

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, SWAT.

Service Appeal No. 798/2022

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

Mr. Nisar Khan S/O Sarmat Khan R/O village and post office Fath-e-Pur,
 Swat. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male), District Swat.
4. District Accounts Officer, Swat. (Respondents)

Mr. Muhammad Rahim Shah,
 Advocate ... For appellant

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

Date of Institution.....	16.05.2022
Date of Hearing.....	06.07.2023
Date of Decision.....	06.07.2023

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 11.02.2016 of respondent No. 3, whereby he was removed from service and against the order dated 23.11.2017 whereby his departmental appeal was rejected being time barred. It has been prayed that on acceptance of the appeal, the removal orders might be set aside and he might be reinstated in service with all



back benefits and arrears etc. or his removal order be converted into compulsory retirement alongwith 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 appointed as Primary School Teacher (PST) in the respondent department on 01.10.1992 and was adjusted at GPS Yaka Badesha, Tehsil and District Swat. Due to nearest blood relative murdered by the militants and receiving life threat from the same group, the appellant was very careful and cautious toward^s life. Vide order dated 11.02.2016, he was removed from service by the respondent No. 3 on the charge of absence from duty. Being aggrieved, he filed departmental appeal on 26.10.2017 before the respondent No. 1 which was rejected on 23.11.2017 being time barred; hence the present appeal.

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 District Attorney for the respondents and perused the case file with connected documents in detail.

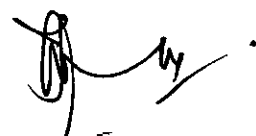
4. Learned counsel for the appellant, after presenting the case in detail, argued that the order of respondent No. 3 was illegal and illogical as the requisite formalities, such as show cause notice had not been served upon the appellant, although in the termination order respondents mentioned issuance of show cause notice to the appellant. He further argued that under Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules.



2011, in case of willful absence from duty, notice should have been issued to the appellant through registered acknowledgment on his home address. If the same was received back as un-served or no response was received from him within the stipulated period, a notice should have been published in two leading newspapers, failing which an ex-parte decision should have been taken against him on expiry of stipulated period given in the notice. He further argued that no opportunity of defence was provided to the appellant before awarding major penalty to him. On the point of limitation, learned counsel argued that the impugned order was void and no limitation ran against such order in the light of verdict of the August Supreme Court of Pakistan.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, at the very outset argued that the appellant was removed from service on 11.02.2016 against which he filed departmental appeal which was rejected on 23.04.2017 being time barred and hence the appeal before the Tribunal was not maintainable. He further argued that the appellant remained absent from duty time and again during his entire service which was evident from the copies of the teachers attendance register of the school and report of the ASDIO (Male) Primary, Swat. He requested that the appeal might be dismissed.


6. From the arguments and record presented before us, it transpires that the appellant, while serving in the Elementary & Secondary Education Department as Primary School Teacher, absented himself from his lawful duty and was removed from service. A show cause notice available with the




record presented before us shows the dates on which the appellant remained absent. According to that notice, he was absent for five days during the year 2014 and two days in 2015, at different/random dates, and was reported as habitual absentee. There is no documentary evidence that the show cause notice had been served and delivered at the home address of the appellant, as provided in the Rules. In case of no response from the appellant, there is no proof of any publication in two dailies. This indicates that the procedure as given in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has not been adopted. We feel that before awarding any major punishment, the competent authority should have kept the provisions of the E&D Rules in view and a fair opportunity should have been provided to the appellant to present and defend his case.

7. In view of the above, the service appeal in hand is allowed and the appellant is reinstated into service with the directions to the respondents to conduct a proper formal inquiry in accordance with relevant law and rules within a period of 60 days of receipt of copy of this judgment. Back benefits are subject to the outcome of the inquiry proceedings. Costs shall follow the event. Consign.

08. *Pronounced in open court at Camp Court Swat and given under our hands and seal of the Tribunal this 06th day of July, 2023.*


(FAREEHA PAUL)
 Member (I)
 (Camp Court, Swat)


(SALAH-UD-DIN)
 Member (J)
 (Camp Court, Swat)