

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 3319/2020

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Mr. Nasir Masih, Ex-Sweeper, Administration Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar. (Appellant)

Versus

1. **The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.**
2. **The Secretary, Administration Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Deputy Secretary (Admn), Administration Department Khyber Pakhtunkhwa, Peshawar. (Respondents)**

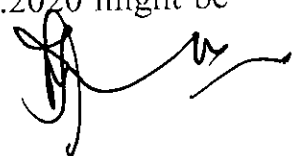
Mr. Noor Muhammad Khattak,
Advocate ... For appellant

Mr. Muhammad Jan, ,
District Attorney. ... For respondents

Date of Institution.....15.04.2020
Date of Hearing.....09.05.2023
Date of Decision..... 09.05.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 02.02.2018 whereby major penalty of removal from service was imposed on the appellant and against the appellate order dated 27.02.2020, whereby his departmental appeal was rejected for no good grounds. It has been prayed by the appellant that on acceptance of the appeal, the impugned orders dated 02.02.2018 and 27.02.2020 might be



set aside and he might be reinstated into service with all back benefits alongwith any other remedy which the Tribunal deemed fit.

2. Brief facts of the case, as given in the memorandum and grounds of appeal, are that the appellant was serving in the respondent department as Sweeper. During service, he became seriously ill and was unable to perform his duty. He went to a doctor for treatment who advised complete bed rest to him till the recovery from the disease. After recovery, the appellant approached the concerned authority for rejoining of his duty, who handed over the impugned order dated 02.02.2018, whereby major penalty of removal from service was imposed on him. Feeling aggrieved from the impugned order dated 02.02.2018, he preferred departmental appeal which was rejected on 27.02.2020 for no good grounds; hence the instant appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail argued that the appellant had not been treated in accordance with law and rules on the subject and as such respondents violated Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan. He further argued that no absence notice had been served upon the appellant nor publication had been made before issuance of the impugned order which was mandatory under Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules,



2011. According to him, absence of the appellant was not willful but due to his serious illness. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was appointed as Sweeper (BS-03) in the respondent department on 27.09.2006. It was on account of his willful absence from duty in 2017, when he was proceeded against under Rule-09 of the Khyber Pakhtunkhwa Government Servant (B&D) Rules, 2011 and in pursuance of the said rules, first a show cause notice was served upon him on 23.11.2017 to which he neither responded nor reported for duty. Therefore, second show cause notice was inevitably served upon him through leading newspapers which was published on 29-30th December, 2017 but again he failed to respond and resume his duty till 01.02.2018. According to the learned District Attorney, no proof of illness, medical treatment or recovery from illness was produced by the appellant before his competent authority. Consequently, taking an ex-parte action, major penalty of removal from service was imposed upon him vide order dated 02.02.2018. He filed a departmental appeal in April, 2018, which was badly time barred. The appeal was properly processed and regretted by the appellate authority with a copy to the appellant vide letter dated 25.05.2018. He requested that the appeal might be dismissed.

6. Record and arguments presented before us reveal that the appellant, while serving as Sweeper in the respondent department, absented himself



from lawful duty on account of alleged illness. Two prescriptions dated 10.10.2017 and 12.12.2017 have been attached with the appeal which are of some private clinic in Batkhela. When confronted during the court proceedings whether any application for leave was submitted by the appellant, learned counsel for the appellant informed that the appellant could not submit the same as no one in his house was available to take his application to his high ups except his old ailing father. When further confronted about his residential address, he confirmed that the appellant belongs to Peshawar and resides in Peshawar. If it is so, then it is not understandable why he went for his treatment in a private clinic in Batkhela and if he could go to such a distant place, so far away from his home, why he failed to inform his high ups despite being a resident of Peshawar?

7. It is an undisputed fact that a civil servant is bound under the rules to inform his high ups about his absence in time and get the leave sanctioned by clearly mentioning the nature of leave. In this case, no application was forwarded by the appellant and, hence, no sanction of medical leave is available on record. As far as procedure adopted under the rules is concerned, notices were issued to the appellant, as is evident from the two show cause notices published in two dailies dated 29th and 30th December, 2017. As the appellant was absent since 01.09.2017 and the order of removal from service was issued on 02.02.2018 after fulfillment of the procedure as given in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, the intervening period has rightly been treated as



leave without pay as the same comes under the principle of no work-no pay as held by the august Supreme Court of Pakistan also.

8. In view of the above discussion, the appeal in hand is dismissed. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 9th day of May, 2023.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
CHAIRMAN

Fazle Subhan PS