

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

Service Appeal No.77/2019

Date of Institution ... 17.01.2019  
Date of Decision ... 13.12.2022

Muhammad Saleem, S/O Muqarab Khan R/O Class -IV Association Office  
LRH, Peshawar.

... (Appellant)

**VERSUS**

The Government to Khyber Pakhtunkhwa through Secretary Health  
Department, Peshawar and two others.

... (Respondents)

Ibrahim Khan Afridi  
Advocate

... For appellant

Naseer Ud Din Shah  
Assistant Advocate General

... For respondents

Mrs. Rozina Rehman  
Miss Fareeha Paul

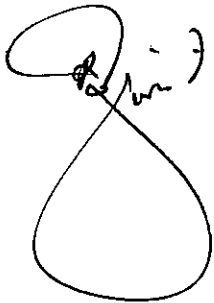
... Member (J)  
... Member (E)

**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 the instant service appeal, the  
impugned order dated 22.02.2018 may please be set  
aside/turned down and the deducted salary of the appellant  
may kindly be reimbursed back to the appellant.”**

2. Brief facts of the case are that appellant is provincial civil  
servant who was performing his duties in Leady Reading Hospital  
Peshawar as ward orderly. His salary was withheld without any reason



and plausible explanation which was released vide order dated 22.02.2018, while respondents deducted salary of 127 days. He then submitted an application/departmental appeal on 05.04.2018 regarding deduction of his salary but the same was not responded to, hence the present service appeal.

3. We have heard Ibrahim Khan Afridi, Advocate learned counsel for the 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.

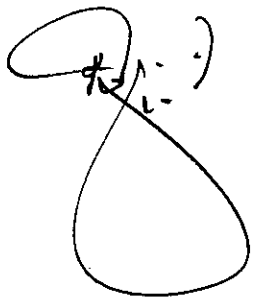
4. Ibrahim Khan Afridi, Advocate learned counsel for the appellant submitted that the impugned order is against law and facts as the appellant was not treated according to law, rather he was treated in a discriminatory manner which was not warranted in the eyes of law. He submitted that the appellant was not treated at par with his colleagues as envisaged in Article 4 of the Constitution of Islamic Republic of Pakistan. That as per Article 25 of Constitution of Islamic Republic of Pakistan there shall no discrimination but in the instant case whole process was done partially according to the will of the respondent No. 2. Learned counsel further contended that well settled principle of law "Audi alteram partem" was violated and that appellant was not given an opportunity before issuance of impugned order. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned Assistant Advocate General submitted that the salary of the appellant was withheld due to non-performance of his duty. He submitted that appellant was transferred to the office of



Assistant Director (Legal) vide office order dated 09.10.2017 but he failed to join his duty, therefore, explanation was called but no response was tendered, therefore, show cause notice was issued for his long absence on 15.01.2018 but he failed to submit any reply. He resumed his duty on 10.01.2018. In consequence respondent No. 2 issued letter dated 22.02.2018 vide which salary for the period of absence from duty i.e 127 days was ordered to be deducted. Lastly, he submitted that there was no discrimination and that appellant was treated in accordance with law and procedure.

6. From the record it is evident that the appellant was provincial civil servant who was performing his duties in Leady Reading Hospital Peshawar as ward orderly. Allegations against the present appellant are that he remained absent for 127 days, therefore, salary for the said period was ordered to be deducted and after fulfillment of all requirements his salary was released which had already been stopped. Record shows that the respondents blatantly violated the set norms and rules and conducted the proceedings in an authoritarian manner. No proper procedure as envisaged in E&D Rules, 2011 was followed. No charge sheet alongwith statement of allegations was issued to the appellant. No proper inquiry was conducted in order to bring on record the absence of the appellant without the permission of the competent authority. It is astonishing as to why the department kept mum for a long period of 127 days without initiating proper proceedings against the appellant. Absence for 127 days was not proved through cogent evidence. The appellant was discriminated which is evident from the





record that one Muhammad Waris, ward orderly was also charged for 43 days of absence and his salary was accordingly deducted. Reportedly he filed service appeal which was later on withdrawn because his salary for the said period was refunded vide office order dated 18.01.2019. No cogent reason was shown as to why the appellant was discriminated and why his salary was not refunded.

7. For the above mentioned facts and circumstances, this appeal is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

13.12.2022

  
(Fariha Paul)  
Member (E)

  
(Rozina Rehman)  
Member (J)