

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**  
**AT CAMP COURT ABBOTTABAD**

**Service Appeal No. 1182/2022**

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

Waseema Jabeen Bibi, Primary School Teacher (PST) Government  
Girls Community Model School Jijal Circle Dubair, Kohistan Lower  
..... (*Appellant*)

**VERSUS**

1. District Education officer (Female) Kohistan Lower.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa,  
Peshawar..... (*Respondents*)

**Present:-**

MUHAMMAD RIAZ SWATI,  
Advocate

--- For Appellant.

ASIF MASOOD ALI SHAH,  
Deputy District Attorney

--- For respondents.

Date of Institution.....28.07.2022  
Date of Hearing.....23.05.2023  
Date of Decision.....23.05.2023

**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 copied as under;

*“That on acceptance of instant appeal with cost, this  
Honourable Tribunal may please set aside the impugned  
compulsory retirement from service order dated 25.03.2022  
passed by respondent No. 1, declaring the same ultra verse,  
illegal, void ab-initio, without lawful authority and ineffective*

*upon the rights of appellant. Appellant may kindly be reinstated in service from the date of her compulsory retirement i.e. 25.03.2022 with all back benefits in the interest of justice and equity”*

02. Brief facts of the case are that the appellant was serving as Primary School Teacher in District Kohistan since 09.02.2012. She was posted as PST GGCMS Jijal Circle Dubair, Kohistan Lower. The appellant was imposed major penalty of compulsory retirement on the allegation of will full absence from duty vide impugned order dated 25.03.2022. Feeling aggrieved, the appellant filed departmental appeal which was not responded within the statutory period, hence the instant service appeal instituted on 28.07.2022.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in her 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 appellant while serving as PST since 09.12.2012 having unblemished service record was imposed major penalty of compulsory retirement from service on the allegation of will full absence from duty vide impugned order dated 25.03.2022. That the impugned order was passed in violation of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011; that the appellant has not been treated in accordance with law, as such the respondents violated Article 10-A of the Constitution. Learned counsel for the appellant further

contended that no show cause notice was issued to the appellant and no chance of personal hearing was provided to the appellant. She has, therefore, been condemned unheard. Learned counsel for the appellant argued that the entire proceedings was kept secret and the appellant deprived from right to fair trial as provided in Article 10-A of the Constitution of Islamic Republic of Pakistan 1973. That the major penalty was imposed on the appellant on her previous 4 days within 2 years absence i.e. 15.04.2019, 05.09.2019, 22.01.2020, 01.02.2020 for which she had already been penalized hence civil servant could not be penalized or punished twice for the same charge. He further argued that all the proceedings were against the well settled principle of natural justice, enshrined in the maxim Audi alteram partem. To strengthen his arguments, learned counsel for the appellant relied on PLD 2000 Supreme Court of Pakistan & 2022 PLC (C.S) 1201.

05. Learned Deputy District Attorney on behalf of respondents contended that the appellant was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 for the charges of willful absence from duty. Show Cause Notice was served upon the appellant vide No. 1266-73 dated 24.02.2022 for her willful absence from duty. It was further contended that the appellant had also been reported absent previously several times for which she has already been punished. That the competent authority after having considered the charges evidence on record, her track record pertaining to her willful absence on various occasions, the letter of personal hearing granted to her vide No. 1400 dated 15.03.2022 that the charges mentioned in the show cause have been proved against the appellant, therefore, the competent authority imposed major penalty of compulsory retirement from service upon the appellant on

25.03.2022. He further argued that the impugned order of compulsory retirement from service vide order dated 25.03.2022 is not an arbitrary, but a lawful order.

06. The appellant as per contents of the impugned order dated 25.03.2022 was proceeded against the charge of willful absence but the procedure as laid down under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was never adopted. Rule-9 of Rules ibid provides as under;

*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 acknowledgment 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.*



The defense failed to provide evidence with regard to issuance of notice to the appellant at her home address and publication of absence Notice through Newspaper as required under the above quoted rule. Likewise in the Show Cause Notice, which the appellant denies to have received, the proceedings were initiated on three grounds viz (1) absence from duty on 22.02.2022; (2) Inefficiency; (3) Guilty of misconduct. The grounds No. 2 and 3 necessitated detailed scrutiny of the conduct of the

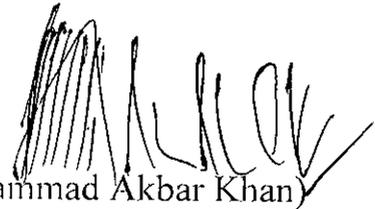
appellant being a civil servant through inquiry committee or an inquiry officer as provided under Rule-10 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. If the competent authority was satisfied to dispense with the formal inquiry he was required to have recorded reasons in writing for dispensing with the inquiry as required under 5 (a) of the Rules ibid which has not been done. Moreover, in the impugned order there is no mention of the one day absence i.e. 22.02.2022 as indicated in the show cause notice. Instead the four days of absence period of the appellant during previous two years for which she had already been penalized by imposing minor penalty of stoppage of one increment have again been made ground for imposition of the major penalty of compulsory retirement. This tantamount to double jeopardy prohibited by Article-13 of the Constitutions of Islamic Republic of Pakistan which clearly provides that no person shall be prosecuted or punished for the same offence more than once.

07. In view of what has been discussed above we are constrained to allow the instant appeal and set aside the impugned order dated 25.03.2022 and reinstate the appellant in service with effect from 25.03.2022 with all financial and service benefits. Costs shall follow the event. Consign.

08. *Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal this 23<sup>rd</sup> day of May, 2023.*



(Salah-Ud-Din)  
Member (J)  
Camp Court Abbottabad



(Muhammad Akbar Khan)  
Member (E)  
Camp Court Abbottabad