

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 6620/2021

Date of Institution ... 21.06.2021

Date of Decision... 15.05.2023

Haleem Muhammad Khan, Junior Clerk/Muharrir to Judicial Magistrate
Karak.

... (Appellant)

VERSUS

District & Session Judge, Karak and one other.

... (Respondents)

MR. HALEEM MUHAMMAD KHAN,
Appellant

--- Pro-se.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Briefly stated the relevant

facts of the case are that the appellant while serving as Junior

Clerk/Muharrar to the court of Judicial Magistrate Karak, was

proceeded against departmentally on the allegations that he had

remained absent from duty with effect from 16.09.2020 till

28.09.2020. On conclusion of the inquiry, the appellant was

awarded major penalty of reversion to lower post of Naib Qasid

for a period of one year with the observation that his pay shall

remain protected during the period of his reversion as Naib Qasid.

The penalty so awarded to the appellant was challenged by him


through filing of departmental appeal, which was not responded

within the stipulated period of 90 days, hence the instant service appeal.

2. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of filing of reply, wherein they denied the assertion raised by the appellant in his appeal.

3. Appellant has addressed his arguments supporting the grounds agitated by him in his service appeal. On the other hand, learned Deputy District Attorney for the respondents has controverted the arguments of 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.



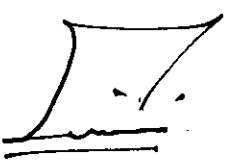
5. A perusal of the record would show that the appellant at the relevant time was serving as Civil Muharrar to the court of Civil Judge/Judicial Magistrate -III Karak. On 23.09.2020, Civil Judge/Judicial Magistrate-III Karak submitted written report to the then Senior Civil Judge (Administration) Karak that the appellant was absent from duty, who forwarded the same to the District & Sessions Judge Karak with the observation that it was a case of willful absence and the appellant was an official of Establishment of District & Sessions Judge Karak. The District & Session Judge also considered the case of the appellant as one of willful absence, however instead of adopting the procedure as provided in

Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, final show-cause notice was straightaway issued to the appellant with the observations that regular inquiry was being dispensed with. In order to appreciate the issue in a proper way, Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 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. Nothing is available on the record, which could show that notice through registered acknowledgement was issued to the appellant on his home address. The appellant, however allegedly

appeared for his duty on 28.09.2020 and then submitted reply to the show-cause notice on 01.10.2020, wherein he took the plea that his absence was not willful rather the same was due to the reason that some known accused had made firing on his son and a report in this respect was also lodged by him in Police Station Karak, which was entered in Daily Diary dated 14.09.2020. In this scenario, the absence of the appellant from duty was a factual controversy, which required to have been probed through a regular inquiry for reaching a just and right conclusion but the same has not been done.




7. The impugned order of reversion of the appellant was passed on 04.11.2020, which falls in the period of public health emergency relating to COVID, 19 imposed by the Provincial Government, which was extended from time to time and was still in force at the time of filing of the instant service appeal. In view of Section-30 of the Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the limitation period provided under any law including the limitation Act, 1908 was to remain frozen, therefore, the instant appeal was not hit by bar of limitation

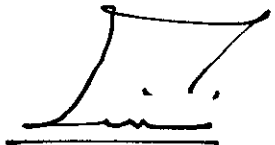
8. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned order dated 04.11.2020 and the matter is remitted to the competent Authority for de-novo inquiry to be completed within a period of 30 days of receipt of copy of his judgment. The issue of back benefits shall be subject

to outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
15.05.2023



(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)