

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1048/2017

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Qamar Ali Khan S/O Hayat Khan, R/O Gedder Mama Khel, Bannu, Ex-Chowkidar, GPS, Gedder Mama Khel. (*Appellant*)

Versus

1. District Education Officer (M) Bannu.
2. Director, Elementary Education, Khyber Pakhtunkhwa, Peshawar.
3. Secretary, Elementary Education, Khyber Pakhtunkhwa, Peshawar.
..... (*Respondents*)

Mr. Arbab Saiful Kamal,
Advocate ... For appellant


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

Date of Institution.....18.09.2017
Date of Hearing.....10.07.2023
Date of Decision..... 10.07.2023

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 20.03.2007 of respondent No. 1, whereby appellant was terminated from service. It has been prayed that on acceptance of the appeal, order dated 20.03.2007 be set aside and the appellant be reinstated in service with all back benefits or in alternate, appellant be given pensionery benefits, GP Fund, Gratuity etc. of the rendered service.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed on 06.10.1987 as Chowkidar and was posted at



GPS, Gedder Mama Khel, Bannu. On 14.11.2004 he was implicated in a criminal case, alongwith other relative, by complainant Muhammad Haroon. On 20.03.2007, he was terminated from service by respondent No.1 with effect from 15.11.2004. Appellant, feeling aggrieved, submitted representation through registered post on 18.04.2007 before respondent No. 2 for reinstatement in service but in vain. After compromising the matter, he was acquitted from the charges on 29.05.2013 by the Additional Sessions Judge-I, Bannu. On 20.05.2016 appellant submitted subsequent representation before the authority but no action was taken. On 22.05.2017, he submitted final representation before respondent No. 2 but without any fruitful result; hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have 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 appellant had rendered 17/18 years spotless service in the department but no benefit of the same was given to him. He further argued that absence of the appellant was not willful but due to the compelling circumstances. He further argued that after gaining acquittal from the competent court of law, the department was legally bound to reinstate him in service but no heed was paid to the representation of the appellant. He requested that the appeal might be accepted as prayed for.



5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant did not inform the department of his involvement in criminal case. He further argued that the appellant remained absent w.e.f 14.11.2004 to 18.04.2007 and the department served upon him three absence notices vide letters dated 27.06.2006, 27.07.2006 and 18.08.2006 and also published his absence notice in Daily Express dated 15.11.2006 and sent letter for his personal hearing and appearance before the enquiry committee but he failed to respond. He further argued that the appellant committed criminal case under section 302 and remained fugitive of the law and court and was not entitled for the relief which he sought. According to him there was no second departmental appeal under the law and requested that the service appeal might be dismissed.

6. Arguments and record presented before us indicate that the appellant, while serving in the Elementary & Secondary Education Department as chowkidar, got involved in FIR U/S 302/324 PPC on 14.11.2004. Instead of presenting himself for arrest, he became an absconder. Counsel for the appellant confirmed that he surrendered in 2012 after lapse of almost eight years. Being a civil servant, he was bound to inform his high ups about the incident, under the law, so that his competent authority could have taken necessary action accordingly. It has been noted that he failed to do so and hence was declared absent from his lawful duty. The department initiated disciplinary proceedings against him and after fulfilling all the codal formalities, terminated his service. When confronted, the learned counsel for




the appellant admitted that he remained absent from duty without informing his high ups, therefore, the absence is admitted.

7. Coming to the point of acquittal from the charges leveled against him in the FIR, the judgment of learned Additional Sessions Judge-I, Bannu dated 29.05.2013 very clearly states that it had been made based on a compromise arrived at between the legal heirs of the deceased and the appellant and a landed property of 8 kanals 18 marlas was transferred by the appellant in the names of the minors of the deceased as Diyat. The plea taken by the learned counsel for the appellant that as he was acquitted, therefore, he was fit for reinstatement into service does not hold ground here because acquittal in this case was as a result of payment of Diyat to the family of deceased, which is not only a clear indication that the appellant was guilty of murder but the diyat is one of the punishments provided under the law.

8. In view of the above discussion, the service appeal is groundless and is dismissed with cost. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 10th day of July, 2023.*


(FARZEEN PAUL)
Member (I)


(KALIM ARSHAD KHAN)
Chairman