BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, PESHAWAR.

Appeal No. 1441/2019

Date of Institution ...

31.10.2019

Date of Decision

14.07.2020

Hazrat Younas S/o Muhammad Rahim, R/o Jamra Lilawnai, Tehsil Alpuri, District Shangla Ex-T.T. BPS-07 at GMS Sheshan Lilawnai District Shangla. ... (Appellant).

VERSUS

Govt: of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar and three others. ... (Respondents)

Present.

Mr. KALEEM ULLAH, Advocate.

For appellant

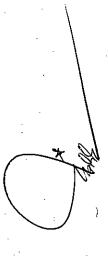
MR. MIAN MUHAMMAD,

MEMBER (Executive)

JUDGMENT

MIAN MUHAMMAD, MEMBER:-

1. The appellant was recruited as Theology Teacher in BPS-07 vide office order of the DEO(M) Secondary Nowshera dated 30.03.1996. He was posted against the vacant post in GMS Sheshan Lilawnai District Shangla. It was further contended by the learned counsel for the appellant that he was performing his duties with zeal and zest in District Shangla when during the period of insurgency in Malakand that schools in the areas were closed. It was during that period that EDEO Shangla vide office order dated 25.01.2010 imposed the major penalty of "Dismissal from the service" upon the appellant under the prevalent law at that point of time i.e Khyber Pakhtunkhwa Government Servants Removal from Service (Special Powers)Ordinance 2000. The appellant has been condemned unheard as no



charge sheet/statement of allegations or show cause notice has been issued to the appellant which is against the spirit of natural justice, law and rules. When confronted on the point of limitation, the learned counsel relied on various judgments of the august Supreme Court pertaining to void orders where limitation can be ignored and cases be considered/decided on merit. When confronted with another point as to whether the appellant sought any departmental remedy available to him, he raised the point that the impugned order dated 25.01.2010 was issued on the back of the appellant. He was not aware of the impugned order nor he was intimated it officially. It was only in the year 2019 that he came to know about major penalty of "dismissal from Service". Moreover, the appellant has time and again requested to DEO(M) Shangla for his posting and pay but to no avail till date and the last reference in this respect is of dated 26.08.2019 available on record.

02. Now in view of the special circumstances in Malakand Division on the face of Talibanization during that period and taking in view the judgments of apex court regarding void orders, the departmental appeal dated 02.02.2010 is sent back to the respondents to decide the same through speaking order within a period of two months. The appeal is disposed off accordingly. File be consigned to the record room.

(MIAN MUHAMMAD) MEMBER(E) 21.01.2020

Appellant present in person.

Requests for adjournment due to general strike of the Bar. Adjourned to 03.03.2020 before S.B.

Chairman

03.03.2020

Counsel for the appellant present and seeks adjournment. Adjourned to 16.04.2020 for preliminary ...,hearing before S.B.

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

16.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 14.07.2020 for the same. To come up for the same as before S.B.

Reader

Form- A

FORM OF ORDER SHEET

Court of	
Case No	1441/ 2019

	Case No	1441/2019
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	31/10/2019	The appeal of Mr. Hazrat Younas presented today by Mr. Kaleemullah Advocate may be entered in the Institution Register and put
*		up to the Worthy Chairman for proper order please.
		REGISTRAR 3 \ \ 10 \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \
2-	01/11/18.	put up there on 12/12/18.
•	,	CHAIRMAN
	P	
	12.12.2019	Appellant in person present.
		Appellant requests for adjournment due to non- availability of his learned counsel owing to the general
•		strike of the bar.
		Adjourned to 21.01.2020 before S.B.
	·	Chairman
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BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 441 /2019

mazrat rounas			
·		(Petitioner)	
		· · · · ·	
	VERSUS		

Govt. of KP through Secretary Education, Peshawar and others

_(Respondents)

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	Grounds of Appeal a/w Affidavit Application for condonation of delay a/w Affidavit Copy of CNIC Copy of appointment order Copy of impugned order dated 25.01.2010 Copy of departmental presentation Copy of service book Attendance Register	Grounds of Appeal a/w Affidavit Application for condonation of delay a/w Affidavit Copy of CNIC Copy of appointment order Copy of impugned order dated 25.01.2010 Copy of departmental presentation Copy of service book Attendance Register

Petitioner

Through

Kaleem Ullah

a

Jannat Hussain

Advocates High Court,

Peshawar

Dated: 23.10.2019

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1441 /2019

Mayber Pakhtoldiwa Service Tribuani

Hazrat Younas S/o Muhammad Rahim
R/o Jamra Lilawnai, Tehsil Alpuri, District Shangla
Ex-T.T. BPS-07 at GMS Sheshan Lilawnai District Shangla

31/10/20/9

_____(Petitioner)

VERSUS

- 1) Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar
- 2) Director Elementary & Secondary Education, Peshawar
- 3) Director Coordination Officer, District Shangla
- 4) Executive District Officer, Elementary & Secondary Education, District Shangla

(Respondents)



Appeal Under Section 4 of the KP Service Tribunal Act, 1974 against the order dated 25.01.2010, whereby the order of dismissal from service has been passed against the appellant.

Prayer:

That on acceptance of this appeal, the order dated 25.01.2010 may please be set aside and the appellant be reinstated

back to his service with all back benefits

OR in alternative the respondent may

kindly be directed to award the

pensionary benefits to the appellant.

Respectfully Sheweth,

Brief facts given raise to the instant appeal are as below:

- 1) That the appellant was appointed as Theology Teacher and was posted against the vacant post in Govt. Middle School, Sheshan Lilawnai District Shangla in the year 1996. (Copy of appointment order is attached)
- 2) That the appellant has been serving his department as a teacher by heart and sole and has got at his credit a length of service standing to more than 14 years.
- 3) That the respondent No. 3 vide its impugned office order No. 502-09/EDO(H) dated 25.01.2010 dismissed from the service on the flimsy grounds that the appellant belongs to a Terrorist Organization. (Copy of impugned order is attached)
- 4) That the appellant so many time verbally as well as through written application prefer departmental appeal to the highups but till date no fruitful response was given to the appellant nor any order in black and white till date with regard to the departmental appeal of the appellant was awarded to the appellant, hence the appellant approached this

hon'ble tribunal on the following grounds amongst others.

GROUNDS:

- A) That the impugned order dated 25.01.2010 is against the law, facts, norms of natural justice, hence not tenable and liable to be set aside.
- B) That the appellant has not been treated by respondent / department in accordance with law and rules on the subject noted above and as such the respondents violated the provision of the Constitution of Islamic Republic of Pakistan, 1973.
- C) That no show cause notice whatsoever has been served upon the appellant nor any inquiry has been constituted to probe into the matter.
- D) That no opportunity was given to the appellant to be heard by the respondent.
- E) That the impugned order dated 25.01.2010 is a classic example of "nano judicaza" i.e. no one should be condemned unheard.
- F) That the allegation on the basis of which the appellant was dismissed from the service is not supported by any documentary proof nor the appellant is nominated till date in a criminal case nor the appellant has any criminal history.

G) That the appellant seeks permission to advance other grounds and proofs at the time of hearings.

It is, therefore, humbly prayed that on acceptance of this appeal, the order dated 25.01.2010 may please be set aside and the appellant be reinstated back to his service with all back benefits OR in alternative the respondent may kindly be directed to award the pensionary benefits to the appellant.

Appellant

Through

Kaleem-Ullah & Janat Hussain Advocate High Court, Peshawar

Dated: 23.10.2019

<u>AFFIDAVIT</u>

I, Hazrat Younas S/o Muhammad Rahim R/o Jamra Lilawnai, Tehsil Alpuri, District Shangla Ex-T.T. BPS-07 at GMS Sheshan Lilawnai District Shangla, do hereby solemnly affirm and declare on Oath that the contents of instant application are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable court.

AT ALI AVYAN

INCTARY

PULLIC

PESHAVIAR

POLICIE High Coast Peatron

3 1 CCT 2019

DEPONENT

Hazrat Younas

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Hazrat You		e Appea	l No	/201	9
			, ·		(Petitioner)
		VE	RSU	S	
Govt. of KF	through Se	cretary E	Education,	Peshawai	and others(Respondents)

<u>Application for condonation of delay</u> <u>in filing of instant service appeal.</u>

Respectfully Sheweth,

- 1) That the appellant filed above mentioned appeal along with this application before this august Service Tribunal in which no date has been fixed so far.
- 2) That the respondent till date has not given any decision on the departmental appeal of the appellant and the appellant was kept at hope till date, that's why the instant appeal is filed.
- 3) That delay in filing of the instant appeal was not intentional but due to the reason mentioned above.

It is, therefore, humbly prayed that on acceptance of this application the delay in filing of the instant appeal may kindly be condoned for the ends of justice.

Petitioner / appellant

Through

Kaleèm Üllah

Jannat Hussain Advocates High Court,

Peshawar

Dated: 23.10.2019

FFIDAVIT

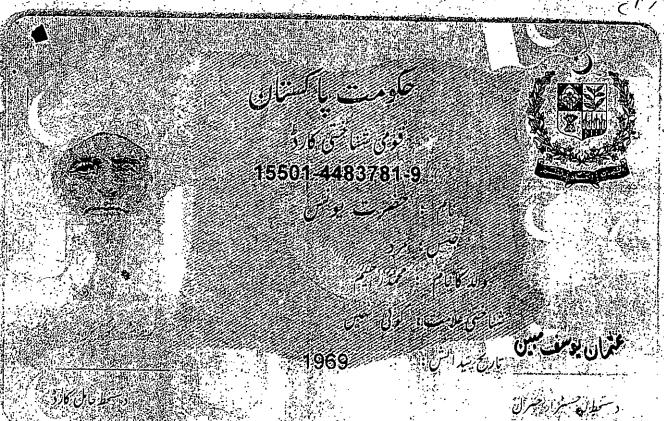
I, Hazrat Younas S/o Muhammad Rahim R/o Jamra Lilawnai, Tehsil Alpuri, District Shangla Ex-T.T. BPS-07 at GMS Sheshan Lilawnai District Shangla, do hereby solemnly affirm and declare on Oath that the contents of instant application are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable court.

DEPONENT

Hazrat Younas

3 1 OCT 2019







APPOINTMENT./ Consequent upon Selection/Recommendation of the selection Committee. Mr. Har Dail Yollans SIC HOHAMNIO RAHIN sandidate is hereby appointed against post of "T" in BPS No. > P.M. plus-usual allowances as admissible under the ule with effect from the date of taking overcharge at Sint Monny M)A against the vacant/NCP/Leave-on the terms and conditions noted above: -TERMS AND COMPITION. The appointment is purely temporary and liable to terminathon at any time without assigning any reason or notice. In case of resignation they will have to submit one month prior motice to the Dantil or forefict one month pay from the GovtL Servant. They are required to produce Health and Age Certificate from the Madical authorities concerned before taking over oberge in case they are not Govt: Servant. They are not allowed to take over-charge-it-their Ageless them 18 years and above. years. All original, Educational, Character and Domicila porticing eates must be verified by the Head of Enstitution conce ned before banding over charge. If they fail to take over charge of the post will seven days from the issued of this order the appointment will be antomatically considered as sancelled. Charge-report should be submitted to all concerned. 7/-B/. No.TA/DA etc is allowed. . (GASI FASIRUD DIN) DISTRICT' EDUCATION OFFICER. (MAIR) CECCHOARY MOVSTERA. /Appointt: MSR those/3 Copy forwarded for information and n/a to the; -District Accounts Officer Bowshera. 2/. 3/.

> DISTRUCT EDUCATION OFFICER. (MAJE) SECONDARY NOW TORAL

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OFFICE OF THE EXECUTIVE DISTRICT OFFICER E&SE, SHANGLA OFFICE ORDER.

WHEREAS it has been noticed from the reliable source that you Mr. Hazrat Younas posted as T.T BPS - 07 in GMS Sheshan Lilawnai District Shangla have indulged yourself as "You are the rother of the commander Muhammad Alam and supported Taliban in District Shangla by providing shelters to them and presently absconding".

AND WHEREAS from the reliable source report the undersigned is of the opinion that you being a Govt. servant are guilty for misconduct under Section-3 Sub-section-b of the removal from service (Special powers ordinance 2000-01) and as well Sub-section-d of section-3 engaged in subversive activities.

AND WHEREAS your retention in service is prejudicial to national security.

AND WHEREAS from the reliable source report you have been found actively involved in anti-state activities, which demands the initiation of the disciplinary proceedings against you under Section-3 Sub-section-b & d of the aforesaid ordinance Removal form service (Special power ordinance 2000-01).

AND WHEREAS the undersigned being the competent authority, issued a show cause notice against you vide this office letter No. 334 dated 19/01/2010. On the response of the show cause notice your written reply has not been recived in the stipulated time as you have been absconding since 20/09/2009 form your govt. duty.

AND WHEREAS for the reasons mentioned in the show cause notice, I being the competent authority unsatisfied from your behavior and found you guilty for misconduct under Section-3 Sub-section-b and also found you involved in subversive activities under Sub-section-d of Section-3 of the aforesaid

ordinance and therefore needs no further proceedings under Seciton-5(4) of the North West Frontier Province removal from service (special powers) (amendment) Ordinance 2000-01.

NOW THEREFORE in exercise of the powers conferred by Section-3 of North West Frontier Province Removal from service (special powers) Ordinance 2000-01, I the undersigned being the competent authority is pleased to imposed a major penalty of "dismissal form Service" on Mr. Hazrat Younas posted as T.T BPS-07 in GMS Sheshan Lilawnai with immediate effect.

EXECUTIVE DISTRICT OFFICER
ELEMENTARY & SECONDARY EDUCATION
DISTRICT SHANGLA.

· Sd .-

No. 502-09/EDO(H) cc:

Dated: 25 /01/2010.

the Additional Chief Secretary Govt. of NWFP Home & TAs, Department Peshawar.

0210. The Secretary to Govt. of NWFPO E&Se, Department Peshawar.

The Commissioner Malakand division at Saidu Sharif, Swat.

12. The District Magistrate / DCO Shangla.

The District Accounts Officer Shangla.

0014. The Account concerned Local office.

715. The ADOs(Estt.) local office.

16. The Official concerned.

EXECUTIVE DISTRICT OFFICER
ELEMENTARY & SECONDARY EDUCATION
DISTRICT SHANGLA.

Juliu Thouse D-E-0 Surjes about Middle Street Dalps 2 Mish cupil is Charles Julie Joldsochie Ville Colo (7) July Eyou & En 1/2/ En July En Jul 2 16/1 or 2009 Sulli les C> P 13/100 Lolibe Martillar 1/2 Come coo o wb محور و تر این ملوی آلع عملی وی سے مالی کو لولری المنا الله على المال الله الموسى المال الله المالي المالي المالي John Confish June July 1/2 civilizations of US. Opis Duch 9 0 pio 2 15 po per 0 3/2 12 o de 10 po 2.2.2010 (ph/ 104/4) 3 1651. 219 (ph/ 104/4) Je Sold Con Ser Ser Ser Ord Well of C

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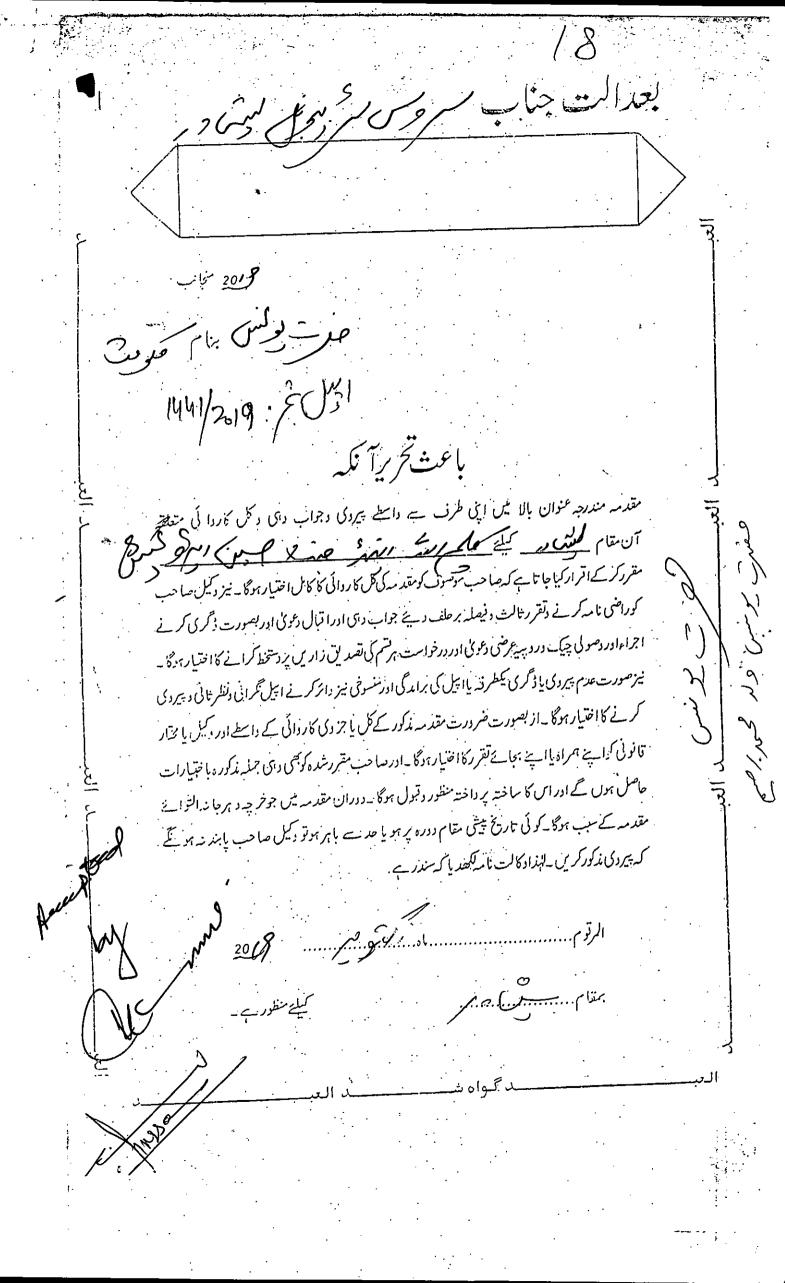
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KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No.1952 /ST

To

The District Education Officer, Government of Khyber Pakhtunkhwa, Shangla.

Subject: -

JUDGMENT IN APPEAL NO. 1441/2019, MR. HAZRAT YOUNAS.

I am directed to forward herewith a certified copy of Judgement dated 14.07.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.