

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**  
**AT CAMP COURT ABBOTTABAD.**

Service Appeal No. 883/2022

Date of Institution ... 07.06.2022

Date of Decision ... 22.02.2023

Mohsin Anees, Warder Central Prison Haripur..

... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Secretary Home and Tribal  
Affairs Department Peshawar and 04 others.

... (Respondents)

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MR. MUHAMMAD ARSHAD KHAN TANOLI,  
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,  
Additional Advocate General

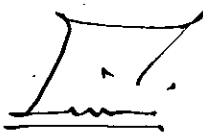
--- For respondents.

MR. KALIM ARSHAD KHAN  
MR. SALAH-UD-DIN

--- CHAIRMAN  
--- MEMBER (JUDICIAL)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that the appellant was appointed as Warder in Khyber Pakhtunkhwa Prison Department vide appointment order dated 03.10.2019. During the course of his service, disciplinary action was taken against the appellant on the allegation of misconduct and he was removed from service vide the impugned order dated 29.03.2022. The same was challenged by the appellant through filing of departmental appeal, which was




also rejected vide order dated 18.05.2022, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Additional Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. We have heard the arguments of learned counsel for the parties and have perused the record.



5. A perusal of the record would show that show-cause notice dated 17.05.2021 was issued to the appellant by Superintendent Circle Headquarters Prison Haripur on the allegation that he had remained absent from duty with effect from 06.03.2021 to 04.04.2021 (29 days) without permission of the competent Authority. According to the said show-cause notice, the competent Authority had dispensed with further inquiry and had directed the appellant to submit reply within 07 days of receipt of the show-cause notice. The alleged absence of the appellant was constituting the charge of habitual absence as mentioned in clause-d of Rule-3 of Khyber Pakhtunkhwa Government Servants

(Efficiency & Discipline) Rules, 2011, however the appellant was held liable for committing grave misconduct, which is mentioned in clause-b of Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. According to the available record, the matter was then kept on back burner without any outcome. It was on 07.02.2022 that another show-cause notice was issued to the appellant showing him absent with effect from 09.12.2021 to 28.12.2021 and 01.01.2022 to 31.01.2022 (51 days) without seeking any permission of the competent Authority.

6. The available record does not show that the appellant was given any intimation by the competent Authority for personal hearing, which was allegedly scheduled on 22.03.2022. In his departmental appeal, the appellant had taken the plea that his absence from duty was on account of severe illness of his father as well as his appearance in the M.A examination. The stance so taken by the appellant in his departmental appeal, required probe through a proper inquiry, however the departmental appeal of the appellant was rejected in a cursory manner without touching the grounds so taken by the appellant in his departmental appeal. August Supreme Court of Pakistan in its judgment reported as 2004 SCMR 616 has held that in case of imposing of major penalty, the principle of natural justice requires that a regular inquiry be conducted in the matter and opportunity of personal hearing and defense be provided to the civil servant proceeded

against. The impugned orders are thus not sustainable in the eye of law and are liable to be set-aside.

7. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders. The appellant is reinstated in service and the matter is remanded back to the competent Authority for conducting of de-novo regular inquiry into the matter within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall follow the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
22.02.2023



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)  
CAMP COURT ABBOTTABAD



(KALIM ARSHAD KHAN)  
CHAIRMAN  
CAMP COURT ABBOTTABAD

ORDER  
22.02.2023

Learned counsel for the appellant present. Mr. Tariq Shaikh, Law Officer alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned orders. The appellant is reinstated in service and the matter is remanded back to the competent Authority for conducting of de-novo regular inquiry into the matter within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall follow the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
22.02.2023



(Kalim Arshad Khan)  
Chairman  
Camp Court Abbottabad



(Salah-Ud-Din)  
Member (Judicial)  
Camp Court Abbottabad