

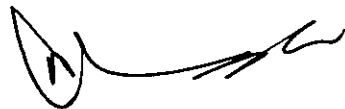
penalty of removal from service may be imposed upon such Government servant.”

7. In the instant case no proper notice was issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within 15 days of issuance of the notice. Neither charge sheet nor show cause notice was issued in accordance with law. From perusal of the entire record, it becomes crystal clear that proper procedure as laid down in rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was not followed by the competent authority strictly in accordance with law.

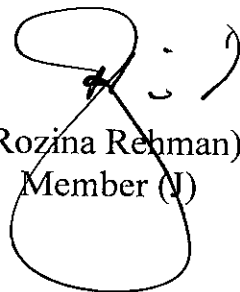
8. In view of the above circumstance, facts and discussion made herein above the instant service appeal is partially accepted. Appellant is reinstated into service and case is remitted back to the Department for de-novo inquiry within 60 days of the receipt of this judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. The issue of back benefits shall be subject to the outcome of the inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

03.03.2023



(Kalim Arshad Khan)
Chairman



(Rozina Rehman)
Member (J)

before the authority. He submitted that all the codal formalities were observed during the process in accordance with law.

6. From the record it is evident that appellant Abdul Wahab Chowkidar GPS Faqir Banda Mardan was proceeded against departmentally for willful absence from duty w.e.f 23.01.2015 till the date of impugned order i.e. 12.08.2015 without any permission which means that he was proceeded against under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 on the allegations of his willful absence. Procedure in case of willful absence is fully mentioned in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 which is hereby reproduced for ready reference:

“ 9. Procedure in case of willful absence.

Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an *ex-parte* decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major



and entire satisfaction of his superiors. He was removed from service vide order dated 26.10.2015 without any intimation to the appellant. Being aggrieved, he filed departmental appeal which was not responded to, hence, the present service appeal.

3. We have heard Asad Zeb Advocate learned counsel for appellant and Muhammad Jan learned District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Asad Zeb Advocate, learned counsel for appellant submitted that the impugned order is illegal, against law and facts as regular inquiry was must which was not conducted in the appellant's case which is violation of due process of law. Learned counsel further contended that the appellant was never served with any show cause notice and that he performed his duty regularly and there was no complaint against him. He contended that the appellant was condemned unheard as no opportunity of personal hearing was afforded to the appellant and he was not informed about the initiation of disciplinary action against him. He submitted that being a poor and sole bread earner of a large family, he was not afforded any opportunity to prove his innocence and was verbally informed about the impugned order. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned District Attorney submitted that three notices were sent to the appellant which were not replied and the appellant remained absent from his duty due to which final show cause notice was published in the newspaper but even then, he failed to appear

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.164/2016

Date of Institution	...	28.01.2016
Date of Decision	...	03.03.2023

Abdul Wahab S/O Mohammad Azeem Chowkidar GPS Faqir Banda,
Mardan. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary &
Secondary Education, Civil Secretariat, Peshawar and three others.

... (Respondents)

Asad Zeb,
Advocate ... For appellant.

Muhammad Jan,
District Attorney ... For respondents.

Mr. Kalim Arshad Khan	...	Chairman
Mrs. Rozina Rehman	...	Member (J)

JUDGMENT

Rozina Rehman, Member(J): The appellant has invoked the jurisdiction
of this Tribunal through above titled appeal with the prayer as copied
below:

**“That the impugned order dated 12.08.2015, which is
communicated to appellant on 27.10.2015 may kindly be set-
aside and the appellant may kindly be re-instated in service
with all back benefits”.**

2. Brief facts of the case are that appellant was appointed as
Chowkidar on 24.03.2010, who performed his duty with full devotion