

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, ABBOTTABAD

Service Appeal No. 4825/2021

Date of Institution	...	14.04.2021
Date of Decision	...	28.03.2023

Mst. Fiza Bibi, PST GGPS Chak Shah Muhammad District Haripur.

... (Appellant)

VERSUS

The Secretary (E&SE) Department, Government of Khyber Pakhtunkhwa,
Peshawar and two others.

... (Respondents)

Syed Noman Ali Bukhari,
Advocate

... For appellant

Asad Ali,
Assistant 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 the order dated 16.11.2020, may please be set aside and the appellant may be reinstated into service with all back benefits.”

2. Brief facts of the case are that appellant was appointed as PST in 2009. She filed an application for ex-Pakistan leave for two years and accordingly extraordinary leave was granted for 731 days w.e.f 03.05.2018 to 03.05.2020 alongwith NOC to proceed abroad. She was supposed to join duty on 03.05.2020 but she did not reach Pakistan on time because due to COVID-19, flights were closed.



After revival of flights she reached Pakistan on 29.08.2020. She submitted his arrival report but the same was not accepted and she was removed from service vide order dated 16.11.2020. Being aggrieved, she filed departmental appeal which was not responded to, hence, the present service appeal.

3. We have heard Syed Noman Ali Bukhari Advocate, learned counsel for the appellant and Asad Ali, learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Syed Noman Ali Bukhari Advocate, learned counsel for the appellant argued inter-alia that the impugned order is against law, rules, norms of justice, hence, not tenable and liable to be set aside because the appellant was condemned unheard and was not treated according to law. Learned counsel for appellant submitted that no proper regular inquiry was conducted and that statements, if any, were not recorded in presence of appellant nor she was given the chance of cross-examination; that the inquiry report was also not provided and without issuance of final show cause notice, the impugned order was passed which is against law and rules. He contended that neither charge sheet alongwith statement of allegations nor show cause notice was served upon appellant and that major punishment was imposed without fulfillment of all codal formalities. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, AAG submitted that the appellant failed to join her duty on the expiry of ex-Pakistan leave as per report of Sub Divisional Education Officer (Female) Haripur. That she remained absent from duty since 02.05.2020, therefore, she was directed to resume duty but in vain.



He contended that after completion of all codal formalities, the final notification of removal from service was issued by the respondents as per law.

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 appellant applied for ex-Pakistan leave which was sanctioned vide order dated 03.05.2018 of Sub Divisional Education Officer (Female) Haripur w.e.f 03.05.2018 to 03.05.2020. No Objection Certificate was also issued to appellant to proceed abroad and accordingly she alongwith her minor kids proceeded abroad where her husband was serving. She was expected to report on 03.05.2020 and admittedly, that was the period of COVID-19 and flights had been cancelled/closed. This fact was not denied by the respondents in their comments or during arguments. After revival of flights, appellant reached Pakistan on 29.08.2020 which is evident from her passport. The impugned order dated 16.11.2020 clearly shows her arrival in Para-03 that she attended the office of District Education Officer (Female) Haripur but despite her presence, she was not dealt with in accordance with law. She was proceeded against departmentally for willful absence under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. 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 penalty of removal from service may be imposed upon such Government servant.”


The absence notice is available on file annexed with the comments as “*Annexure-A*” which clearly shows that the same was not issued on the home address of the appellant. It merits a mention here that neither charge sheet alongwith statement of allegation nor show cause notice was issued. Inquiry report is available on file but there is nothing on record as to who issued directions for initiation of inquiry proceedings and for the appointment of Inquiry Committee consisting of Noreen Ayaz Principal GGHSS Dingi and Shagufta Jabeen Deputy DEO (F) Haripur. Despite her arrival and visit of the office of SDEO (Female) Haripur on 30.08.2020 she was not associated with the inquiry proceedings. The inquiry report was also not supplied to the appellant and all the proceedings were conducted in an authoritarian manner. Copy of inquiry report was not supplied to the accused official to enable her to offer her explanation.

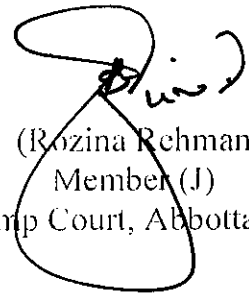


7. In view of the circumstances of the case, this appeal is accepted, impugned order is set aside and appellant is reinstated into service from the date of her removal from service. The absence period be treated as extraordinary leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

28.03.2023


(Muhammad Akbar Khan)
Member (E)
Camp Court, Abbottabad


(Rozina Rehman)
Member (J)
Camp Court, Abbottabad

Mutazem Sindh