still it was a practice during the previous years, where there were dearth of female teachers in FATA, and Agency Education Officer was appointing authority, moreover, when removing authority was asked about bogus signatures of the then Agency Education Officer, that whether he had verified these signatures or not, the answer was no so the order was passed on mere ground of direct induction into the system which makes liable not only the appellant but the appointing authority as well but as discussed above the appointing authority may did in good faith as being a tribal area where previously female education was not on sound footing and there were shortage of female teachers so keeping in view such fact her appointment at that time seems to be justified. Keeping in view the above observations, the appeal is accepted, without any back benefits.

Appeal No.4 .Balqees PST, GGMS Sultan Killi.

The appellant was initially appointed in 2004 while removed from service on 25.04.2014 her absence was shown since 2007. The teacher concerned has stated that she has done her duty till April 2014. The committee has noticed that she had joined GECT Jamrud for her B.ED and she has been given proper leave by AEO vide No.4845-50 dated 7.10.2009 which cannot be converted into absence, After perusal of the record and statement of the AAEO (F) the teacher concerned had deployed substitute in her place, which is an illegal practice and undue advantage at the cost of national exchequer such practice need to be checked on harsh basis, therefore her appeal is stand rejected/regretted.



D (9) 15

Appeal No.5&6 Mst. Naeema Gul & Shumaila PST GGPS BaghKilli.

The applicants concerned were dismissed from services on the ground of absenteeism and using substitutes. The perusal of the record and hearing proceeding reveals the fact, that, the Malik Makan had pressurized the appellant and unduly influenced them for payment out of their salaries to him in lieu of absence from duty.

The teachers concerned when confronted to other quarries reveals other facts, like accommodation problem and ill-treated behavior of Malak Makan ,which the appellants concerned reported to Agency education Officer concerned who had not bothered to resolve the issue but rather keep himself MUM on the issue being female and stationed in far flung area were compelled to resort to such illegal practice, the school where the appellants were working is a legal possession of the Government and Agency Education officer being public Functionary and agent of the government should have refer the matter to authorities i.e to Director FATA or Political Agent who can take action under frontier crime Regulation Act against all those who try to illegally occupy the government building or premises no such report was submitted by the agency education officer against Malik –e – makan but the appellant were made responsible they were redeployed GGHS Landi kotal and the concerned principal has issued a performance certificate to them on 9-10-2015 which is a documentary proof that they had performed their respective duty . .

The Committee records that being non locals and females were in weak position, therefore slight punishment/penalties has to be imposed rather strict penalty .They will be awarded penalty of forfeiture 03 increments and their appeals is accepted without back benefits.

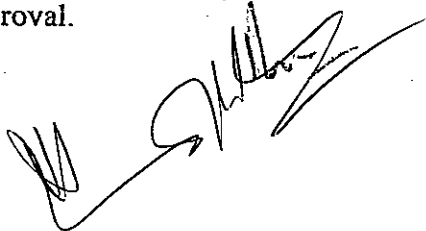
Appeal No.8 Pervez Khan PST.

He has been dismissed from services on ground of his absence from duty with effect from 16.02.2013. The absence period had shown with effect from 16.02.2013, whereas AEO has already sanctioned three months leave from 16.09.2013 to 16.12.2013 and the absence period had converted into leave. Afterwards, the winter vacations had started. His dismissal order was issued in 2015.

Committee after perusal of the record observed, that the Agency Education Concerned had sanctioned 03 months leave only, but still the appellant remained absent for 6 months consecutively, more over appellant could not support his claim, but frankly admitted the fact, that he remained absent from duty on the pretext, that his father was ill, as, he did not produce any plausible reasons/proof, therefore his appeal is stand rejected.

Appeal No.9 Mohammad Umar PST.

The appellant services were dismissed on ground of willful absence from duty as he remained absent from duty i.e. 12-8-2013 to 28-10-2016 without any leave or prior approval.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL No.1264/2016

NEELAM AMAN

VS

EDUCATION DEPTT:

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO THE REPLY SUBMITTED BY THE RESPONDENTS

R/SHEWETH:

All the preliminary objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

- 1- Incorrect and not replied accordingly. That appellant has regularly performed her duty with devotion and to the entire satisfaction of her superiors.
- 2- Admitted correct to the extent of transfer order of the appellant while the remaining para is incorrect. That there was no complaint received during the entire service of the appellant. That after transfer from GGPS Kota Trap Mohmand Agency to GGPS Aqil Shah Killi Jamrud Khyber Agency the appellant submitted her arrival report at the concerned station and started performing her duty quite efficiently. That appellant while serving as PST at GGPS Aqil Shah Killi was again transferred to GGPS Bakhtullah Killi Landi Kotal where the appellant submitted her arrival report and started performing her duty.
- 3- Incorrect and not replied accordingly. That appellant was regularly performed her duties at GGPS Bakhtullah Killi Landi Kotal, Khyebr Agency. Copy of the attendance register already attached with the appeal as annexure.....D.
- 4- Incorrect and not replied accordingly. That appellant has been removed from service without conducting regular inquiry in the matter and straight away removed from service.
- 5- Incorrect and not replied accordingly hence denied.

GROUND:
(A to I):

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect, baseless and not in accordance with law and Rules hence denied. That no charge sheet and statement of allegation has been served on the appellant before issuing the impugned orders dated 24.10.2014 and 14.11.2016. That no show cause notice has been served on the appellant while issuing the impugned order dated 24.10.2014. that no chance of personal hearing personal defense has been given to the appellant before issuing the impugned order dated 24.10.2014. That no regular inquiry has been conducted in the matter which is as per Supreme Court judgments is necessary in such like matters.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted in favor of the appellant.

APPELLANT



NEELAM AMAN

THROUGH:



**NOOR MOHAMMAD KHATTAK
ADVOCATE**

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 53 /ST

Dated 10/01/2018


To

The Agency Education Officer,
Khyber Agency,
At Jamrud.

Subject: **JUDGEMENT/ORDER IN APPEAL NO. 1264/16 MST.NEELAM AMAN**

I am directed to forward herewith a certified copy of Judgment/Order dated 26/12/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


**REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.**

He