

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.7785/2021

BEFORE: **MR. KALIM ARSHAD KHAN ... CHAIRMAN**
MISS FAREEHA PAUL ... MEMBER(E)

Jasim Khan S/O Sher Ghulam Khan R/O Mohallah Ghari Khalid Khan Afridi, Tarnab Peshawar. (Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock and Cooperative Department, Civil Secretariat, Peshawar.**
2. **Section Officer (Establishment) Agriculture, Livestock and Cooperative Department, Peshawar.**
3. **Director Agriculture Engineering, Directorate of Agriculture Engineering, Khyber Pakhtunkhwa, Peshawar..... (Respondents)**

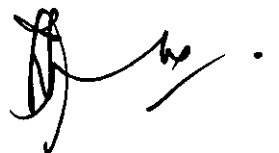
Mr. Amaad Nasir Kundi,
Advocate ... For appellant

Mr. Fazal Shah Mohmand,
District Attorney, ... For respondents

Date of Institution.....23.11.2021
Date of Hearing.....17.04.2023
Date of Decision..... 17.04.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 23.04.2013 whereby major penalty of dismissal from service w.e.f. 03.07.2012 was imposed on the appellant in terms of Rule 9 of Khyber Pakhtunkhwa (E&D) Rules, 2011 and subsequent orders of the respondents on the appeal for reinstatement in service dated



04.06.2021, 04.08.2021, 20.08.2021 and 27.08.2021. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant might be reinstated in service with all back and consequential benefits.

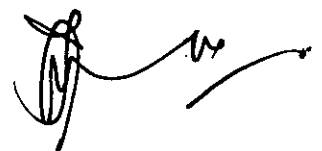
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Junior Clerk (BPS-07) in the Directorate of Agriculture Engineering Khyber Pakhtunkhwa on 11.12.2009. He was nominated in case FIR No. 257 dated 28.03.2012 registered U/S 302, 324, 34 PPC, PS Chamkani, Peshawar whereby he was put behind the bars. He intimated the department (respondent No. 3) about the situation vide his application dated 09.04.2012 which was sanctioned on 04.05.2012 and another application for extension dated 28.05.2012 which was also accepted vide sanction order dated 02.07.2012. The appellant, alongwith his family members, shifted to some unknown place in order to save his life. As the situation was beyond his control, he could not attend his office. The department issued various notices of absence dated 24.07.2012, 06.08.2012, 16.08.2012 and 13.03.2013 including publication in the newspaper which were never communicated nor received by him. Although the respondent department was informed by the appellant but even then, he was dismissed from service with retrospective effect on account of absence vide office order dated 23.04.2013 issued by respondent No. 3, which was never communicated to him. The appellant faced trial and was honourably acquitted by the learned Additional District & Sessions Judge/Model



Criminal Trial Court, Peshawar vide judgment dated 22.03.2021. The appellant filed an appeal dated 20.05.2021, through proper channel, for reinstatement in service in the office of respondent No. 3 which was forwarded to respondent No. 2 on 04.06.2021. Respondent No. 2 further forwarded the appeal to respondent No. 1 on 04.08.2021, who remitted the appeal back to respondent No. 3 on 20.08.2021, wherein it was mentioned that request of the appellant might be examined under Rule 17 of Khyber Pakhtunkhwa Government Servants (I&D) Rules, 2011 which was not responded but vide letter dated 27.08.2021, it was sent to the appellant. The appellant being constrained approached the Honourable Peshawar High Court through Writ Petition No. 3584-P/2021 which was disposed of and the appellant was advised for recourse to the proper/competent forum for redressal of his grievance; hence the instant appeal.

3. Respondents were put on notice who submitted written reply/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail argued that the impugned orders and inaction on the part of the respondents was against the law, facts and norms of justice; hence liable to be set aside. He further argued that the appellant had never committed any act or omission which could be termed as misconduct. Since the appellant had been acquitted honourably by the competent court of law, he was entitled to



be reinstated in service with all back benefits. He further argued that major penalty of dismissal from service had been imposed but without holding regular inquiry and that the respondents had not observed the provisions of Rule 9 of the rules *ibid* as no publication had been made in two leading newspapers. He requested that the appeal might be accepted as prayed for.

5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the respondent department issued absence notices to the appellant at his home address as well as published in newspaper(s) as per Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 but no response was received on his behalf regarding his absence from duty from 03.07.2012 to 23.04.2013. He further argued that application of the appellant for reinstatement was received after his acquittal from the criminal charge which was forwarded to the Establishment Department for advice who advised that in such a situation, under the rules, removal from service was sufficient instead of dismissal from service. He requested that the appeal might be dismissed.

7. From the arguments and record presented before us, it transpires that the appellant while serving in the Directorate of Agriculture Engineering, Khyber Pakhtunkhwa, was nominated in FIR No. 257 dated 28.03.2012 u/s 302, 324, 34 PPC and was put behind the bars. As stated by him in his service appeal, he intimated his department about the situation vide an application dated 09.04.2012. Perusal of the application indicates that it was meant for leave for construction of his house and there was no mention of



any FIR against him in that application or that he was behind the bars. Another application dated 28.05.2012 available with the service appeal is also silent about the FIR and is simply for leave for construction of house. Both the applications were accepted by the authority and leave was sanctioned. In the second sanction order, it was clearly mentioned that no further leave would be sanctioned to him after availing the leave already sanctioned and in the light of that order, he had to join his duty on 03.07.2012. When he failed to join his duty, disciplinary action was initiated against him. Absence notices available with the appeal indicate that they were sent at his home address through registered posts, but they were received back, undelivered. Notices were issued in newspapers also.


8. The plea taken by the appellant that he informed his office about his involvement in a criminal case cannot be proved by any documentary evidence, and the documents, which are two applications, to which he is referring are silent on this matter. This shows that the appellant is guilty of mis-statement before this bench. Not only this, he acted in utter violation of rules, where he is bound to inform his department about the situation so that they could have taken action under the rules, say, by putting him under suspension till his trial was over etc. Another point that has been noted is that the notices of absence were issued at his home address but they were not received by him. If we accept his stance that he had shifted to some other place alongwith his family for fear of his life, he was under obligation to inform his department about his whereabouts. As far as departmental action



is concerned, it has been rightly pointed out by the Establishment Department that after fulfillment of all codal formalities, order of removal from service could have been issued instead of dismissal from service. Record is silent whether request of the appellant was examined under Rule 17 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, as advised by the Establishment Department vide letter dated 20.08.2021. It is felt that the department could have acted according to the advice of Establishment Department, but that may not be a ground for acceptance of appeal or for that matter reinstatement of the appellant.

9. In the light of the above discussion, we have no hesitation in saying that the appellant acted in utter disregard of the rules and absented himself from his lawful duty without intimating his high-ups. When he was nominated in FIR, he was bound to present himself for arrest and trial but he absconded and became fugitive from law. He did not bother to inform his official high-ups about the matter. In view of all the above mentioned facts, the appeal is dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 17th day of April, 2023.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
CHAIRMAN

Fazal Subhan PS