

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6605/2021

Date of Institution ... 21.06.2021
Date of Decision ... 20.03.2023

Haroon ul Rasheed S/O Mir Shimal Khan R/O Sikander Khel Bala Haibak
Malak Shah Tehsil & District Bannu.

... (Appellant)

VERSUS

The Director General Health Services Khyber Pakhtunkhwa, Peshawar and
three Others.

... (Respondents)

Malik Zeeshan Khan,
Advocate

... For appellant.

Fazal Shah Mohmand,
Additional Advocate General

... For respondents.

Mrs. Rozina Rehman

...

Member (J)

Mr. Muhammad Akbar Khan

...

Member (E)

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 this Service Appeal an appropriate
direction may please be issued declaring that the
compulsory retirement from service of appellant is illegal,
void ab-initio, without the legal criteria, unjust, unfair
and without the fundamental rights of the appellant.
Further the impugned office order No.749-57 dated
22.01.2021 passed by the respondents may be declared
illegal and against the natural justice and the appellant
may very kindly be restored from the date of issuance of**


the said impugned order and accordingly all the back benefits/salaries of the appellant be released.”

2. Brief facts of the case are that appellant was undergoing treatment at the District Headquarter Hospital MTI Bannu and was tested Typhoid positive on 06.01.2021 with further advice for bed rest for three days. He was therefore, unable to perform his duty on 06.01.2021. A show cause notice was issued in respect of his alleged absence without prior permission of the competent authority and vide order dated 22.01.2021, major penalty of compulsory retirement from service was imposed upon the appellant. Feeling aggrieved, he filed departmental appeal which was regretted, hence, the present service appeal.

3. We have heard Malik Zeeshan Khan, learned counsel for the appellant and Fazal Shah Mohmand, learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Malik Zeeshan Khan Advocate, learned counsel for the appellant argued inter-alia that the impugned order is wrong, illegal, against law and facts as the appellant was not given proper opportunity of personal hearing. Learned counsel further contended that for one day leave, major punishment was awarded and the reasons whereof were not taken into consideration despite repeated requests by the appellant. He submitted that the appellant was not a habitual absentee from duty which is evident from the record and for one day leave, he was punished in shape of compulsory retirement by violating the fundamental rights of the appellant.

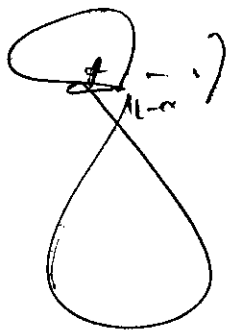
5. Conversely, learned AAG submitted that the appellant failed to submit any proper application for medical leave from his Incharge or the



District Health Officer Bannu, hence, he was guilty of misconduct. He contended that he was punished in accordance with law for his willful absence from duty which is evident from the inquiry report of the Committee constituted by the District Health Officer, Bannu on the directions of Deputy Commissioner, Bannu which committee probed into the misuse of public property of BHU Khalifa Gul Nawaz, Bannu for private functions and recommended major penalty against appellant who was primarily responsible for misuse of public property after duty hours being custodian.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that the present appellant Haroon ul Rasheed was attached to BHU Khalifa Gul Nawaz as Chowkidar who remained absent from his duty on 06.01.2021 and in this regard, he produced proper medical record which shows that he was undergoing treatment at District Headquarter Hospital MTI, Bannu vide Out Patient Department Slip No.995 dated 06.01.2021 for treatment and was tested typhoid positive. He was advised by the physician for bed rest for three days. These medical documents were never denied by the respondents and a show cause notice was issued on 12.01.2021 after receiving inquiry report from Dr. Hameed Ur Rehman Deputy DHO Bannu and Dr. Sajid Ayaz Khan, PMO Incharge Police Hospital Bannu with the following allegations:

"1. As per the report received from Inquiry Officer, you remained absent from your duty on 06.01.2021 without any application or prior permission of the competent authority.



2. *As per inquiry report, premises of BHU Khalifa Gul Nawaz were used by PDM supporters for cooking of Meal for PDM rally on 06.01.2021 after 2:00 PM which reveals lack of responsibility on your part as you failed to prevent use of Public Property for private function being custodian of Health facility.”*

He submitted his reply to the show cause notice which is available on file. He also produced OPD chit alongwith prescription chit but the same was not taken into consideration by the competent authority as well as by the Inquiry Committee. The inquiry report is available on file which was submitted by the respondents alongwith comments. The Committee recorded the statement of staff members but none of them deposed against the appellant. On one hand, the appellant was found absent on 06.01.2021 while on the other, he was held responsible for the activity allegedly done on the date when the appellant was absent. As per show cause notice, cooking activities were noted to had been conducted in one corner of the said BHU for PDM rally which had started after the duty hours. The record is silent in respect of any statement or photograph showing that corner of BHU which was allegedly used for cooking activities. Admittedly, appellant was not present on that specific date and time. The record is silent as to what was the role of Incharge of BHU and the District Administration. As per inquiry report, besides present appellant, one Nacem Ullah Baheshti and Noor Rehmat Ward Orderly also remained absent without any authorization on 06.01.2021 but they were not proceeded against departmentally and the present appellant was made scapegoat despite his illness. No proper opportunity was given to the appellant. No witness was examined in his presence and he was not


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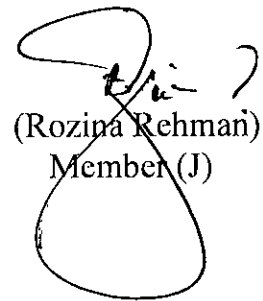
afforded any opportunity of cross-examination. No opportunity of personal hearing was afforded. None were held responsible for the entire activities right from the Incharge of BHU and the only Chowkidar was held responsible due to his absence for a single day.

7. For what has been discussed above, instant service appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

20.03.2023


(Muhammad Akbar Khan)
Member (E)


(Rozina Rehman)
Member (J)