


appellant is reinstated into service for the purpose of de-novo inquiry. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Date of receipt of copy of the judgment shall be acknowledged in writing. Cost shall follow the event. Consign.

06. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 21<sup>st</sup> day of August, 2023.*

  
KALIM ARSHAD KHAN  
Chairman

  
SALAH UD DIN  
Member (Judicial)

*\*Adnan Shah, P.A\**

05. According to the charge sheet and statement of allegations, the appellant was proceeded against on the allegations of absence from duty as well as for alleged embezzlement of an amount of Rs. 93500/-. While going through the enquiry report, we have observed that no evidence, what-so-ever, was recorded during the enquiry in support of the allegations leveled against the appellant which is in contrary to the procedure as provided in Rule-11 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. The enquiry report would show that the enquiry officer had cross examined the appellant without providing an opportunity to her to adduce any evidence in her defense. The proceedings taken against the appellant also did not show as to whether the appellant was proceeded against for habitual absence or willful absence and it was not ascertained whether in presence of numerous undisputed applications for grant of leave at different points of times submitted by the appellant, the absence of the appellant would be willful or habitual. We find an application for earned leave submitted for earned leave submitted for one hundred days leave found placed on record which is on the proper format but the leave was regretted on flimsy ground. None of the above factors could be properly addressed during the enquiry. The appellant has been awarded major penalty without observing the legal and codal formalities, therefore, conducting of de-novo enquiry is necessary for reaching a just and right conclusion which is to be conducted within ninety (90) days of the receipt of this judgment. The impugned orders dated 04.09.2018 and 24.10.2018 are set aside and the





**7/2003/PF/4211-20 DATED 24.10.2018 PASSED BY THE RESPONDENT NO.2 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT WAS DISMISSED.**

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**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case are that appellant was serving as Doctor in the Health Department; that she was imposed major penalty of removal from service on the allegation that she remained absent from service with effect from 15.10.2016 to 02.01.2018 and she has also drawn Rs. 93500/- under various heads of account as DDO without obtaining necessary sanction from the competent authority; that the appellant filed departmental appeal on 24.09.2018 which was rejected on 24.10.2018, hence, the present service appeal.

02. 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.

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 Deputy District Attorney controverted the same by supporting the impugned order(s).

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

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

*Service Appeal No.1438/2018*

Date of presentation of Appeal.....23.11.2018  
Date of Hearing.....21.08.2023  
Date of Decision.....21.08.2023

**Dr. Lubna Afridi** D/O Muhammad Anwar Afridi W/o Major Muhammad Moosa Khan C/o Muhammad Nadir Khan, Ali House opposite Government Girls Primary School Kareempura, Abbottabad.....**Appellant**

Versus

1. **The Government** of Khyber Pakhtunkhwa Peshawar through Secretary Population Welfare Department, Peshawar.
2. **Chief Minister**, Khyber Pakhtunkhwa, Peshawar.
3. **Chief Secretary**, Khyber Pakhtunkhwa, Peshawar.
4. **Director General**, Health Services, Khyber Pakhtunkhwa Peshawar.
5. **Director General**, Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.
6. **Muhammad Ayaz Khan**, Deputy Secretary, Higher Education Department, Peshawar.....(**Respondents**)

Present:

Mr. Kamran Khan, Advocate.....For the appellant

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

.....  
**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER BEARING NO. SOE(PW)1-7/2003/PF/4434-40 DATED 04.09.2018 ISSUED BY THE RESPONDENT NO.1 WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE ON THE BASIS OF SO-CALLED INQUIRY REPORT CONDUCTED/ISSUED BY RESPONDENT NO.6 AND AGAINST THE ORDER BEARING NO. SO(PWD)1-**

