

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 1370/2019

Date of Institution ... 23.09.2019

Date of Decision... 05.05.2023

Mst. Rabia Akbar, Ex-Family Welfare Assistant (Female) BPS-07, District Population Welfare, District Mardan.

... (Appellant)

**VERSUS**

The Secretary, Population Welfare Department, Khyber Pakhtunkhwa Peshawar and 02 others.

... (Respondents)

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MR. ANWAR ALI KHAN CHITRALI,  
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,  
Deputy District Attorney

--- For respondents.

MR. KALIM ARSHAD KHAN  
MR. SALAH-UD-DIN

--- CHAIRMAN  
--- MEMBER (JUDICIAL)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Briefly stating the relevant facts of the case are that the appellant was appointed as Family Welfare Assistant (BPS-07) in the respondent-department vide order dated 22.03.2010. During the course of her service, the appellant was granted three months earned leave till 30.09.2017, however after availing the same, she did not report back for her duty, therefore, disciplinary action was taken against her and on conclusion of the same, she was terminated from service vide impugned order dated 16.01.2018. The appellant challenged the order of her termination through filing of



departmental appeal on 03.07.2019, however the same was regretted vide order dated 22.08.2019. The appellant has now invoked the jurisdiction of this Tribunal by way of filing the instant service appeal for redressal of her grievance.

2. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of filing of para-wise reply/comments, wherein they refuted the assertion raised by the appellant in her appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in her service appeal. On the other hand, learned Deputy District Attorney for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

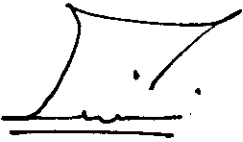


4. We have heard the arguments of learned counsel for the parties and have perused the record with their valuable assistance.

5. A perusal of the record would show that upon submission of application for leave, the appellant was granted earned leave till 30.09.2017. It is an undeniable fact that after availing earned leave, the appellant did not report back for her duty and remained absent without any leave or permission of the competent Authority. Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provides the procedure to

be adopted by the competent Authority in case of willful absence of any civil servant, which is reproduced as below:-

*“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.”*



6. Available on the record is copy of letter dated 10.10.2017 whereby explanation was called from the appellant. Similarly, notice of absence from duty was sent to the appellant on 23 November 2017 on her home address, which was followed by publication of notice of absence from duty in daily “Mashriq” but the appellant did not appear for resuming her duty and was thus terminated from service vide impugned order dated 16.01.2018. The appellant belatedly challenged the order of her termination through filing of departmental appeal on


03.07.2019 i.e after lapse of more than one year, which was regretted vide order dated 22.08.2019. The appellant has though alleged that after expiry of three months earned leave, she had submitted another application for grant of one year leave but the said assertion of the appellant has been categorically denied by the respondents in their comments and she had failed to produce any documentary proof regarding her aforementioned assertion. Keeping in view the conduct of the appellant, the impugned order of termination of the appellant could not be set-aside merely on the ground that advertisement was not made in two newspapers and that word "*termination*" instead of word "*removal*" was mentioned in the impugned order dated 16.01.2018.

7. In view of the above discussion, the appeal in hand stands dismissed with the observations that word "*termination*" may be read as removal in the impugned order dated 16.01.2018. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
05.05.2023



(KALIM ARSHAD KHAN)  
CHAIRMAN

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)