

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 2224/2020

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Abdul Wakeel, Ex-PSHT, GPS Almas Stori Khel, District Khyber.
..... (Appellant)

Versus

1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer, Khyber Tribal District at Jamrud.
..... (Respondents)

Mr. Shafiullah,
Advocate

...

For appellant

Mr. Asad Ali Khan,
Assistant Advocate General

...

For respondents

Date of Institution.....	15.09.2020
Date of Hearing.....	06.06.2023
Date of Decision.....	06.06.2023

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 06.09.2019 whereby major penalty of removal from service was imposed upon the appellant and against the order dated 17.08.2020, whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant might be reinstated in service with all back & consequential benefits and any other remedy, which the Tribunal deemed fit and appropriate.

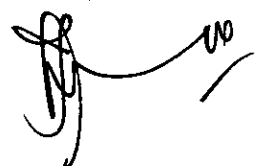


2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was working as PSITT in the respondent department. He became ill and rushed to the hospital and his treatment took some time due to which he was compelled to remain absent from his duty. Without issuance of charge sheet and show cause notice and without conducting inquiry, he was removed from service vide impugned order dated 06.09.2019. Feeling aggrieved, he filed departmental appeal which was rejected on 17.08.2020; hence the present appeal on 15.09.2020.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Assistant Advocate General 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, contended that no inquiry was conducted against the appellant, no show cause notice was served upon him and he was removed from service in a slipshod manner. He further contended that no opportunity of hearing was afforded to him and he was condemned unheard. According to him, the punishment of removal from service was harsh and not commensurate with the guilt of the appellant. He requested that the appeal might be accepted as prayed for.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant himself admitted that he remained absent from duty without any prior permission of his superiors. The respondent department followed proper procedure by serving



two absence notices upon the appellant vide letters dated 13.05.2019 and 24.05.2019. Proper departmental inquiry was conducted and then he was removed from service being habitual absentee. Learned Assistant Advocate General requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant, while serving as PSIT, was removed from service on the charge of being absent without any leave sanctioned by his competent authority. There is no mention of the number of days for which he remained absent. A copy of departmental appeal of the appellant after his removal is available with the record presented before us which says that his mother was not well and admitted to hospital and he was looking after her and therefore remained absent whereas the facts given by him in his service appeal mention that he became ill and was rushed to the hospital and his treatment took some time due to which he remained absent from his duty. Although the respondents state in their reply that proper departmental inquiry was conducted but no such document has been attached with the reply nor produced during the hearing. Had a proper inquiry been conducted, all the facts could have been unearthed. Two absence notices are also available in the record, which, according to the respondents, were served upon the appellant on two different dates but there is no evidence whether they were actually served and received by him or not.


7. From the facts narrated above, it is evident that major punishment was awarded to the appellant without fulfilling the procedure as mentioned in the Khyber Pakhtunkhwa (Efficiency and Discipline) Rules, 2011. The appeal is, therefore, allowed with the directions to the respondents to conduct denovo



inquiry by fully associating the appellant in the entire proceedings and giving him fair opportunity to present and defend his case. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 06th day of June, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)