

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT SWAT.**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
SALAH UD DIN ...MEMBER (Judicial)

Service Appeal No.909/2022

Date of presentation of appeal.....13.06.2022
Dates of Hearing.....05.04.2023
Date of Decision.....05.04.2023

**Mst. Rawasia daughter of Abdullah R/o Mohallah Gul Abad
Dargai, District Malakand.**

.....*Appellant)*

Versus

1. **Government of Khyber Pakhtunkhwa Health Department** through Secretary, Civil Secretariat Peshawar.
2. **Director General**, Health Services Khyber Pakhtunkhwa at Peshawar.
3. **District Health Officer, Malakand** at Batkhela, Swat.
4. **Medical Superintendent** District Headquarter Hospital Batkhela, District Malakand.
5. **District Accounts Officer**, Malakand at Malakand Top.
.....(*Respondents*)

Present:

Mr. Umer Sadiq,
Advocate.....For appellant.

Mr. Fazal Shah Mohmand,
Additional Advocate General.....For respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, the appellant was appointed as Charge Nurse (BPS-16) in the respondent-department; that the appellant was posted as Charge Nurse at District Headquarter Hospital Batkhela at Malakand; that the appellant alongwith

others Nurses were placed in the surplus pool; that later on the appellant was adjusted and posted at DHQ Hospital Dir Upper against a vacant post; that in the meanwhile the appellant filed a written request for her posting as DHQ Hospital Batkhela, which was regretted by respondent No.2; that subsequently, the transfer order in respect of the appellant was withdrawn and she was once again ordered to be retained at DHQ Hospital Batkhela; that the appellant applied for earned leave, which was granted by the competent authority; that after serving for a considerable period at DHQ Hospital Batkhela, the appellant was transferred to Civil Hospital Totakan, District Malakand; that thereafter the appellant was again directed by respondent No.3 to serve at DHQ Batkhela; that the appellant was performing her routine duties, when her salary was stopped by the concerned Accounts Officer; that the appellant approached the Accounts Office for release of her salary but he received a letter dated 08.05.2017, wherein the appellant was charge sheeted; that the appellant filed reply to the charge sheet; that being aggrieved, the appellant approached the Hon'ble Peshawar High Court through a writ petition No. 384-M of 2017, and the Hon'ble Peshawar High Court, Peshawar vide order dated 24.01.2018 directed the respondents to conclude the inquiry within fifteen days; that the respondent department had not completed the enquiry proceedings despite various requests and reminders, the appellant filed another writ petition No. 545-M/2018 before the Hon'ble High Court Mingora Bench; that during the pendency of the said writ petition the respondents produced copy of inquiry report alongwith office order dated 06.04.2021, whereby the appellant was removed from service; that the appellant withdrew the said writ petition and filed departmental appeal on 15.02.2022, which was not responded within ninety days, hence, the instant service appeal.

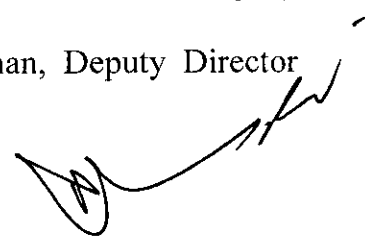


2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order(s).

5. The reply of the respondents shows that the appellant was served with a show cause notice on 15.03.2021 and she was removed from service on 06.04.2021 on the grounds that while serving as Charge Nurse at DHQ Hospital Batkhela, she was transferred to Civil Hospital Totakan Malakand after 2/3 years of her stay at DHQ Hospital Batkhela and that too on her own request; that she submitted departure report on 28.02.2011, but did not assume duty at her new assignment rather absented herself from duty; that she also managed to draw pay from the previous station i.e. the DHQ Hospital Batkhela till 2015. As against the above factual position, claim of the appellant is that she had been performing duties from 2008 to 15.02.2011 in the DHQ Hospital Batkhela. That she was transferred from the DHQ Hospital Batkhela to Category-D Hospital Totakan, vide office order No. 4393-97 dated 15.02.2011. That she submitted arrival/departure report vide letter No. 735-42 dated 09.03.2011 and accordingly her payrolls, source etc were signed by the District Health Officer. An enquiry committee was constituted comprising of Dr. Fazal Rehman, Deputy Director



HRM DG Health Office Peshawar and Dr. Hidayat Ullah DD Coordination & Development DG Health Office Peshawar vide order No. 3526-30/E-II dated 29.09.2020 for conducting an inquiry in the prolonged willful absence case of Mst. Rawasia Charge Nurse earlier attached to DHQ Hospital Batkhela and later on with DHO Malakand. Findings of the enquiry committee are worth perusal which are reproduced as under:-

"After minutely examining and scrutinizing the personal file of Mst. Rawasia maintained at DG Health Office Peshawar, her personal file maintained at DHQ Hospital Batkhela, other relevant record at DHQ Hospital Batkhela, DHO office Malakand, previous inquiry report and recorded statements of relevant officers/officials, the inquiry committee found that:

- 1. Mst Rawasia D/O Abullah was appointed as Charge Nurse BS-16 through Khyber Pakhtunkhwa Public Service Commission vide DGHS order No. 30993-31032/E-II dated 21.10.2008, attached as Annex G, and posted at DHQ Hospital Batkhela.*
- 2. Before compliance of the above order, her posting order was modified and posted her at DHQ Hospital Dir Upper vide office order No. 34560-67/E-II dated 22.11.2008, attached as Annex H,,*
- 3. Later on, she was retained at DHQ Hospital Batkhela on the recommendation of senior Minister of Power, Planning and Development Khyber Pakhtunkhwa vide office order No. 36137-44/E-II dated 06.12.2008, attached as Annex I. She submitted her arrival report at DHQ Hospital Batkhela on 12.12.2008.*
- 4. She submitted an application for transfer from DHQ Hospital Batkhela to Civil Hospital Totakan on 05.01.2011 and she was posted accordingly vide office order No. 4393-97/E-II dated 15.02.2011, attached as Annex J.*
- 5. She submitted her departure report at DHQ Hospital Batkhela on 28.02.2011 which was endorsed to DG Health Office Peshawar vide letter No. 518/25/PF dated 02.03.2011, attached as Annex K, but the departure report was not found in the personal file of Mst. Rawasia at DHQ Hospital Batkhela. Besides her departure report, so many other documents, like absence resorts were also missing in her personal file maintained at DHQ Hospital Batkhela.*
- 6. Mst Rawasia submitted her arrival report at DHO office Malakand on 01.03.2011 which was endorsed to DG Health Office Peshawar on 09.03.2011 vide letter no. 735-42/PF, attached as Annex L. The endorsement letter was entered into the dispatch register of DHO office but the hand writing was different than the usual hand writing of the dispatch register. There was no personal file of Mst. Rawasia at DHO office Malakand, so couldn't ascertain the presence of her*

arrival report in her personal file. The relevant staff of the DHO office was inquired about Mst. Rawasia. All of them, including the DHO Malakand apprised the inquiry committee that Mst. Rawasia has neither submitted her arrival report in this office nor she has performed duty at Cat D Hospital Totakan. It is pertinent to mention here that after transfer from DHQ Hospital Batkhela to Cat-D Hospital Totakan, her salary was not stopped by DHQ Hospital September 2015. Her salary was stopped by the MS DHQ Hospital Batkhela in September 2015. The inquiry committee could not find a single person in the DHQ Hospital batkhela and DHO office Malakand who was aware of her presence or performing duty at DHQ Hospital Batkhela and Civil Hospital Totakan.

7. Mr. Mohyammad Altaf, the then accounts Clerk of DHQ Hospital Batkhela currently working in DHO office Malakand, stated that being a Clerk of the accounts Section I was totally unaware of her absence and he never received any departure report of Mst. Rawasia after her transfer from DHQ Hospital Batkhela to Civil Hospital Totakan. He further added that I stopped her in September 2015 when I came to know about her absence. Statement of Mr. Mohammad Altaf is attached as Annex M.

8- So many absence notices had been served upon her at her home address by DG Health Office, wherein she was directed to report to DG Health officer otherwise disciplinary action will be initiated against her, attached as Annex N.

9- Multiple explanations, show cause and charge sheet was served upon her on account of her absence from duties without any information and permission of the competent authority, attached as Annex O.

10- In this regard a comprehensive inquiry was ordered by MS DHQ Hospital Batkhela wherein Dr Sabihuddin DTO Malakand and Inayat Yar PMO DHQ Hospital Batkhela were nominated as inquiry Officers and in their inquiry they found that she had performed her duty after arrival on 12/12/2008 till April 2009 (for 5 months) and after that she remained absent from her duties till the date of inquiry and they had recommended recovery of salaries from May 2009 till last salary she received.

11-According to the statement of MS DHQ Hospital Batkhela, he endorsed the inquiry report conducted by Dr Sabihudin and Dr Inayat yar as per file recored with addition and recommendation of the said committee to probe the responsible person who had not taken in time action to stop pay and poor supervise the absence process of Mst Rawasia.

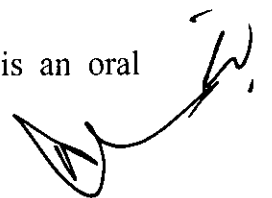
12- DHO Malakand states that:

"I have the honor to state that though as per dispatch register of this office Mst Rawasia D/O Abdullah had submitted arrival report to this office on 1/3/2011. She was posted in Civil Hospital Totaken but she didn't join her duty in the said Hospital till 30th September 2016.

According previous MO in Charge Dr. Shakil Ahmed, she has not been seen in Civil Hospital Totakan for the last 4 years during his tenure. The present In Charge Dr. Tariq Salerm has also given the statement that he neither knows Mst. Rawasia Charge Nurse nor she has worked under his control during his last 6 months tenure. According to other office record there is nothing available in this office (personal file). By unknown reasons, she had joined duty at Civil Hospital Totakan w.e.f 01.10.2016 till 19.10.2016. She has been marked absent on 20.10.2016 and 22.10.2016. She has marked attendance on 23.10.2016. Thereafter she is absent from 24.10.2016 till dated (10.10.2020). From the above findings it is assumed that officials of that period of this office have favored the accused in a sense that they have not maintained official record of the accused, have given her open chance to go anywhere at the cost of attending her duties. I want to add here that the signature of EDO/DHO on her charge report/adjustment order also seems fake".

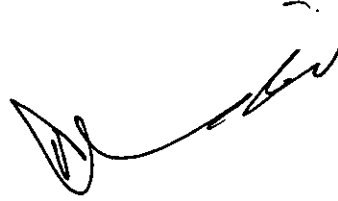
13. Furthermore it is pertinent to mention here that the husband of the accused/official clearly appears to be the main facilitator of this whole scheme and real person behind the whole story who manipulated, fully appears to be the main facilitator of this whole scheme and real person behind the whole story who manipulated, fully assisted and made all kinds of efforts in furtherance and cover up of this unlawful act on behalf of his wife. It is fully corroborated by this fact alone that he managed to falsely reflected her duties with him in operation theater, despite of the fact that she never attended the same during the entire period under report.

6. The Tribunal on 07.03.2023 directed the respondents to produce attendance register and complete enquiry file in respect of the appellant pertaining to the RHC Totakhan in order to ascertain whether she had performed study there. The relevant registers were produced before us which, on perusal show that not a single attendance of the appellant was marked in any of the registers from the period since her transfer till her removal from service, therefore, the absence of the appellant stood proved not only through the attendance registers but also during the enquiry committee proceedings. On 07.03.2023, the Tribunal directed the learned counsel for the appellant to ensure personal attendance of the appellant, which direction was repeated on 03.04.2023, today a lady in clad was produced but she was not in possession of either CNIC or service card, therefore, she could not be identified to be actually the appellant, especially when there is an oral

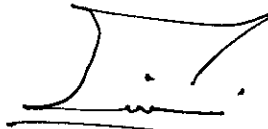


objection by the respondents' side that the appellant was not even in the country. This being so there is hardly any exception which could be taken to the impugned order. Finding no merits in this appeal is stands dismissed. Costs shall follow the events. Consign.

7. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 5th day of April, 2023.*



KALIM ARSHAD KHAN
Chairman
Camp Court Swat



SALAH UD DIN
Member (Judicial)
Camp Court Swat

***Adnan Shah, P.A*