

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR
AT CAMP COURT, ABBOTTABAD.

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.1111/2022

Date of presentation of Appeal.....13.07.2022

Date of Hearing.....21.06.2023

Date of Decision.....21.06.2023

Mr. Anwar Khan, PST Village & Post Office Baffa, Tehsil Baffa,
District Mansehra.....*Appellant*

Versus

1. **Government** of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **The Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **The District Education Officer (Male)**, District Mansehra.
.....(*Respondents*)

Present:

Mr. Arshad Khan Tanoli, Advocate.....For appellant

Mr. Asad Ali Khan, Assistant Advocate GeneralFor respondents.

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, 1974 FOR DECLARATION TO THE EFFECT THAT THE APPELLANT WAS ILLEGALLY SHOWN ABSENT FROM SERVICE W.E.F 25.12.2009 TO 29.01.2018 FINALLY, APPELLANT HAS BEEN REMOVED FROM SERVICE ORDER ENDORSEMENT NO.12818-23/ESTT DATED 30.11.2021 WHICH IS PERVERSE, DISCRIMINATORY, AGAINST THE LAW AS WELL AS AGAINST THE RECOMMENDATION OF THE INQUIRY OFFICER IN TWO INQUIRIES WHEREIN, IT WAS RECOMMENDED BY THE INQUIRY OFFICER IN BOTH THE INQUIRIES THAT THE MAJOR PENALTY OF COMPULSORY RETIREMENT IS TO BE IMPOSED ON THE APPELLANT BUT THE COMPETENT AUTHORITY WITHOUT FOLLOWING THE PRESCRIBED PROCEDURE, IMPOSED MAJOR PENALTY OF



REMOVAL FROM SERVICE VIDE IMPUGNED REMOVAL FROM SERVICE ORDER DATED 30.11.2021 WHICH IS LIABLE TO BE SET ASIDE.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that appellant was appointed as PST vide order dated 27.02.1993. It is alleged that during the service, the appellant got leave without pay w.e.f 04.03.2004 to 03.03.2006, 04.03.2006 to 03.03.2008, 10.03.2009 to 25.12.2009; that after expiry of extraordinary leave without pay, he reported back in the office of respondent No.3 and requested for his adjustment in any school; that the appellant filed several applications to different fora; that he submitted application to the Director Education Department who ordered for conducting inquiry into the matter and appointed inquiry officer. The inquiry officer, after conducting inquiry, recommended imposition of major penalty of compulsory retirement from service. That respondent No.3, without considering the recommendation of the inquiry officer, removed the appellant from service vide order dated 31.11.2021. Feeling aggrieved, he filed departmental which was rejected, hence, the instant appeal.

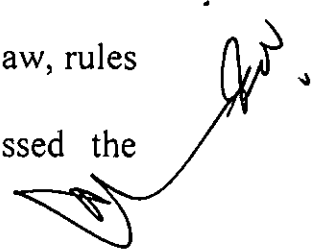
2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous

legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard appellant and learned Assistant Advocate General for the respondents.

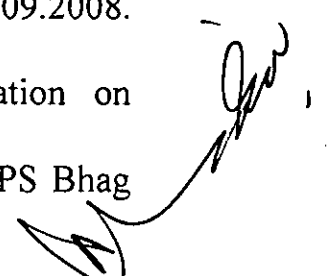
4. Learned counsel for the appellant argued that the impugned order dated 30.11.2021 was liable to be set aside because procedure had not been adopted by the competent authority in accordance with law; that total service of the appellant in Education Department was 13 years and he never remained absent during that period and after expiry of extraordinary leave without pay, the appellant had reported in the office of respondent No.3 for adjustment. He submitted that the appellant had been removed from service without following the prescribed procedure, therefore, removal of the appellant from service order was liable to be set aside. Further submitted that the appellant caused no loss to the public exchequer and had not received salary for the period during which he had not been adjusted, hence, the department was supposed to reinstate the appellant in service. Therefore, he requested for acceptance of the present service appeal.

5. As against that learned Assistant Advocate General argued that the entire action of the respondents was within the ambit of law, rules and regulations and the respondent department had passed the

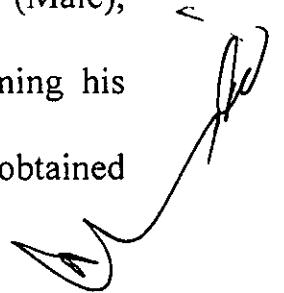


impugned order after observing all legal and codal formalities in the shape of inquiry, issuance of show cause notice and opportunity of personal hearing. Further submitted that the appellant was serving abroad during the absence period (w.e.f 25.12.2009 to 29.01.2018) and after completion of the task there he returned to the country and started submitting applications after a lapse of 2594 days w.e.f 25.12.2009 to 29.01.2018. Lastly, he submitted that his absence from duty and being abroad had been admitted by his maternal uncle as well. Therefore, he requested for dismissal of the instant service appeal.

6. This appeal is against the order dated 30.11.2021, whereby, the appellant was removed from service because of his absence from 25.12.2009 to 29.01.2018. The appellant contends that, while being in service as PST Government Primary School Manda Ghucha, District Mansehra, he obtained leave without pay from 04.03.2004 to 03.03.2006, 04.03.2006 to 03.03.2008, 10.03.2009 to 25.12.2009 and on expiry of extraordinary leave without pay, he reported to the office of respondent No.3 and requested his adjustment in any school. The record reflects that vide order bearing endorsement No.22565-67 dated 01.09.2008, the appellant on his return from leave, was adjusted at GPS Bhag Dhanna against vacant post of PST w.e.f 01.09.2008. According to the appellant, he had moved an application on 20.12.2009; that he had obtained leave without pay from GPS Bhag



Dhanna, District Mansehra from 10.03.2009 to 25.12.2009 and that his period of leave was going to expire, therefore, he might be adjusted against any vacant post. The appellant has not annexed any document showing that he was granted leave without pay from 10.03.2009 to 25.12.2009. Copy of similar application is also filed on 01.01.2010 but with the date of leave i.e. instead of 10.03.2009, the appellant has written in the application of 01.10.2010 the date as 02.03.2009. He has also annexed copy of another application dated 02.06.2010 stating that he had obtained leave without pay in the year 2009 from GPS Bhaag Dhanna but he was not being adjusted against any post. There is another application bearing endorsement of the office of the District Officer (E&SE) shown to have been addressed to the District Education Officer (Male) Mansehra. This is with some different contention. The appellant has stated in this application that he had obtained leave from 04.03.2006 to 03.03.2008 and on expiry of leave, the appellant, when reported to his school, there was no vacant post and the applicant submitted application for leave but that was not granted nor he was given any reply and he was also not adjusted. There is copy of another application dated 03.10.2019 with the subject adjustment and obtaining copy of inquiry by the appellant submitted to the District Education Officer. This time, the applicant, in his application addressed to the District Education Officer (Male), Mansehra, stated a different fact that he had been performing his duties as PST from 1993 to 2009 and in March, 2009, he obtained



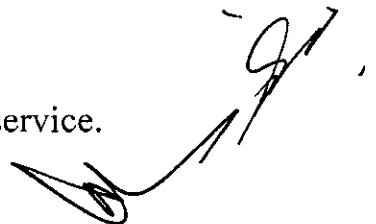
leave till December, 2009; that on completion of leave, he submitted application for his adjustment but he did not receive any reply; that he submitted many applications and in January, 2019, the DEO appointed Principal of GHSS No.1, Mansehra as Inquiry Officer, who completed inquiry and forwarded to the department but even then, since January, 2019 till filing of application, he did not receive any reply. He prayed, in the application, that he might be given copy of inquiry for his record. There is copy of another application of 05.10.2019 shown to have been submitted by the appellant to the Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar, wherein he quite differently stated that he had been performing duties as PST from 27.02.1993 to 25.12.2009. That during his service, the appellant had obtained leave from 10.03.2009 to 25.12.2009 and on completion of leave, he had been voicing for his adjustment but no positive response was being given to him. There is copy of another application dated 16.10.2019 addressed to the Director E&SE, wherein, the appellant said that on completion of his leave on 25.12.2009 he had submitted many applications but he did not receive reply or notice or show cause through newspaper etc. That in the year 2018 and 2019, two inquiries were conducted, the copies of which were also not provided. He requested that he might be dealt with judiciously. There is copy of the application dated 19.10.2019 to the DEO for providing photocopy of service book. There is another copy of an application shown to have been received on 29.01.2018 by

the office of the District Education Office, wherein, same narration has been made.

7. An inquiry was conducted in respect of prolonged absence of the appellant, By Luqman Ali Khan, Principal GHSS No.1, Mansehra who submitted his report on 02.02.2019 and suggested major penalty for compulsory retirement, where-after, opportunity of personal hearing was provided to the appellant and show cause notice was served upon him on 17.08.2021.

8. The appellant has annexed copies of a bundle of applications but with no supporting documents whether any of the applications were actually received by the addressee of the applications or merely, for the purpose of making this appeal bulky, he has procured/prepared and placed on file these copies. It appears from the inquiry report that the appellant approached several times to the EDO office for his adjustment. His last application was moved on 18.01.2019. It is incomprehensible as to what was the need of making application after intervals and why the appellant had not first submitted his arrival report. If, for instance, we consider his first application as arrival report, his presence or attendance in the DEO office since expiry of his leave is not established. The detail of leave period is also given in the inquiry report as under:

He availed the following types of leave during his service.



- " i. He has been granted leave of full pay w.e.f 04.03.2004 to 01.07.2004 & leave without pay w.e.f 02.07.2004 to 03.03.2006 vide DO (M) Mansehra order under Endstt: No.2967-68, dated 15.12.2003 as per Service Book record.*
- ii. Extra Ordinary leave w.e.f 04.03.2006 to 03.03.2008 (731 days) sanctioned by the competent authority vide Notification No.3460-63 dated 28.02.2006.*
- iii. Leave without pay w.e.f 04.03.2008 to 31.08.2009 to sanctioned vide EDU (E&S) Mansehra order under Endst: No.22565-67 dated 01.09.2008.*
- iv. Leave without pay w.e.f 10.03.2009 to 25.12.2009 (292 days) sanctioned Vide DEO (S/L) Mansehra Notification under Endst: No.651-54 dated 16.01.2009. However entry of this leave is not on the record of Service Book."*

Following are the findings of the Inquiry Officer:

"1.Mr. Anwar Khan Ex-PST was granted leave without pay w.e.f 10.03.2009 (292 days) vide EDO Notification under Endst:No.651-54 Dated 16.01.2009. Entry of which is not recorded in the service book due to unknown reason. However the notification of the said leave is available in the file sent by DEO (M) Mansehra office.

2. After the expiry of the above mentioned leave the concerned teacher paid several visits to EDO/DEO office for his adjustment. He submitted four number of applications on dates 20.12.2009, 02.06.2010, 10.08.2011 and 10.03.2014 but no response is given from the office. Lastly he submitted an application on 29.01.2018 in light of which the DEO (M) Mansehra considered that for conduct of Inquiry.

3. In light of his response to question No.11 he told that previously an enquiry was conducted but still no response given to him. Answer to question No.12, he replied that after the expiry of his leave on 25.12.2009, no letter in shape of Show Cause Notice of Personal Hearing is received to him nor he was guilty. His statement is based on facts as the original record is also silent in this connection.

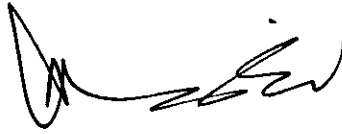
In the conclusion, the Inquiry Officer found that ^{the}he ^Qappellant had had not been adjusted after expiry of extraordinary leave without pay but no appeal to the competent authority was found on the record or provided by the appellant. The Inquiry Officer suggested for major penalty in the shape of compulsory retirement. During personal hearing, he was asked to justify his absence w.e.f 25.12.2009 to 29.01.2018 (2954 days), he replied that he had submitted application for re-adjustment on 25.07.2009, in his actual school from where he had proceeded on leave (GPS Bhaag Dhanna) but he had not been adjusted anywhere. This application did not bear diary number of the DEO to confirm whether the same was actually submitted.”

9. Be that as it may, the appellant says that he had obtained leave till 25.12.2009 but he could not account for his absence, there-after, till 29.01.2018 which is around 2954 days. Such a long absence of the civil servant for over the years cannot be taken lightly or leniently. The non-performance of duty for this long period is not denied anywhere by the appellant, rather he says that he had been making



applications for his adjustment. The contention of the appellant that he had been making applications for adjustment appears to be self-made and because of the very long period of absence, it cannot be accepted rather those applications seem to be an effort to cover the prolonged absence. How these applications were brought on record, as found in the enquiry report, is also not known nor those can be relevant for want of supporting evidence. This being so, we find that the appellant has been dealt with in accordance with law and appropriately having no merits in this appeal, which is dismissed with cost. Consign.

10. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 21st day of May, 2023.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Adnan Shah