


FORM OF ORDER SHEET

Court of _____

Appeal No. 583/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/04/2024	<p>The appeal of Mr. Waheed Ullah Jan presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL No 583 / 2024

WAHEED ULLAH JAN

V/S

EDU: DEPTT:

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal with affidavit	1-3
2.	Copy of notification dated 16/11/2017	A	4
4.	Copies of departmental appeal and service appeal	B	5-6
5.	Copy of impugned appellate order dated 19/10/2018	C	7
6.	Copy of notification dated 12/11/2018	D	8
7.	Copies of service appeal and judgment dated 02/02/2022 & order	E	9-18
8.	Copy of order dated 02/02/2022	F	19-20
9	Copy of the departmental appeal	G	21
10.	Vakalat Nama	22

Dated: 15-04-2024

THROUGH:

APPELLANT

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

SERVICE APPEAL No 588 / 2024

Mr. Waheed Ullah Jan, Senior Qari (BPS-16),
GHS Sari Behlol, Mardan.

..... **APPELLANT**

VERSUS

- 1- The Secretary Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer (M), Mardan.

..... **RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE IMPUGNED APPELLATE ORDER DATED 19/10/2018,
WHEREBY THE APPELLANT HAS BEEN RE-INSTATED INTO
SERVICE WITH IMMEDIATE EFFECT AND THE
INTERVENING PERIOD W.E.F. 15.11.2017 TO 18.10.2018
HAS BEEN TREATED AS LEAVE WITHOUT PAY AND
AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL
APPEAL OF THE APPELLANT WITHIN THE STATUTORY
PERIOD OF NINETY DAYS**

PRAYER:

That on acceptance of this appeal the impugned appellate order dated 19/10/2018 may very kindly be rectified/modified to the extent of intervening period by treating the intervening period w.e.f. 15.11.2017 to 18.10.2018 as period spent of duty. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

1. That appellant is an employee of the respondent Department and performing his duty with full zeal & zest and up to the entire satisfaction of his high ups.
2. That the appellant while performing his duty, a departmental proceeding has been initiated against the appellant and after conclusion of the same, the respondent awarded major

punishment of compulsorily retirement of the appellant vide notification dated 16/11/2017. Copy of notification dated 16/11/2017 is attached as annexure.....A

3. That feeling aggrieved from the ibid notification, the appellant filed departmental appeal followed by Service Appeal No 377/2018 before this Honourable Tribunal on the grounds mentioned in the memorandum of appeal. Copies of departmental appeal and service appeal are attached as annexure.....B

4. That during the pendency of the aforesaid appeal, the respondent No 2 on acceptance of the departmental appeal of the appellant issued the impugned appellate notification dated 19/10/2018 whereby the appellant has been reinstated, but with immediate effect and the intervening period has been treated as leave without pay. Copy of impugned appellate order dated 19/10/2018 is attached as annexure.....C

5. That it is important to mention here that after issuing the reinstatement order, the respondents through notification dated 12/11/2018 withdraw the reinstatement order of the appellant on the ground that the service appeal mentioned above was pending adjudication before the Honourable Service Tribunal Khyber Pakhtunkhwa. Copy of notification dated 12/11/2018 is attached as annexure.....D

6. That the appellant feeling aggrieved from the ibid notification dated 12/11/2018 filed departmental appeal followed by Service Appeal No 317/2019, whereby the appeal of the appeal was allowed through judgment dated 02/02/2022. That in compliance the respondents re-instated the appellant into service. Copies of service appeal, judgment dated 02/02/2022 and order are attached as annexure..... E

7. That it is important to bring into the knowledge of this Honourable Tribunal that the earlier Service Appeal No 377/2018 filed by the appellant has been infructuous, therefore, dismissed vide order dated 02/02/2022. Copy of order dated 02/02/2022 is attached as annexure.....F

8. That the appellant feeling aggrieved from the impugned appellate order to the extent of intervening period which has been declared as leave without pay i.e. w.e.f. 15.11.2017 to 18.10.2018, preferred appeal/representation before respondents, but the same has not been decided till date. Copy of the departmental appeal is attached as annexure.....G

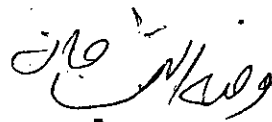
9. That now the appellant feeling aggrieved and having no other remedy filed the instant appeal on the following grounds amongst the others:-

GROUND:

- A- That impugned appellate order dated 19/10/2018 passed by the respondent No 2 to the extent of intervening period i.e. w.e.f. 15.11.2017 to 18.10.2018 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be rectified/modified to the extent the intervening period by treating the same as period spent on duty.
- 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 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and malafide manner by treating the intervening period i.e. w.e.f. 15.11.2017 to 18.10.2018 as leave without pay.
- D- That under the principle of natural justice the appellant is entitled for the pay of intervening period i.e. w.e.f. 15.11.2017 to 18.10.2018.
- E- That, the treatment meted out to the appellant clearly based on discrimination and mala fide and as such the respondents violated the Principle of Natural Justice.
- F- That the action and inaction of the respondents is against the law, facts and norms of natural justice.
- G- 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 very graciously be accepted as prayed for, please.

Dated: 15-04-2024



APPELLANT

THROUGH:

**NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

&

**UMAR FAROOQ MOHMAND
ADVOCATE HIGH COURT**

AFFIDAVIT

I, Mr. Waheed Ullah Jan, Senior Qari (BPS-16) GHS Sari Behlol, Mardan, do hereby solemnly affirm and declare on oath that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble tribunal.


DEPONENT

-4-

"A"

X

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN

NOTIFICATION

Ijaz Ali Khan District Education officer (Male) Mardan as Competent Authority under the Khyber Pakhtunkhwa Government servants (Efficiency & Discipline) Rules, 2011, do hereby serve Mr. Waheed Ullah Jan S.Qari GHS Pati Kalan follows:

- **Where As** Mr. Waheed Ullah Jan Qari GHS Pati Kalan involved in immoral activities.
- **And Where As** a show cause notice regarding involvement in immoral activities penalty was tentatively proposed under rules 4(b) of Khyberpakhtunkhwa Govt servant E&D rules 2011.
- **And where As** your response to the show cause notice was not satisfactory.
- **And where As** a formal inquiry has been conducted and the charges leveled upon you were proved.
- **And Where As** you were directed to attend the office of the undersigned for personal hearing.
- **And where As** you attend the office of the undersigned on 27-10-2017 for personal hearing.
- **And where As** the Competent Authority is not satisfied from your written statement at the time of personal hearing, after having considered the charges evidence on record.
- **And Where As** you found guilty of gross misconduct under KPK Govt servant E&D rules 2011.

Now in exercise of the power conferred to me under rules 4(b) sub rules (II) of the KPK Govt servant E&D rules 2011, the undersigned being competent authority is pleased to impose the major penalty of Compulsory Retirement from the service upon Mr. Waheed Ullah Jan Qari GHS Pati Kalan w.e.f 15-11-2017.

Sa

(Ijaz Ali Khan)
District Education Officer
(Male) Mardan

Endst: No. 101001e P.F

Dated 16/11/17 /2017.

Copy forwarded to the:-

1. Head Master GHS Pati Kalan
2. District Accounts Officer Mardan.
3. Mr. Waheed Ullah Jan Qari GHS Pati Kalan
4. DMO(I MU) Mardan
5. General File.

دستور
مردان

ATTESTED

District Education Officer
(Male) Mardan

16/11/17

To,

The Secretary,
Elementary & Secondary Education,
Khyber Pakhtunkhwa,
Peshawar.

Through proper channel

SUBJECT:- DEPARTMENTAL APPEAL/ REPRESENTATION.

Respected Sir,

Mythis appeal/ representation is against the office order/ EndstNo. 2142-45/F No.39/Vol: II/ Complaint/ KCT(M) Gen, dated Peshawar the 12-11-2018, of the Director, Elementary Education Khyber Pakhtunkhwa, Peshawar, whereby my re-instatement into service Order contained, in vide Endst: 7070-73, dated 19-10-2018, has been withdrawn. (copies the orders are attach as annexure "A& B")

FACTS:-

- I- That the District Education Officer (Male) Mardan, compulsory retired me from my service, vide office order/ Endst 10100/ G P.F, dated 16-11-2017. (copy of the office order is attached as annexure "C")
- II- That being aggrieved from the said order I preferred, departmental representation/ appeal & Review, to the Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar,. (Copies of the Appeal/ reviews are attached as annexure "D& E")
- III- That I preferred, appeal to the Service Tribunal Khyber Pakhtunkhwa, Peshawar on dated 15-03-2018.
- IV- That during the pendency of the said appeal, the Director Elementary & Secondary Education Peshawar, accepted my departmental appeal/ review and order for my reinstatement into service, vide Endst: 7070-73, dated 19-10-2018. (copy of the Re-instatement Order is attached as annexure "B")
- V- That all of a sudden the Director Elementary & Secondary Education Peshawar, withdrawn the reinstatement into service order of the appellant. (copy of the Re-instatement Order is attached as annexure "A")
- VI- That the impugned order is illegal, void, untenable under the Law and against the principals of natural justice on the following amongst many other grounds inter alia,

GROUND:-

1. Because I am innocent and having been falsely involved in the case.
2. Because once the charges against me are not proved, and I am reinstated into service by the competent authority, then such order cannot be withdrawn.

ATTESTED

"B"
-5-


2037
Date 29/11/18

3. Because after receiving my re-instatement into service order, I immediately report to the competent authority for my arrival, vide Diary No. 5699, DEO-M, Mardan dated 20-10-2018.
4. Because after my reinstatement into service order, I am willing to withdraw my appeal from the Service Tribunal, but without allowing me time the Director Elementary & Secondary Education Peshawar, withdrawn my reinstatement into service order. /
5. Because the said withdrawn order is wrong illegal, against the law, hence ineffective upon the rights of the appellant.
6. Because the Director Elementary & Secondary Education Peshawar, has admitted in my reinstatement order that the charges against me are not proved.
7. Because I am innocent falsely involved in the case, is with malafide intention and concocted one.
8. Because there were glaring illegalities and irregularities committed in my case.
9. Because my service record has been clean and unblemished, rather commendable throughout my service.

It is requested that the office order/ Endst No. 2142-45/F No.39/ Vol. II/ Complaint/ KCT(M) Gen, dated Peshawar the 12-11-2018, issued by the Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar, whereby my reinstatement into service has been withdrawn maybe be set aside, and I may be reinstated into service with all back service benefits.

Dated - 28-11-2018

Yours obediently


Qari Waheed Ullah Jan

ATTESTE

"C" 7- 5699 / 1 طائرى

D-E-O-M

Mardan

Date: 20/10/18

Registered.

DIRECTORATE OF ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA

NOTIFICATION.

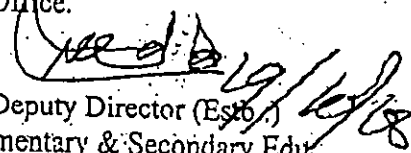
1. WHEREAS, Mr. Waheed Ullah Jan S.Qari GHS Pati Kalan Mardan was proceeded under the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 for charges of involvement in immoral activities/misconduct.
2. AND WHEREAS, the DEO (M) Mardan being competent authority constituted an enquiry committee vide his office Endst: No.75046 dated 07.09.2017.
3. AND WHEREAS, the above named teacher submitted an appeal to this office vide dated 28.11.2017, the same appeal was sent to DEO(M)Mardan for comments vide this office letter NO.1010 dated 05.12.2017 the DEO(M)concerned submitted his comments to this office vide his letter No.81 dated 02.01.2018.
4. AND WHERE AS, the DEO (M) concerned served show cause notice upon the teacher concerned and offered an opportunity for person hearing. The teacher concerned appeared for personal hearing vide dated 16.10.2017 at 2.00 PM but had nothing for his defence.
5. AND WHEREAS, the DEO (M) Mardan being competent authority imposed the major penalty of "Compulsory Retirement" from service w.e.f 15.11.2017 vide his office Endst: No.10100 dated 16.11.2017.
6. AND WHERE AS the above named teacher submitted review appeal vide dated 05.09.2018 for re-instatement before appellate authority for re-consideration.
9. AND WHEREAS, the Director Elementary and Secondary Education Khyber Pakhtunkhwa)being competent authority, after having considered the facts and evidence on record, is of the view that charges against accused teacher have not been proved.
7. NOW THEREFORE, in exercise of powers conferred under Khyber Pakhtunkhwa Servants (Efficiency & Discipline) Rules-2011 the appellate authority has decided to accept the appeal of Mr. Waheed Ullah S.Qari GHS Pati Kalan Mardan. He is re-instated into service with immediate effect and the intervening period i.e from the date of compulsory retirement till taking over charge is treated as leave without pay.

DIRECTOR.

Endst: No. 7070 / F No. 39/KC/Vol:II/Complaint(N)Gen: Dated Peshawar the 19/10/2018.

Copy forwarded for information and necessary action to the:-

1. District Education Officer (M) Mardan with the remarks that the Notification issued by this office vide Endst:No.288-90 dated 22.01.2018 is hereby withdrawn and the teacher concerned may be adjusted against the vacant post S.Qari at GHSS Gaddar Mardan.
2. District Accounts Officer Mardan.
3. Mr. Waheed Ullah S.Qari GHS Pati Kalan Mardan.
4. P.A to Director Elementary & Secondary Education Local Office.
5. Master Files.


Deputy Director (Estb.)
Elementary & Secondary Edu.
Khyber Pakhtunkhwa Peshawar 19/10/18

ATTESTED

P 12

Annexure - "D"
8-

SH...
Advoc...
District...

ETAM
Court
Mardan

Registered.

DIRECTORATE OF ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA

NOTIFICATION.

The notification regarding re-instatement in respect of Mr. Waheed Ullah S.Qari GHS Pati Kalan District Mardan issued by this office vide Endst.No.7070-73 dated 19.10.2018 is hereby withdrawn. In the light of DEO(M)Mardan report that the case is under trial in the court of Service Tribunal Khyber Pakhtunkhwa.

DIRECTOR.

Endst. No. /F No.39/Vol:11/Complaint/KCT(M)Gen. - Dated Peshawar the 21/11 /2018.

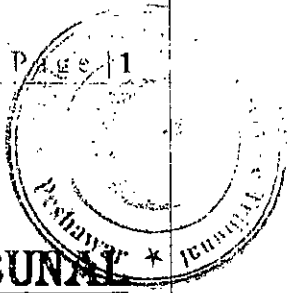
Copy forwarded for information and necessary action to the:-

1. District Education Officer (M)Mardan w/r to his No.8124 dated 23.10.2018.
2. District Accounts Officer Mardan.
3. Mr. Waheed Ullah S.Qari GHS Pati Kalan Mardan.
4. P.A to Director Elementary & Secondary Education Local Office.
5. Master Files.

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

7/9/18

ATTESTED



9. "E"

BEFORE THE PROVINCIAL SERVICES TRIBUNAL

PESHAWAR

Appeal No. 317 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 298

Dated 01-3-2019

Qari Waheed Ullah son of Abdur Raziq, (Ex-Senior Qari) resident of Takkar road sadder colony, Tehsil Takht Bahi & District Mardan Appellant

Versus

1. The Government of Khyber Pakhtunkhawa through Secretary, Education.
2. The Director (E & SE) Khyber Pakhtunkhawa, Peshawar.
3. The ~~District Education Officer~~ District Officer Male (E & SE), Mardan. Respondents

Filed to-day

Registrar
3/19

APPEAL UNDER SECTION 4, OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER OF DIRECTOR (E & SE) KHYBER PAKHTUNKHAWA, PESHAWAR / RESPONDENT No.02, CONTAINED IN OFFICE ORDER/ ENDST 2142-45/F No.39/ VOL: II/ COMPLAINT/ KCT(M) Gen, Dated Peshawar The 12-11-2018, WHEREBY THE APPELLANT REINSTATEMENT INTO SERVICE ORDER IS WITHDRAWN, WHICH IS ILLEGAL, VOID, AGAINST LAW AND FACTS, WHILE DEPARTMENTAL APPEAL FILED ON DATED 28/11/2018, RECEIVED VIDE DAIRY 2037, DATED 29-11-2018, REMAINED UN-RESPONDED EVEN AFTER LAPSE OF 90 DAYS, WHICH IS ILLEGAL AGAINST LAW AND FACTS.

ATTESTED

(Signature)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

. 10 .

PRAYER

ON ACCEPTANCE OF THE INSTANT APPEAL THE IMPUGNED ORDER OF THE DIRECTOR (E & SE) KHYBER PAKHTUNKHAWA, PESHAWAR/ RESPONDENT No.02, CONTAINED IN OFFICE ORDER/ ENDST 2142-45/F No.39/ VOL: II/ COMPLAINT/ KCT(M) Gen, Dated Peshawar The 12-11-2018. WHEREBY THE APPELLANT REINSTATEMENT INTO SERVICE ORDER IS WITHDRAWN, MAY PLEASE BE SETASIDE AND THE APPELLANT MAY BE REINSTATED INTO HIS SERVICE WITH ALL BACK SERVICE BENEFITS.

ANY OTHER CONSEQUENTIAL RELIEF, NOT SPECIFICALLY PRAYED FOR AND DEEMED APPROPRIATE BY HIS HONORABLE TRIBUNAL, IN FACTS AND CIRCUMSTANCES OF THE CASE, MAY ALSO BE GRANTED TO THE APPELLANT.

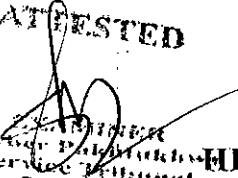
Respectfully Sheweth,

ON FACTS:-

Brief facts giving rise to the present appeal are as under

- I- That the appellant was performing his duty as Senior Qari, in the elementary and secondary Education department Khyber Pakhtun khawa, and was posted at Government High School Pati Kalan.
- II- That during the course of service, respondent No. 03 imposed major penalty upon the appellant of compulsory retirement from service, vide office order/ Endst 10100/ G P.F, dated 16-11-2017. (Copy the order is attach as annexure "A")

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

That aggrieved therefrom, the Appellant preferred departmental Representation/ Appeal, to the Director (E & SE) Khyber

Pakhtun Khawa, Peshawar / Respondent No.02. On 27-11-2017, and which was received vide office diary No. 1414, dated 28-11-2017. (copy of Departmental Representation/ Appeal is attached as annexure "B")

- IV- That the Appellate order was never conveyed to Appellant, even after the lapse of ninety (90) days, Hence, he filed appeal before the Service tribunal on 05-03-2018.
- V- That during the pendency of the said appeal, respondent No 02, set aside the order of the respondent No.03 vide office order/ vide Endst: 7070-73, dated 19-10-2018 and reinstated the appellant into service. (copy of the reinstatement order is as annexure "C")
- VI- That the respondent No. 02, again withdraw the aforesaid reinstatement order of the appellant on the plea of pendency appeal before this Honourable tribunal vide office order/ Endst No. 2142-45/F No.39/ Vol: II/ Complaint/ KCT(M) Gen, dated Peshawar the 12-11-2018. (copy of the reinstatement order is as annexure "D")
- VII- That the appellant prefer departmental appeal to the respondent No.01, against the withdrawal of his reinstatement order on 28-11-2018, vide registered post (copy of the departmental appeal and postal receipts are as annexure "E & F")

VIII- That the Appellate order was never conveyed to Appellant, even after the lapse of ninety (90) days, hence this Appeal is within time. The impugned order is unjustified, illegal, against the principles of natural Justice, ultra vires and the same is liable to be set aside on the following grounds inter alia;

ATTESTED


Signature
 Member (Pakhtun Khawa)
 Service Tribunal
 Peshawar

-12-

GROUND:-

1. Because the respondent No 02 has clearly and in unequivocal terms exonerated the appellant from all the charges/ allegations, which were made basis for the compulsory retirement of the Appellant.
2. Because the reinstatement order dated 10-10-2018, of the appellant clearly states that the charges/ allegations against him have not been proved, consequently he has been reinstated into service.
3. Because once a reinstatement order has been issued by a competent authority, afterwards it cannot be withdraw.
4. Because the appellant has been ready and willing to withdraw his appeal pending before this Honourable Tribunal on the date fixed.
5. Because the impugned withdrawal order of the reinstatement into service of the appellant is illegal, without lawful authority and of no legal effect, hence ineffective upon the rights of the appellant.
6. Because the appellant was falsely implicated, the allegation/ complaint of his involvements in immoral activities are wrong, baseless, without any proof and cogent evidence; he was never involved in such activities, which were also discredited by the competent authority, consequently the appellant has been reinstated into service.

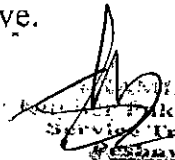
ATTESTED


K. D. S. Bhatnagar
Service Tribunal
Bhubaneswar

-13-

7. Because appellant had not been afforded a fair opportunity of hearing which is sine-qua-non for any action under service law and entrenched in our judicial system.
8. Because appellant has not been afforded a fair opportunity of hearing which is sine-qua-non for any action under service law and entrenched in our judicial system.
9. Because the Appellant was condemned unheard. The inquiry was conducted in his absence, neither his statement was recorded nor he was inform about the inquiry.
10. Because there is no charge sheet statement of allegations in instant case.
11. Because appellant is not handed over inquiry report/proceedings. In spite of oral and written requests till today.
12. Because impugned order is not supported by reasons, muchless cogent reasons as envisaged in the General Clauses Act as well as the principle of Natural justice which are deemed to be enshrined in every statute whether specifically provide or not.
13. Because he was not supplied the copy of Inquiry report and was kept in dark about the findings of the inquiry.
14. Because the allegation of appellants involvement in immoral activities are wrong and ill-founded.
15. Because inquiry committee has involved the appellant with mala fide intention and for ulterior motive.

ATTESTED



EXAMINER
Member Panchukhwa
Service Tribunal
Chennai

-14-

16. Because since the Appellants appointment in 06-06-1996, he perform his duty with dedication, to the entire satisfaction of his superiors; there is no complaint against him.

17. Because the service record of the Appellant has been clean and unblemished, rather commendable throughout his service.

18. The Appellant leave of this Honourable Tribunal to claim further grounds also;

It is therefore most humbly prayed that On acceptance of the instant appeal, the impugned order of the withdrawal of the appellants reinstatement into service, contained in office order/ Endst No. 2142-45/F No.39/ Vol: II/ Complaint/ KCT(M) Gen, dated Peshawar the 12-11-2018, may please be set aside, and appellant and may be reinstated into service with all back service benefits.

Any other consequential relief, not specifically prayed for and deemed proper and appropriate by his Honourable Tribunal, under the facts and circumstances of the case, may also be granted to the appellant.

Dated - 01-03-2019

APPELLANT
QARI WAHEED ULLAH
THROUGH COUNSEL

SHUAIB SULTAN
ADVOCATE HIGH COURT

SHUAIB SULTAN
Advocate High Court
District Courts Mardan

AFFIDAVIT

I, Qari Waheed Ullah ex-senior Qari son of Abdur Razi R/O Takkar road Saddar colony, Tehsil Takht Bahi District Mardan, do hereby state on solemn affirmation that the contents of the instant Appeal is true, correct to the best of my knowledge and belief and nothing has been concealed in this respect. DEPONENT

QARI WAHEED ULLAH
Senior Advocate
Higher District Court
Mardan

Shuaib Sultan Advocate
Attestes
No. 3392
Date 01/03/19

-15-



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 317/2019

Date of Institution ... 01.03.2019
Date of Decision 02.02.2022

Qari Waheed Ullah son of Abdur Raziq, (Ex-Senior Qari) resident of Takkar Road Sadder Colony, Tehsil Takht Bhai, District Mardan.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Secretary Education and two others.

... (Respondents)

Muhammad Irshad Mohmand,
Advocate

... For appellant.

Naseer ud Din Shah,
Assistant Advocate General

... For respondents.

Salah-Ud-Din

... Member (J)

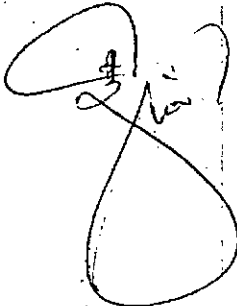

Rozina Rehman

... Member (J)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

"On acceptance of instant service appeal, the impugned order of the Director (E&SE) Khyber Pakhtunkhwa Peshawar/Respondent No.2 contained in office order dated 12.11.2018, whereby, the appellant reinstatement into service order is withdrawn, may please be set aside and the appellant may be reinstated into his service with all back benefits."


ATTESTED

Rozina Rehman
Member (J)

16-

2. Brief facts of the case are that appellant was performing his duty as Senior Qari and was posted at Government High School Patti Kalan. Major penalty of compulsory retirement from service was imposed upon appellant vide office order dated 16.11.2017. Feeling aggrieved, he preferred departmental appeal to the Director E&SE Khyber Pakhtunkhwa on 27.11.2017. The appellate order was not communicated to the appellant even after the lapse of 90 days, he, therefore, filed service appeal in this Tribunal on 15.03.2018. During the pendency of service appeal, his departmental appeal was accepted and he was reinstated into service on 19.10.2018 but the respondent No.2 withdrew the reinstatement order of the appellant on the plea of pendency of service appeal. The appellant preferred departmental appeal against the withdrawal of his reinstatement order but to no avail, hence, the present service appeal.

3. We have heard Muhammad Irshad Mohmand Advocate learned counsel for appellant and Naseer ud Din Shah learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Muhammad Irshad Mohmand Advocate learned counsel appearing on behalf of appellant, inter-alia, argued that the appellant was clearly exonerated from all charges by the respondent No.2 and he was reinstated into service which order clearly shows that the allegations leveled against appellant were false and frivolous. He submitted that once reinstatement order is issued by a competent authority, then it cannot be withdrawn without genuine reasons. He contended that the impugned withdrawal order is therefore, illegal

ATTESTED

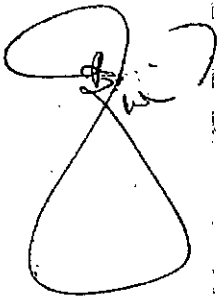
Attesting Authority
Director E&SE
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

-17-

and without lawful authority. Another limb of arguments was that appellant was not afforded a fair opportunity of hearing which is a sine qua non for any action under service law and that the impugned order is not supported by reasons as envisaged in the General Clauses Act.

5. Conversely, learned AAG submitted that the notification regarding reinstatement in respect of the appellant was withdrawn in the light of report of the respondent No.3 as the case of the appellant was subjudice in Service Tribunal. He contended that the appellant was a habitual bad character person who was involved in satanic activities time and again and that the impugned order was passed due to his bad character and immoral activities.

6. From the record, it is evident that appellant Qari Waheed Ullah was proceeded against departmentally under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and vide order dated 16.11.2017 major penalty of compulsory retirement from service was imposed upon appellant. Feeling aggrieved, appellant filed departmental appeal on 27.11.2017 which was rejected vide order dated 23.01.2018, however another notification was issued on 19.10.2018, whereby, the appellate authority accepted his appeal and appellant was reinstated into service with immediate effect while the intervening period i.e. from the date of compulsory retirement till taking over charge was treated as leave without pay. This order was passed during the pendency of Service Appeal No.377/2018, wherein, the order dated 16.11.2017 had been challenged by the appellant. In view of the pendency of the



NOTED
SECRETARY
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA


service appeal filed by the appellant, another notification was issued on 12.11.2018 vide which notification regarding reinstatement in respect of appellant issued vide order dated 19.10.2018 was withdrawn. The impugned order dated 12.11.2018 is not supported by cogent reasons as envisaged in the General Clauses Act. Mere pendency of an appeal in the Service Tribunal is no ground for withdrawal of an order which was otherwise issued by the competent authority in view of the entire record. The order of reinstatement into service in respect of the appellant by the competent authority bearing endorsement No.7070-73 dated 19.10.2018 is not denied. The same has been admitted to have been rightly issued by the competent authority.

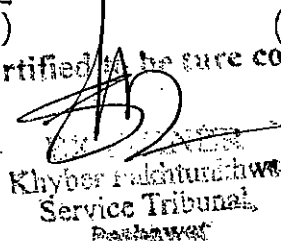
7. For what has been discussed above, this appeal is accepted. The impugned order dated 12.11.2018 in respect of withdrawal of the reinstatement order is set aside and the appellant is accordingly reinstated into service in the light of order dated 19.10.2018. The intervening period i.e. from the date of compulsory retirement till taking over charge by the appellant has already been treated by the authority as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
02.02.2022


(Salah-ud-Din)
Member

(Certified true copy)


(Rozina Rehman)
Member (J)


Khyber Pakhtunkhwa
Service Tribunal
Peshawar



BEFORE THE PROVINCIAL SERVICES TRIBUNAL

PESHAWAR

Appeal No. 377 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 397

Dated 15/03/2018

Qari Waheed Ullahson of AbdurRaziq, (Ex-Senior Qari) resident of Takkar road sadder colony, Tehsil Takht Bahi & District Mardan.....Appellant

Versus

1. The Government of Khyber Pakhtun Khawa through Secretary, Education.
2. The Director (E & SE) Khyber Pakhtun Khawa, Peshawar.
3. The Executive District Officer Male (E & SE), Mardan. Respondents

APPEAL UNDER SECTION 4, OF THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER OF THE DISTRICT EDUCATION OFFICER(MALE) MARDAN/ RESPONDENT NO.03, CONTAINED IN OFFICE ORDER/ ENDST 10100/ G P.F, DATED 16-11-2017, WHEREBY THE APPELLANT IS AWARDED THE MAJOR PENELITY OF "COMPULSORY RETIRMENT" FROM SERVICE, WHICH IS ILLEGAL, VOID, AGAINST LAW AND FACTS, WHILE DEPARTMENTAL APPEAL FILED ON DATED 27/11/2017, RECEIVED VIDE DAIRY 1414, DATED 28-11-2017

REMAINED UN-RESPONDED EVEN AFTER LAPSE OF 90 DAYS, WHICH IS ILLEGAL AGAINST LAW AND FACTS.

Filed to-day

Registrar

15/3/18

PRAYER

ON ACCEPTANCE OF THE INSTANT APPEAL THE IMPUGNED ORDER OF THE DISTRICT EDUCATION OFFICER(MALE) MARDAN / RESPONDENT NO.03, CONTAINED IN OFFICE ORDER/ ENDST 10100/ G P.F, DATED 16-11-2017. WHEREBY THE APPELLANT HAS BEEN AWARDED MAJOR PENELITY OF COMPULSORY RETIRED FROM HIS SERVICE, MAY PLEASE BE SET ASIDE AND THE APPELLANT

ATTESTED

EXAMINER
Khyber Pakhtunkhwa

-20-

S.A# 377/2018 Qari Waheed Ullah Jan Vs. Education Department

Date of Institution: 15.03.2018

Date of Decision: 02.02.2022



Order
02.02.2022

Appellant with counsel present.

Naseer Ud Din Shah learned Assistant Advocate General alongwith Sajid Ali ADEO for the respondents present.

This appeal has been filed against the order dated 16.11.2017 vide which appellant was awarded major penalty of compulsory retirement from service.

From the record, it is evident that during the pendency of appeal in hand, appellant was reinstated into service but later on, his order of reinstatement was withdrawn, therefore, he filed another Service Appeal bearing No.317/2019 which was allowed and order of reinstatement of appellant was kept intact. The appeal in hand having become infructuous is, therefore, dismissed. No order as to costs. File be consigned to the record room.

ANNOUNCED.
02.02.2022

(Salah-ud-Din)
Member (J)

(Rozina Rehman)
Member (J)

Date of Presentation of Application 15/4/23
Number of Words 17
Copying Fee 5/-
Urgent 9/-
Total 16/-
Name of _____
Date of 15/4/23
Date of Delivery of Copy 15/4/23

Certified to be true copy

ENCLINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

To

The Director,
Elem: & Secondary Education Deptt:
Khyber Pakhtunkhwa.

"5"
-21-

Through: The District Education Officer,
Male Mardan.

Subject: DEPARTMENTAL APPEAL/REPRESENTATION.

Respected Sir,

This appeal is against the Office Notification No. 7070-73/F.No.39/KC/Vol: II/Complaint (N) Gen Dated 1-10-2018 regarding leave without pay w.e. from 15-11-2017 to 18-10-2018.

It is submitted for your kind information that Major Penalty of Compulsory Retirement was imposed upon me by DEO (M) Mardan for the baseless and meaningless charges vide office Endstt No. 10100/G Dated 16-11-2017.

The appellant submitted Departmental Appeal to the Director E&SE Deptt: Khyber Pakhtunkhwa being appellate authority. The E&SE Department has conducted two enquiries after imposing of major penalty upon the appellant. Both the enquiry committees have declared the appellant as innocent and recommended for Re-Instatement with all back benefits.

The Director, E&SE Deptt: Khyber Pakhtunkhwa has accepted the appeal and Re-Instated the appellant vide Notification No. 7070-73/F.No.39/KC/Vol: II/Complaint (N) Gen Dated 1-10-2018. However, the intervening period i.e. w.e. from 15-11-2017 to 18-10-2018 was converted into leave without pay.

As per Rules in Vogue, no one can be penalized for the undo charges. I am quite innocent and both the enquiry committees have also declared me as innocent. Hence, conversion of my service into leave without pay is quite injustice.

It is therefore requested that my intervening period w.e. from 15-11-2017 to 18-10-2018 may please be considered as ON DUTY and the salaries of the said period may please be paid to me as due and admissible under the rules.

I shall ever pray for your long life and prosperity.

Forwarded to The DEO (M)
for further order please.

[Signature]
HEAD MASTER
GHS Sari/Behlol

[Signature]
Yours Obediently,
(WAHEEDULLAH JAN) D.E - 0
Sr. Qari,
GHS Sari Behlol Mardan

2384
30/12/2023

30/12/023 ATTESTED

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No 12024

Waheed Ullah Jan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt:

(RESPONDENT)
(DEFENDANT)

I/We Waheed Ullah Jan

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** 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. / / 202



CLIENT

ACCEPTED

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

WALEED ADNAN

UMAR FAROOQ MOHMAND

&

**MEHMOOD JAN
ADVOCATES**