

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT SWAT.**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
SALAH UD DIN ...MEMBER (Judicial)

Service Appeal No.1191/2019

Date of presentation of appeal.....12.09.2019
Dates of Hearing.....09.02.2023
Date of Decision.....09.02.2023

Farman Ai Son of Feroz Khan, Naib Qasid at Department of
Education, presently duty on GMS No. 1 Rega, District Buner.
.....(***Appellant***)

Versus

1. **District Education Officer(Male)** Buner.
2. **Director** Elementary & Secondary Education, Khyber Pakhtunkhwa at
Peshawar.
3. **Secretary** Elementary & Secondary Education, Khyber Pakhtunkhwa
at Peshawar.
.....(***Respondents***)

Present:

Mr. Mushtaq Ahmad,
Advocate.....For appellant.

Mr. Asif Masood Ali Shah,
Deputy District Attorney.....For respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE ORDER DATED 21.12.2018, WHEREBY THE
APPELLANT WAS REMOVED FROM SERVICE.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and
grounds of appeal, the appellant was appointed as Naib Qasid in 2011and he had
been serving as such in Government Middle School No.1, Rega, District Buner; that
the appellant was removed from service vide order dated 21.12.2018; that the



appellant filed departmental appeal and awaiting ninety days' waiting period, when no response was received from the respondents, he filed this appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

5. In the reply the respondents stated details of absence from time to time and actions taken against his such absence warding him punishments from time to time. Before the impugned removal order on 21.12.2018, he was proceeded against and was awarded minor penalty of withholding of three annual increments with cumulative effect vide No.3636—40 dated 27.05.2017. It is alleged that the appellant was found absent time and again by the IMU and resultantly, in Educational Steering Committee Meeting under the Chairmanship of Deputy Commissioner Buner, the District Education Officer was directed vide meeting minutes No.6459-70/AG-III/DC/B dated 30.10.2017 to proceed against the appellant under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of impersonation, proxy, misconduct, inefficiency and absence. It was then a show cause notice was issued to the appellant vide No.5698-5700 dated 06.10.2017 and reply was found unsatisfactory and he was removed from service vide No.6433-36 dated 21.12.2018. While keeping in view the above situation we enquired about the legal status of the

Educational Steering Committee on whose direction the appellant was proceeded but no reply was given by the respondents and the learned law officer. We also enquired about the minutes of the meeting of the Committee or the direction given for initiation of departmental proceedings against the appellant as no such minutes or direction is found placed on the file. Copies of minutes of the meetings of 10.03.2017, 30.10.2017 and 16.11.2018 were produced during the course of arguments. The minutes of 10.03.2017 the Deputy Commissioner Buner directed the District Education Officer (Male) Buner to terminate the appellant till next week. In the minutes of 30.10.2017, the Deputy Commissioner showed concern why the appellant had not been terminated and further directed that the appellant should be terminated within a week. Similarly, in the minutes of 16.11.2018, the Deputy Commissioner Buner directed the District Education Officer (Male) Buner to immediately issue termination order of the appellant. In the show cause notice of 06.10.2017 no period of absence was given nor any incident of negligence was stated. In reply to show cause notice the appellant urged that no date of his absence was mentioned in the show cause notice. He alleged that he was found present on 12.10.2017 when the District Education Officer (Male) visited the School. He also annexed the attendance register showing his attendance in the school. It appears that obeying the direction of the Deputy Commissioner Buner given in the meeting held on 16.11.2018 and after more than a year of issuance of show cause notice, the appellant was removed from service on 21.12.2018 saying that the Competent Authority (District Education Officer Buner) was satisfied that the appellant was not interested in government duty and that the charges mentioned in the charge sheet and statement of allegations had been proved against the appellant. Although it is alleged in the reply that the appellant was provided an opportunity of personal hearing but the record does not support the same as there is no document attached with the reply to show that any date for personal hearing was fixed and

communicated to the appellant. The impugned order too is silent that any opportunity of personal hearing was provided to the appellant, which he had not availed. It is nowhere explained or justified as to why the action/impugned order was delayed for over a year. It seems that the Competent Authority has acted under the influence and direction of the Deputy Commissioner Buner and not according to its own wisdom or independently. Before passage of the impugned order no enquiry was conducted nor was it anywhere stated that the enquiry was dispensed with. Procedure as provided under rules 7 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 was not followed if at all the Competent Authority intended to dispense with the enquiry and to proceed against the appellant for his alleged absence. The entire proceedings conducted by the District Education Officer (Male) Buner are thus unwarranted, unjustified and not sustainable.

6. Therefore, we allow this appeal and set aside the impugned order dated 21.12.2018 removing the appellant from service. As a resultant consequence the appellant stands reinstated in service with all back benefits. Costs shall follow the events. Consign.

7. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 09th day of February, 2023.*



KALIM ARSHAD KHAN
Chairman
Camp Court Swat

SALAH UD DIN
Member (Judicial)
Camp Court Swat

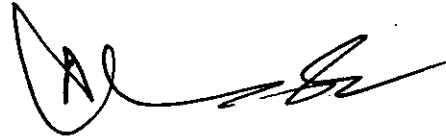
ORDER

9th Feb, 2023

1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Obaid Ur Rehman, ADEO respondents present.

2. Vide our detailed judgement of today placed on file, we allow this appeal and set aside the impugned order dated 21.12.2018 removing the appellant from service. As a resultant consequence the appellant stands reinstated in service with all back benefits. Cost shall follow the event. Consign.

3. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 9th day of February, 2023.*



(Kalim Arshad Khan)
Chairman
Camp Court Swat

(Salah Ud Din)
Member(Judicial)
Camp Court Swat