

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1063/2022

BEFORE: SALAH-UD-DIN --- MEMBER(J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Ali Humayun S/O Atta Muhammad Khan R/O Pohan Colony near TB Hospital Baghdada, Mardan..... (*Appellant*)

VERSUS

1. The Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. The District Education Officer (M) Swabi.
3. The Sub-Divisional Education Officer Tehsil Razar (Swabi).
4. The Secretary Education Khyber Pakhtunkhwa Peshawar.
5. The Headmaster Government Primary School Parra Swabi.

.....(*Respondents*)

Present:

AMJID MAKHDOOM,
Advocate

--- For Appellant

ASIF MASOOD ALI SHAI,
Deputy District Attorney,

--- For respondents

Date of Institution.....16.06.2022
Date of Hearing.....16.05.2023
Date of Decision..... 16.05.2023

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer as copied below;

“On acceptance of this appeal the Notification No. 1251-56 dated 27.02.2022 issued by respondent No. 2 may please be set aside and the appellant may please be restored to his



position with all back benefits from date of his termination.”

02. Brief facts of the case are that the appellant was appointed as PST in the year 2018. The appellant was issued Show Cause Notice bearing No. 2070-G dated 24.11.2020 followed by an enquiry, whereby he was awarded minor penalty of withholding of two annual increments for a period of two years and was transferred to GPS Parra Kalu Khan Swabi on administrative grounds on the allegation of absence from duty w.e.f 02.11.2020 vide order dated 29.07.2021. The appellant assumed the charge on 04.08.2021. The appellant was removed from service vide order dated 27.02.2022 on the allegation of absence from duty w.e.f. 17.08.2021 to 16.10.2021. Feeling aggrieved, the appellant filed department appeal on 05.03.2022 which was turned down on 18.05.2022, hence, the present service appeal.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned orders are against law, facts and norms of justice; that the absence mentioned in the show cause notice is false as the attendance register shows regular duty of the appellant. He submitted that the appellant was regular in his duties and was not absent in the alleged period i.e. 17.08.2021 to 06.10.2021 and the allegations of the respondents are wrong and without any cogent reason which is based on malafide and ill will. Further



submitted that the malafide of the respondents floats from the termination order wherein the proceedings of previous inquiry have been relied by refereeing to advertisement dated 10.12.2020 & 11.12.2020, while the period in dispute is w.e.f. 17.08.2021 to 06.10.2021 and in the said period also, the appellant was not absent from duty; that the respondents have referred in the comments to the previous inquiry while the matter is in respect of a later period; that the appellant has been punished twice, firstly withholding of two annual increments for two years and the second is removal from service which is against law as one person cannot be punished twice. He submitted that the appellant has never been issued show cause notice nor he was provided any opportunity of defense. Lastly, he submitted that neither statement of concerned Headmaster has been recorded nor the attendance register has been examined. Therefore, he requested for acceptance of the instant service appeal.

05. Learned Deputy District Attorney argued that the appellant was rightly removed from service as he was willfully absent from duty. He submitted that the impugned order is in accordance with law and norms of justice and the appellant has been proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Further submitted that the attendance register has been signed by the concerned Head Teacher by force as the appellant belongs to an influential family; that the whole service of the appellant is spotted with absenteeism, disobedience and disinterest towards his job and the department by taking lenient view has given several chances and by given minor penalty for mending his ways but no avail. Further submitted that the appellant is a

habitual absentee and has been issued show cause notice which remained un-responded from appellant. Lastly, he submitted that the appellant has less than four years service which is full of irregularities, inefficiency and disobedience, therefore, he has been rightly removed from service.

06. The impugned order of removal from service dated 27.02.2022 would reveal that actually absence period of two different periods have been combined against the appellant. In fact the appellant was penalized for absence period relating to year 2020 by imposing minor penalty of stoppage of two annual increments for two years vide order dated 29.07.2021. However, the same period has again been made one of the ground for imposition of major penalty of removal from service imposed on him vide order dated 27.02.2021. The ground of proceedings against the appellant is the period of willful absence with effect from 17.08.2021 to 06.10.2021 as per report of the SDEO Tehsil Razzar, district Swabi. In such a situation the procedure as provided in Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was required to be adopted but the required procedure for initiating proceedings against the appellant on ground of willful absence from duty were not complied by the competent authority. Moreover, if it was at all required to dispense with the formal inquiry the competent authority was required to invoke the provision of Rule-5(a) of the Rules *ibid* by recording reasons in writing which has not been done. The impugned order dated 27.02.2022 is thus not sustainable in accordance with the law and liable to be set aside.

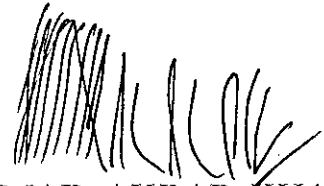
07. Foregoing in view the instant appeal is allowed by setting aside the impugned order dated 27.02.2022 and the appellant is reinstated in

service for the purpose of de-novo inquiry. Back benefits including release of salary to the appellant shall be subject to the outcome of de-novo inquiry. The appellant shall be associated with the inquiry proceedings providing him opportunity of proper defense. De-novo inquiry shall be conducted in accordance with the relevant law and rules within a period of 60 days after receipt of copy of this judgment. Consign.

08. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 16th day of May, 2023.



(SALAH-UD-DIN)
MEMBER (J)



(MUIHAMMAD AKBAR KHAN)
MEMBER (E)