

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD**

Service Appeal No.3519/2021

BEFORE: ROZINA REHMAN --- MEMBER(J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Mr. Awais Khan (Driver) DEO Female Office Abbottabad.
... (*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
 2. Director Elementary & Secondary Education, Peshawar.
 3. District Education Officer, (Female) Abbottabad.
- ... (*Respondents*)

Present:

MUHAMMAD ARSHAD KHAN TANOLI,
Advocate --- For Appellant

ASAD ALI,
Assistant Advocate General, --- For respondents

Date of Institution.....11.03.2021
Date of Hearing.....29.03.2023
Date of Decision.....29.03.2023

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“On acceptance of the instant service appeal, the impugned removal from service order dated 12.10.2020 may graciously be set aside and respondents may be



directed to reinstate the appellant in service with all service back benefits.”

02. Brief facts of the case are that the appellant was appointed as Driver and was posted in the office of SDEO Havelian against vacant post on 03.08.2017. He submitted complaint to respondent No. 3 against SDEO (Female) regarding use of official vehicle dated 05.12.2019. Respondent No. 3 transferred the appellant from the office of SDEO (Female) Havelian to SDEO (Female) Lora vide order dated 07.12.2019 but the said transfer order was kept secret and vide order dated 12.10.2020, the appellant was removed from service on the allegations of absence from duty w.e.f 04.12.2019. Feeling aggrieved from the order dated 12.10.2020, the appellant filed departmental appeal on 20.11.2020, which was not responded to, hence, the instant service appeal.

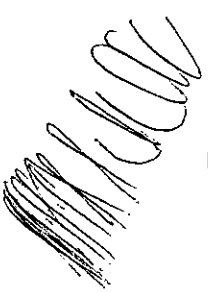
03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Assistant Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the conduct of the respondents is malafide, perverse, discriminatory and against the law; that posting/transfer order of the appellant from SDEO (Female) Havelian to SDEO Lora remained under key and locked without informing the appellant. He submitted that without showing cause, explanation, the appellant was proceeded ex-parte which is against the law. He further submitted that no one can be held guilty without giving opportunity of personal hearing. Learned

counsel for the appellant argued that the appellant while performing duty w.e.f 04.12.2019 to 11.10.2020 was shown absent by the respondents and was not paid salary for his services for the said period. He, therefore, requested for acceptance of the instant service appeal.

05. Learned Assistant Advocate General argued that the conduct of the respondents was not in accordance with rules and law as the appellant was aware of all the circumstances but did not deliberately take charge on his transfer from SDEO (Female) Havelian to SDEO (Female) Lora and remained absent from duty, therefore, he was rightly removed from service; that the department has done all the proceedings in accordance with law. Learned counsel for the appellant further argued that the appellant was punished after fulfillment of all codal formalities.

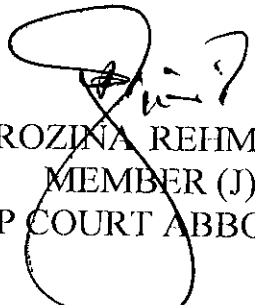
06. It is evident from the record produced and the contents of the inquiry report that the accused official remained unassociated with the proceedings of the inquiry due to the lockdown during COVID-19 peak reason. The accused did not receive charge sheet, statement of allegations and show cause notice. Even he remained unaware of his transfer order to Lora from Havelian. The disciplinary proceedings were completed in absentia of the accused without providing opportunity of ample defense to the accused. Moreover, an inquiry committee was constituted to scrutinize the conduct of the accused but the actual inquiry was carried out in haste by one member. There is no signature of the other member of the inquiry committee on the inquiry report. Besides, the recommendations contained in the inquiry report speak of imposition of minor penalty of stoppage of two increments on the




accused but he was awarded major penalty of removal from service without assigning any reason and giving ample opportunity of defense to the accused.

07. In view of foregoing we are constrained to accept the appeal partially, set aside the impugned order, reinstate the appellant in service and direct the respondents to conduct de-novo inquiry providing opportunity of defense to the appellant at every stage of the inquiry proceedings in accordance with the spirit of law and rules. The matter of back benefits to the appellant shall be subject to the outcome of inquiry. Consign.

08. *Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal this 29th day of March, 2023.*


(ROZINA REHMAN)
MEMBER (J)
CAMP COURT ABBOTTABAD


(MUHAMMAD AKBAR KHAN)
MEMBER (E)
CAMP COURT ABBOTTABAD