

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

Service Appeal No.7686/21

| | | |
|---------------------|-----|------------|
| Date of Institution | ... | 25.10.2021 |
| Date of Decision | ... | 02.05.2023 |

Humayoon Son of Muhammad Yousaf Khan Village & Post Office
Runyal Tehsil Matta, District Swat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary &
Secondary Education Civil Secretariat Peshawar and three others.

... (Respondents)

Imdad Ullah,
Advocate

... For appellant

Fazal Shah Mohmand,
Additional Advocate General

... For respondents

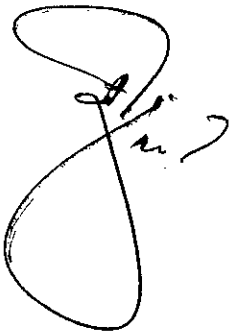
Mrs. Rozina Rehman
Miss Fareeha Paul

... Member (J)
... 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 the instant appeal the impugned
removal order may kindly be declared unlawful,
against the law on subject & be set aside & the alleged
removal order may kindly be expunged & the case of
appellant may kindly be sanctioned for retirement as
his date of retirement is 04.02.2011, furthermore the
pensionary benefits may also be granted in favor of the
appellant on the basis of total length of service.”**



2. Brief facts leading to filing of the instant appeal are that appellant was appointed as CT vide appointment order dated 13.10.1982. He applied for earned leave w.e.f 15.05.2005 to 31.07.2005 i.e. 92 days which was sanctioned vide order dated 07.04.2005. Due to unavoidable circumstances, he submitted another application for leave without pay which was allowed vide order dated 08.08.2007 w.e.f 01.08.2007 to 13.07.2009. During the said period, no one was able to move freely due to militancy in District Swat, therefore, the appellant proceeded to Karachi and remained there for four years and despite his personal efforts, he was unable to come back and resume the charge. During this period, the competent authority failed to issue any show cause notice. As per his school record, his date of birth was 04.02.1951 and he had to retire on 04.02.2011 but the respondents passed the order of his removal from service on 27.06.2011 i.e. after his date of retirement. He then filed departmental appeal which was not responded to, hence the present service appeal.

3. We have heard Imdad Ullah Advocate learned counsel for the appellant and Fazal Shah Mohmand, learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Imdad Ullah Advocate, learned counsel for appellant, inter-alia, contended that the impugned order is against law, rules and facts, hence, not tenable and liable to be set aside as the alleged absence was not willful. Learned counsel submitted that the impugned order of removal from service was issued after the date of retirement of the appellant, so the impugned order has got no legal effect on the rights of

appellant, hence, liable to be set at naught. He contended that the appellant's continuation in service was very much clear from the record but the official respondents just to deprive the appellant from his legal rights removed the appellant from service without any justification.

5. Conversely, learned AAG submitted that the appellant availed 2037 days of leave and remained absent till 21.09.2010. He submitted that the appellant submitted different affidavits alongwith applications that he will remain in Pakistan and will not leave the country. Accordingly, leave was accorded to the appellant but he failed to perform his duty. He submitted that the order of removal from service was issued after fulfillment of all codal formalities.


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 appellant was appointed as CT on 05.10.1982. He applied for earned leave which was accordingly allowed for the period w.e.f 01.05.2005 to 31.07.2005 (92 days) on full pay. Thereafter, he applied again for leave without pay which too was allowed vide order dated 08.08.2007 w.e.f 01.08.2007 to 13.07.2009 (730 days) without pay. Thereafter, he applied once again for extraordinary leave without pay which was not allowed and in this regard, the letter addressed by the Executive District Officer Elementary & Secondary Education Swat to the Headmaster GHS Nazar Abad is available on file. The record in respect of his duty during the period from 14.07.2009 to 12.07.2010 is silent. The respondents also failed to show the absence or presence of the appellant for the said period. As per impugned order dated 22.06.2011 vide which major



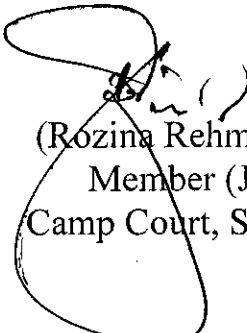
penalty of removal from service was imposed upon appellant he was shown absent w.e.f 13.07.2010. He filed departmental appeal on 19.07.2021 which is badly time barred and his signature is also not available on the departmental appeal. The important aspect of the case is that his date of birth is 04.02.1951 and he attained superannuation on 03.02.2011, whereas, order of his removal from service was issued on 22.06.2011 i.e. after his retirement. Keeping in view the unsigned departmental appeal coupled with date of his retirement and date of removal, this Tribunal is left with no option but to refer back the case of the appellant to the Department for decision afresh.

7. In these circumstances, this appeal is partially allowed. The case is referred back to the Department to decide the departmental appeal of the appellant under the law and rules within 60 days of the receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
02.05.2023


(Fargeha Paul)
Member (E)
Camp Court, Swat

Mutazem Shah


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