

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR
AT CAMP COURT, D.I.KHAN**

**BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
SALAH-UD-DIN ... MEMBER (Judicial)**

Service Appeal No.1091/2022

Date of presentation of Appeal.....05.07.2022
Date of Hearing.....17.07.2023
Date of Decision.....17.07.2023

**Mr. Muhammad Hassan S/O Sarfaraz R/O Village Mahra Tehsil
Parova District D.I.Khan Ex-PST Teacher at GPS Lal Mahra,
D.I.Khan.....(Appellant)**

Versus

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

Present:

Mr. Muhammad Waqar Alam, AdvocateFor the appellant
Mr. Farhaj Sikandar, District AttorneyFor the respondents.

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**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER/NOTIFICATION
NO.27892-95 DATED 14.12.2021 ISSUED BY RESPONDENT
NO.3, DEO (M) D.I.KHAN WHEREBY APPELLANT WAS
DISMISSED FROM SERVICE AND AGAINST THE
OMISSION ON THE PART OF RESPONDENT NO.2 FOR
INDECISION OF THE DEPARTMENTAL APPEAL WHICH
IS AGAINST THE LAW AND IN VIOLATION OF SERVICES
LAWS AND RULES THE APPELLANT WAS CONDEMNED
UNHEARD WITH MALAFIDIES.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that
appellant was serving in Education Department as Primary School Teacher.

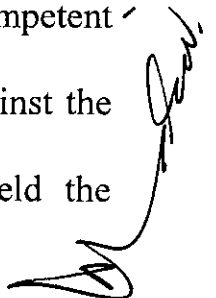
He was involved in criminal case vide FIR No.90 dated 10.07.1998 U/S 302/324 PPC P.S Parova. Accordingly, the appellant was sentenced to death by the Session Court, D.I.Khan in the mentioned case, where-after, he made appeal to the Hon'ble Peshawar High Court, which was decided by modifying the death sentence into life imprisonment; that after completion of the imprisonment/conviction period, he was released from jail on 10.06.2009; that the appellant submitted application for allowing him to join his duty but fiasco; that he filed a departmental appeal which was not decided, where-after, he filed Service Appeal No.1821/2009 before this Tribunal and vide judgment dated 28.11.2017, the Tribunal, by remitting back the appeal to the departmental authority to decide the departmental appeal of the appellant through a speaking order within a period of ninety days. For the purpose of implementation of judgment dated 28.11.2017, the appellant filed execution petition No.75/2021 and during the pendency of that execution petition, the respondents produced the impugned order dated 14.12.2021, whereby, the appellant was dismissed from service. Feeling aggrieved, he filed departmental appeal, which remained un-responded, hence, the present service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned but they failed to submit reply/comments. Resultantly, vide order dated 17.01.2023, they were placed ex-parte and their right to submit reply was struck off.

03. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

04. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

05. It appears that vide judgment dated 28.11.2017, passed in Service Appeal No.1821/2009 filed by the present appellant that the matter was remitted to the department, as it was not clear from the record, whether the appellant was terminated or removed from service or was still in service. A direction was given that the departmental appeal of the appellant should be decided through a speaking order within a period of three months after the receipt of the judgment. The record further reveals that an Execution Petition No.75/2019 was filed by the appellant for implementation of the said judgment. During the pendency of which, on 17.12.2021, Mr. Muhammad Kamran, ADEO and Mr. Baseer Ullah, Litigation Officer put appearance on behalf of the respondents and informed the Tribunal that vide Notification dated 14.12.2021, the appellant was dismissed from service. The Single Bench observed that the notification was issued by the District Education Officer, (Male) D.I.Khan, who was not the appellate authority of the petitioner/appellant and holding the notification as *coram non-judice*, the appellant was left at liberty to challenge that through a separate appeal, hence, this appeal. The Notification dated 14.12.2021, on perusal, shows that it was issued by the DEO (M) D.I.Khan, who is not appellate authority, rather he had issued the impugned notification in the capacity as competent authority. However, the appellant filed the departmental appeal against the same on 07.02.2022. The learned Single Bench has already held the



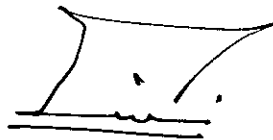
impugned notification as *coram non-judice*. We also find that that impugned order was not issued in terms of the judgment of the Tribunal and was thus not sustainable on this score alone.

06. We, however, feel that on setting aside the impugned order, an inquiry must be conducted, in accordance with the relevant provisions of law and rules, providing the appellant fair opportunity of hearing/associating him with the inquiry proceedings and then make an appropriate order regarding the fate of service of the appellant. The appellant is reinstated for the purpose of inquiry. The issue of back benefits will be subject to the outcome of de-novo inquiry. Consign.

7. *Pronounced in open Court at Camp Court, D.I.Khan and given under our hands and the seal of the Tribunal on this 17th day of July, 2023.*



(KALIM ARSHAD KHAN)
Chairman



(SALAH- UD-DIN)
Member (Judicial)

Mutazem Shah

S.A #.1091/2022

ORDER

17th July, 2023

1. Learned counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Kamran, ADEO for the respondents present.
2. Vide our detailed judgment of today placed on file, we feel that on setting aside the impugned order, an inquiry must be conducted, in accordance with the relevant provisions of law and rules, providing the appellant fair opportunity of hearing/associating him with the inquiry proceedings and then make an appropriate order regarding the fate of service of the appellant. The appellant is reinstated for the purpose of inquiry. The issue of back benefits will be subject to the outcome of de-novo inquiry. Consign.
3. *Pronounced in open Court at Camp Court, D.I.Khan and given under our hands and the seal of the Tribunal on this 17th day of July, 2023.*



(Salah-Ud-Din)
Member (J)

Camp Court, D.I.Khan

Mutazem Shah



(Kalim Arshad Khan)
Chairman

Camp Court, D.I.Khan