

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT D.I.KHAN

Service Appeal No. 1174/2015

BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
MIAN MUHAMMAD --- MEMBER(E)

Mst. Shazia Bibi wife of Imran Rauf daughter of Abdul Hameed, resident of New Bannu Chungi, Thoya Fazil, Near Govt. Primary School No. 1 Dera Ismail Khan..... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
2. Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
3. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
4. Chief Executive, Group of Teaching Hospitals, Bannu.
5. Medical Superintendent, District Headquarter Teaching Hospital, Bannu.....(*Respondents*)

Present:

SHEIKH IFTIKHAR UL HAQ,
Advocate --- For Appellant

MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General --- For respondents

Date of Institution... 19.10.2015
Date of Hearing... 16.01.2023
Date of Decision... 16.01.2023

JUDGEMENT

MIAN MUHAMMAD, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer copied as follows;


“On acceptance of the present service appeal and by setting aside the impugned letter, the appellant may please be reinstated into service with all back benefits.”

02. Brief facts of the case, as per memorandum of the service appeal are that, the appellant was appointed as Female Junior Clinical Technician (Anesthesia) in District Headquarter Teaching Hospital Bannu. The appellant submitted application for maternity leave of 90 days alongwith medical prescriptions which was granted to the appellant w.e.f. 01.01.2015. After expiry of the maternity leave and due to complication after delivery, the appellant could not report for duty. She was dismissed from service on the allegation of absence from duty vide impugned order dated 03.06.2015. Feeling aggrieved, the appellant filed departmental appeal on 16.06.2015 through registered post which was not decided within the statutory period, hence the instant service appeal was filed on 19.10.2015.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant was appointed as Female Junior Clinical Technician (Anesthesia) in District Headquarter Teaching Hospital Bannu. The appellant submitted application for maternity leave of 90 days alongwith medical prescriptions which was granted to the appellant w.e.f. 01.01.2015. After expiry of the maternity leave of 90 days the appellant applied for extension in medical leave through another application via registered post on 03.04.2015 to respondent No. 5. Respondent No. 5 neither allowed the application nor intimated the appellant about the fate of the said application, therefore the appellant remained under the impression that her leave had been allowed but astonishingly the

respondent department issued the impugned order of dismissal from service on the allegation of absence from duty. Respondent No. 5 could not turn down leave application on medical grounds after expiry of maternity leave of the appellant. He could however, refer the appellant to appear before the medical board and should have sought advice in her case. He relied on 2000 SCMR 1640. He next argued that no proper procedure as required under Rules 5 and 7 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has been followed by the respondents. Even procedure for willful absence laid down under Rule 9 of the Rules ibid was not followed. Moreover, no opportunity of personal hearing was provided to the appellant before passing the impugned order, therefore, the impugned order dated 03.06.2015 is not sustainable in the eye of law and is liable to be set-aside, he concluded.



05. Learned Assistant Advocate General for the respondents contended that the application of the appellant submitted to the respondents is disowned as the same is without any diary or dispatch number and no official sanction/approval for extension in maternity leave is available on record. He next argued that direct Show Cause Notice under Rule 7 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was issued to the appellant on 04.05.2015 which was duly replied by the appellant and the competent authority found her reply unsatisfactory whereafter the impugned order of dismissal from service was issued vide impugned order dated 03.06.2015. He further argued that service appeal of the appellant is time barred because the impugned order was passed on 03.06.2015 and the appellant filed the instant service appeal on 19.10.2015. Moreover, this honourable Tribunal has got no jurisdiction to entertain the

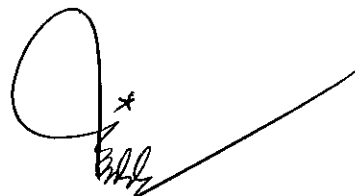
present service appeal in the wake of establishment of MTI Tribunal, he concluded.

06. Perusal of the record reveals that as the appellant had been appointed as Female Junior Clinical Technician (Anesthesia) in District Headquarter Teaching Hospital Bannu on 06.04.2012 and she is not a civil servant. The instant service appeal does not fall in the jurisdiction of this Tribunal. It be, therefore, returned to the appellant for presentation before proper forum for redressal of her grievance if so advised. File be consigned to the record room.

07. *Pronounced in open court at camp court D.I Khan and given under our hands and seal of the Tribunal this 16th day of January, 2023.*



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT D.I.KHAN



(MIAN MUHAMMAD)
MEMBER (E)
CAMP COURT D.I.KHAN

ORDER

16.01.2023

Learned counsel for the appellant present. Mr. Muhammad Riaz

Khan Paindakhel, Assistant Advocate General for the respondent present.

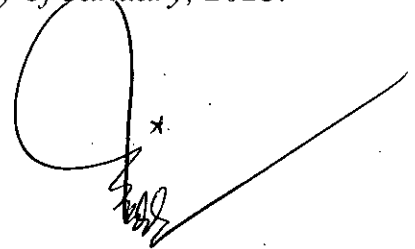
Arguments heard and record perused.

02. Vide our detailed judgement of today separately placed on file consisting of (04) pages, the instant service appeal does not fall in the jurisdiction of this Tribunal. It be, therefore, returned to the appellant for presentation before proper forum for redressal of her grievance if so advised. File be consigned to the record room.

03. *Pronounced in open court at camp court D.I Khan and given under our hands and seal of the Tribunal this 16th day of January, 2023.*



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT D.I.KHAN



(MIAN MUHAMMAD)
MEMBER (E)
CAMP COURT D.I.KHAN