

15.04.2015

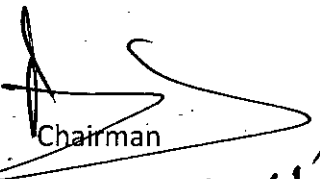
Agent of counsel for the appellant present. Counsel for the appellant is not in attendance due to strike of the Bar. Adjourned for preliminary hearing to 27.04.2015 before S.B.


Chairman

27.04.2015

Counsel for the appellant present. Learned counsel for the appellant informed the Court that the grievances of the appellant have been redressed. Requested for withdrawal of appeal. Dismissed as withdrawn. File be consigned to the record.

ANNOUNCED
27.4.2015


Chairman
27.04.15

3.
Reader Note:

10.09.2014

Counsel for the appellant present. Preliminary arguments could not be heard due to Learned Member is on leave. To come up for preliminary hearing on 14.11.2014.


Reader

4.
Reader Note:

14.11.2014

Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 30.12.2014 for the same.


Reader

5.
Reader Note:

30.12.2014

Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned 19.02.2015 for the same.


Reader

6.
19.02.2015



Clerk of counsel for the appellant present, and requested for adjournment. Request accepted. To come up for preliminary hearing on 15.04.2015.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1014/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	06/08/2014	<p>The appeal of Mst. Dilshahd Begum presented today by Mr. Ashraf Ali Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	11-8-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>10-9-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1014 /2014

Mst: Dilshad Begum Ex-CT
GGHSS Landi Kotal Khyber
Agency

.....Appellant

Versus

The Secretary Education (E &
SE) FATA, FATA Secretariat,
worsak Road, Peshawar and
othersRespondents

INDEX

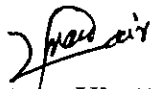
S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal with Affidavit + Application for suspension			
2.	Copy of Show cause		A	9
3.	Copy of medical certificate		B	10
4.	Copy of Impugned Order		C	11
5.	Copy of Impugned order	30-04-2014	D	12-13
6.	Wakalat Nama			


Appellant

Through


Ashraf Ali Khattak

and


Nawaz Khan Khattak
Advocates, Peshawar

Dated: _____ / 08/ 2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Service Appeal No. 1014 /2014

1014
6/8/14

Mst: Dilshad Begum Ex-CT GGSS Landi Kotal Khyber AgencyAppellant.

Versus

1. The Secretary Education (E & SE) FATA, FATA Secretariat, worsak Road, Peshawar.
2. The Director Education FATA, FATA Secretariat, worsak Road, Peshawar.
3. The Political Agent Landi Kotal Khyber Agency.
4. The Agency Education Officer Landi Kotal Khyber AgencyRespondents.

SERVICE APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, ACT 1974 READ WITH SECTION 19 OF THE KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (EFFICENCY AND DISCIPLINE) RULES, 2011 AGAINST THE IMPUGNED ORDER OF RESPONDENT NO.4 DATED 30-04-2014, WHEREIN HE REMOVED THE APPELLANT FROM HER LEGAL SERVICE AND AGAINST WHICH APPELLANT FILED DEPARTMENTAL APPEAL BEFORE THE RESPONDENT NO.2, WHICH IS STILL PENDING WITHOUT DISPOSAL.

Prayer:

On acceptance of the instant service appeal this Honorable Tribunal may graciously be pleased to declare the impugned dated 30-04-2014 of the respondent No.4 as illegal, unlawful and without lawful authority and set aside the same and also re-instate the appellant with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That appellant is the Ex-CT in the respondent department. She has got about 27 years service at his credit with unblemished and clean sheeted conduct record. She has never been rated as in-efficient and un-qualified during her long standing service career.
2. That it is pertinent to mention here that respondents have allegedly visited GGHSS Landi Kotal Khyber Agency 19-02-2013 at the time when the school was closed due to winter vacation. Respondent made a false report of appellant absence and submitted report thereby.
3. That appellant was served with show cause Notice (Annexure-A), but later on withdraws the show cause and directed the appellant to file an affidavit.
4. That it is also pertinent to mention here that the respondent No.4 again allegedly visited the school on 16-04-2014 and again marked the appellant as absent from duty w.effect from 01-04-2014.
5. That it is also worthy to note that the school was closed w.e.from 01-04-2014 to 08-04-2014 on account of spring vacation. Appellant was on her causal leave w.e from 09-04-2014 to 14-04-2014 and was then on medical leave w.e from 14-04-2014 to 22-04-2014 (Annexure-B).
6. That appellant has duly submitted medical leave application along with medical prescription before the leave sanction authority, and the same has been duly sanctioned by leave sanctioning authority.
7. That it is also pertinent to mention that the husband of the appellant has been serving against the post of Executive Chef at Parliament House, Islamabad, therefore, she has to reside with her husband during the course of her official vacation. On this ground she does have the knowledge of any press publication, if any.
8. That appellant has never been remained absent from her official duty. The so called alleged absence has no factual and legal backing. Appellant has 27 years' service at her credit and the punishment awarded to her is too harsh and does commensurate with the alleged accusation.

9. That appellant has never been served with any sort of charge sheet and statement of allegation. No inquiry what so ever has been conducted. The alleged inquiry proceeding has no base in the eyes of law and rules. Appellant has not been provided with opportunity of defense. No final show cause and personal hearing has been afforded to the appellant. Appellant has been condemned unheard.
10. That vide impugned order dated 30-04-2014 (Annexure-C) appellant has been penalized with major penalty of removal from service.
11. That being aggrieved from impugned penal order, appellant preferred departmental appeal (Annexure-D) before the respondent No.2, which is still pending without disposal, hence the statutory period elapsed, therefore, the instant service appeal inter alias on the following grounds.

GROUNDS:-

- A. That appellant has not been treated in accordance with law, rules and policy and thus Article 4 of the Constitution of Pakistan has been violated. The alleged absence has no factual and legal backing. Appellant has never remained absent from duty rather he has performed his duty vigilantly and devotedly even in the worst situation of the area as known to every citizen. He has been prosecuted without his fault. He does not know the sine or crime he has committed. It is fact that there may be some Teachers who may have committed absentee, but appellant has never remained absent from his lawful duty rather performed his duty in very critical situation beyond the call of his lawful obligations and served the Department and public at large.
- B. That no show cause or any other procedure has been adopted by the authorities. The procedural process are not the technicalities of law, but the mandatory provision of law and has been formed part and parcel of disciplinary actions only for the purpose of securing justice in practical shape.
- C. That all public powers are in the nature of trust and public functionaries must act as repository of such trust. In the instant case the obligation of public trust has been

violated.

- D. That major penalty has been imposed in spite of the fact that regular inquiry was absolutely necessary. And it is also pertinent to mention here that according to Article of 13 of the Constitution of Pakistan 1973 "Protection against double punishment and self-incrimination. No person (a) shall be prosecuted or punished for the same offence more than once or (b) shall ,when accused of an offence , be compelled to be a witness against himself " while according to the impugned order ."The period from date of absence till the date of imposition of penalty in respect of the above shall be treated as un-authorized absence from duty with out pay ",which is clear violation of the article 13 of the constitution of Pakistan 1973.
- E. That the Honourable Supreme Court of Pakistan has in thousands of cases has held that no major punishment could be imposed without regular inquiry, the subject impugned order based on no inquiry has therefore, no base in the light of the decision of the Apex Court, thus liable to be set aside.
- F. That factual controversy is involved in the subject case, therefore, regular inquiry was absolutely necessary as per law laid down by the Honourable Supreme Court of Pakistan, the same has been ignored in toto, therefore, on this score, the impugned order is also liable to be set aside.
- G. That the well-known principle of law " Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.
An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

- H. That appellant is jobless since the impugned order, therefore, entitled for back benefits.
- I. That appellant would like to seek the permission of this Honourable Court to advance more grounds at the time of hearing.

For the aforesaid reason it is therefore, humbly prayed that the appeal may kindly be accepted/allowed as prayed for above.

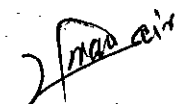
Any other relief which this Honourable deem it proper under the circumstances of the case, but not specifically asked for may also kindly be granted.


Appellant

Through


Ashraf Ali Khattak

And


Nawaz Khan Khattak
Advocates, Peshawar.

Dated: _____ / 08/ 2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2014

Mst: Dilshad Begum Ex-CT GGHS Landi Kotal Khyber AgencyAppellant.

Versus

The Secretary Education (E & SE) FATA, FATA Secretariat, worsak Road,
Peshawar and othersRespondents.

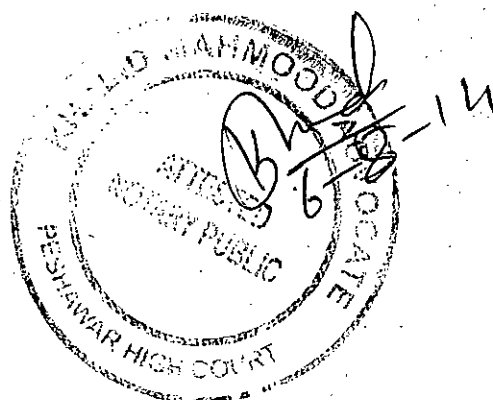
Affidavit

I, Mst: Dilshad Begum Ex-CT GGHS Landi Kotal Khyber Agency, do hereby solemnly affirm and declare on oath that the contents of this writ petition are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.


Deponent

Identified by

Ashraf Ali Khattak
Advocate, Peshawar



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. _____/2014****Mst: Dilshad Begum Ex-CT GGSS Landi Kotal Khyber AgencyAppellant.****Versus****The Secretary Education (E & SE) FATA, FATA Secretariat, worsak Road,
Peshawar and othersRespondents.**

Application for suspending the operation of the impugned order dated 30-04-2014 till the final disposal of the instant appeal.

Respectfully Sheweth,

1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
2. That the facts alleged and grounds taken in the body of main appeal may kindly be as an integral part of this application, which make out an excellent prima facie case in favour of the appellant.
3. That the balance of convenience also lies in favour of appellant and in case the impugned orders are not suspended the appellant will

suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, the operation of the impugned order 30-04-2014 may graciously be suspended till the final disposal of the appeal.



Applicant

Through


Ashraf Ali Khattak,

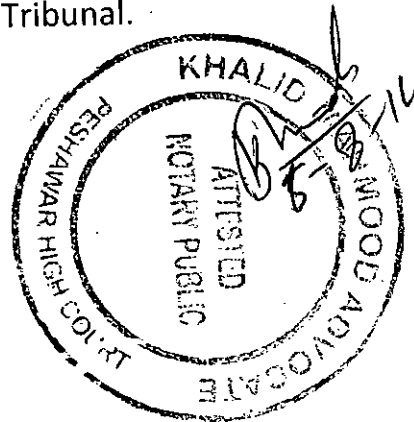
and

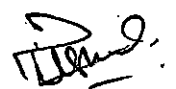
Nawaz Khan Khattak
Advocates, Peshawar.

Dated: _____ / 08 / 2014

Affidavit

I, Mst: Dilshad Begum Ex-CT GGHS Landi Kotal Khyber Agency, do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.




Deponent

Annex: A

9



AGENCY EDUCATION OFFICE
KHYBER AGENCY AT JAMRUD.

NO. _____ ABSENCE NOTICE FILE
DATED _____ 2013.

WILLFUL ABSENCE NOTICE:-

You, Mst; Diishad Begum CT GGHSS Landi Kotai Khyber Agency have been absent from your duty w e f 19/9/2013 to 26/9/2013, during the joint visit of undersigned & Assistant Political Agent Landi Kotal dated 26/9/2013.

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 news papers 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. 6200-7 Absence Notice File Dated 22/9/2013

Copy of the above is forwarded to the:-

01. Director Education FATA at Peshawar.
02. Political Agent Khyber Agency at Peshawar.
03. Assistant Political Agent Landi Kotal w/r to his No. 6624-27/APA-Lki; Dated 26/9/2013.
04. PS to Secretary Social Sector FATA Secretariat Peshawar
05. Principal GGHSS Landi Kotal.
06. AAEO concerned local office.
07. Superintendent local office.

Attested

[Signature]
**To be true copy
Advocate**

[Signature]
Agency Education Officer
Khyber Agency at Jamrud.



DANIAL CLINIC

Annex = B

10

Shop No. 14, Raja Market, Faizabad I-8/4, Islamabad.

Dr. Muhammad Sohail Tariq

B.Sc, MBBS (Pb) RMP

Lab Investigation

Timings

08:00 - 02:00 p.m.

04:00 - 09:00 p.m.

Name DILSHAN BANO Age/Sex 42/F Date.....

Clinical Notes

Rx

To whom it may concern

It is certified that Mrs DILSHAN BANO
who was in Raza is under my treatment.
She is suffering from "Extreme fever". She
is advised to take leave rest for 10 days.
Wct 14/4/14

DR. MUHAMMAD SOHAIL TARIQ
B.Sc, MBBS (Pb), RMP

Investigations

Lab

Ultrasound

ECG

SCORE
20mg/40mg

13/4/14

MOBILEX
7.5mg/15mg

Attested:

[Signature]
To be true copy
Advocate

NOTIFICATION-

Annex: C

11

WHEREAS during the joint visit of AEO accompanied by APA LKL, it was reported that Mst. Dilshad Begum CT GGSS Landi Kotal Khyber Agency was absent from duty with effect from 19/02/2013.

AND WHEREAS a committee was appointed consisting of Mr. Habibullah I/C Principal GHSS Jamrud (BPS18) (Chairman), Mr. Salim Khan Head Master GHS Hashim Abad (BPS-17) (Member), and Mr. Inamul Haq, Supdt 0-0 AEO Khyber (Member) 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.782-85 dated 14/02/14 and No1362-66 dated 13/03/2014

2. 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 Mst. Dilshad Begum CT GGSS Landi Kotal Khyber Agency was absent from duty with effect from 19/02/2013.

3. AND WHEREAS Mst Dilshad Begum CT GGSS Landi Kotal Khyber Agency was proceeded against under Khyber Pakhtunkhwa Govt: Servant (Efficiency & Discipline) Rules 2011, for the charge of "willful absence from duty" with effect from 19/02/2013 as mentioned in the show cause notice served upon her under registered post at her home address vide No.6200-7 dated 27/09/2013

4. AND WHEREAS the accused official did submit reply to the show cause notice but that was unsatisfactory for she was willfully absent again wef 01/04/2014 during the visit of the AAEO dated 16/04/20

5. AND WHEREAS absentee notices were served upon Mst. Dilshad Begum CT GGSS Landi Kotal Khyber Agency through print media in daily newspapers "MASHRIQ" and "Express" on 19/12/13 to attend the office and explain her absence period but she remained absent and did not report for duty in response to the above mentioned notices.

6. 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.

7. 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 Mst. Dilshad Begum CT GGSS Landi Kotal Khyber Agency with immediate effect on account of her chronic and repeated willful absence from duty

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

Encls: No.3674-81 Dated Peshawar the 30/04/2014

Copy forwarded to the:-

1. Secretary Social Sector Department FATA Secretariat.
2. Director Education FATA
3. Political Agent Khyber.
4. PS to Additional Chief Secretary FATA Secretariat Peshawar
5. Agency Account officer Khyber Agency at Jamrud.
6. AAEO concerned.
7. Superintendent/ Accountant
8. Official Concerned.

Agency Education Officer
Khyber Agency at Jamrud.

Attested

True copy
Advocate

To,

THE DIRECTOR OF EDUCATION
(FATA) KPK PESHAWAR

Subject:

DEPARTMENT APPEAL AGAINST THE ORDER DATED 30-04-2014
WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE
WITH IMMEDIATE EFFECT.

Sir,

I have the honour to submit that I have been removed from service vide above referred letter and I request that the aforesaid impugned order dated 30-04-2014 may be set aside in view of the following grounds:-

GROUND.

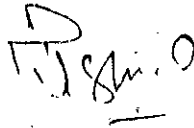
- A. That I was properly performing my duties in the school and was never absent, copies from attendance Register are attached for perusal please.
- B. That I have served for 26 years service in the department with clean record and it does not appeal to a sane mind that a civil servant who has so much long service cannot come to a lower ebb.
- C. That no show cause notice has been served upon me and nor any inquiry in the matter has been conducted, so the impugned order dated 30-04-2014 is liable to be set aside on this score alone.
- D. That the last opportunity ^{of} personal hearing has not been given to me.

Attested
[Signature]
To be true copy
Advocate -

It is, therefore, prayed that in view of above grounds, I have illegally been removed from service and so the impugned order dated 30-04-2014 may be set aside to meet the ends of justice.


Your most obedient servant

Date 26-05-2014



Dilshad Begum CT Teacher
Government Girls Higher Secondary School
Landi Kotal, Khyber Agency

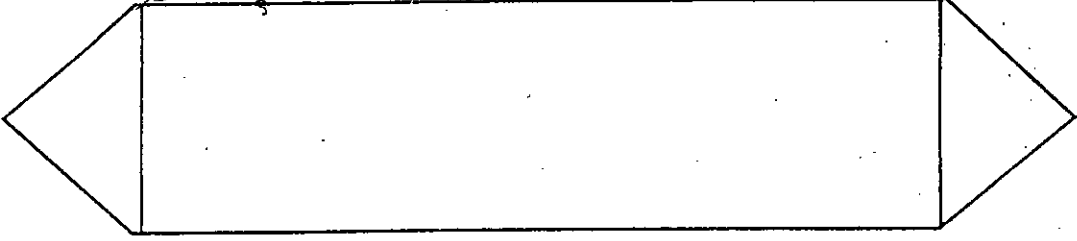
Attested



To be true copy
Advocate

Despatch
No 7546

بعدالت جناب سروس ٹریبونل سٹاور



2ء منجانب
مسماہ دستاد سیکر بنام سیدنی ابو حسن

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام کیلئے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالت ہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند ہے۔

المرقوم _____ ماہ اگست 2014ء

_____ گواہ العبد

کے لئے منظور ہے۔

بمقام

Approved
Approved
Approved