

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

**Service Appeal No. 7914/2021**

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

Mr.Noor Wali Khan, son of Qalander, resident of Uchar Nala, P/O Kamila, Dassu, District Kohistan, Ex-Chowkidar posted at GPS Uchar Nala, Kohistan Upper

*... (Appellant)*

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Director Elementary & Secondary Education, Peshawar..
3. District Education Officer, (Male) Kohistan Upper

*... (Respondents)*

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**Present:**

MUHAMMAD TASLEEM KHAN,  
Advocate


--- For Appellant

ASAD ALI,  
Assistant Advocate General,

--- For respondents  
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Date of Institution.....22.12.2021  
Date of Hearing.....28.03.2023  
Date of Decision..... 28.03.2023

**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 as copied below;

*“On acceptance of the instant service appeal, the impugned order bearing No.4433-40 dated 26.06.2021, passed by respondent No.3 may kindly be set aside*

*declaring them illegal, void and against the law on the subject and appellant be reinstated into service with all back benefits.”*

02. Brief facts of the case are that the appellant was appointed as Chowkidar on 05.12.1995. Education Officer (Male) Kohistan visited the school on three different occasions i.e. 03.12.2020, 24.02.2021 & 29.04.2021 and found the appellant absent and reported the matter to the DEO (Male) Kohistan. The appellant was served with show cause notice which he duly replied. On the basis of that show cause notice, appellant was removed from service on 26.06.2021. Feeling aggrieved, the filed departmental appeal on 08.07.2021 which was rejected vide order dated 25.11.2021, hence, the present 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 appellant never remained absent and the entire proceedings were carried out fictitiously; that before passing of impugned order, no publication as required under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was ever made in the newspapers, hence, the order is illegal, unlawful and having no legal effect. He submitted that no inquiry was conducted and the impugned penalty was imposed without having the allegations proved. Further submitted that the appellant was condemned

unheard and was not put on notice to present his view , hence, the impugned order is not sustainable under the law; that the appellant had a long unblemished service record and has been removed from service with a single stroke of pen. Lastly, he submitted that the impugned order on its very face value, is illegal, unlawful, without lawful authority and having no legal effect. He, therefore, requested for acceptance of the instant service appeal.

05. Learned Assistant Advocate General argued that the appellant was rightly removed from service as he was willfully absent from duty. That the appellant was also reported absent from his school duties from time to time; that the services of the appellant were not satisfactory and the charges and evidence on record have been proved. He further submitted that the appellant was given opportunity in the form of show cause notice but he failed to defend himself nor made personal appearance. In the last, he submitted that the appellant was properly proceeded and after fulfillment of all codal formalities, he was removed from service.

06. With the assistance of learned counsel for the appellant and the learned Assistant Advocate General we scrutinized the available record of the case in hand viz-a-viz relevant laws and rules. The appellant has rendered more than 26 years service in the respondent department. No adverse material available on record relying to his conduct until 03.12.2020 when a visiting officer found him absent from duty. He was again found not present in the school on 24.02.2021 and 29.04.2021. Based on the report of the visiting officer, the DEO (Male) Kohistan upper being competent authority straightaway issued a show cause notice to the appellant. The appellant replied and gave reasons to justify his absence of three days on

different years, months and dates which were not considered convincing and the major penalty of removal from service was imposed on the appellant. The nature of the charges indicated in the show cause notice necessitated detailed scrutiny of the conduct of the civil servant (appellant) through inquiry officer or inquiry committee before imposition of the major penalty as provided under Rule-10 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The nature of the charge viz-a-viz the provision of the Rule quoted dispensing with the inquiry by the competent authority does not seem justifiable and judicious. Likewise, Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 makes it mandatory for publication of willful absence of civil servants in the newspaper. Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 is reproduced as under:-

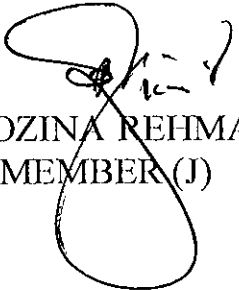
*Procedure in case of willful absence Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing 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"*


This mandatory requirements of the rules before passing final order was not met.

07. In view of what has been discussed in Para-6 above, we are of the firm opinion that the impugned order has been passed arbitrarily

which tantamount to condemning the accused without providing him reasonable opportunity of defense and observance of provision of rules and consideration of the appellant more than 26 years service. As such the impugned order dated 26.06.2021 is set aside and the appellant is reinstated in service with all back and consequential benefits of service. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 28<sup>th</sup> day of March, 2023.*

  
(ROZINA REHMAN)  
MEMBER (J)

  
(MUHAMMAD AKBAR KHAN)  
MEMBER (E)