

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**MUHAMMAD AKBAR KHAN** ... **MEMBER (Executive)**

*Service Appeal No.460/2012*

Date of presentation of Appeal.....31.03.2012  
Date of Hearing.....15.09.2023  
Date of Decision.....15.09.2023

**Mr. Iftikhar Ahmad, Ex-Sub Engineer T/Well Irrigation Sub  
Division Peshawar .....Appellant**

Versus

1. **The Government** of Khyber Pakhtunkhwa Peshawar through Chief Secretary, Khyber Pakhtunkhwa, Peshawar
2. **The Secretary to Government of Khyber Pakhtunkhwa**, Irrigation Department, Peshawar.
3. **The Chief Engineer (South)**, Irrigation Department Khyber Pakhtunkhwa Peshawar.....(**Respondents**)

Present:

Mr. Yasir Salim, Advocate.....For the appellant  
Mr. Asad Ali Khan, Assistant Advocate General.....For respondents

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**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974  
READ WITH SECTION-10 OF THE KHYBER  
PAKHTUNKHWA (THEN NWFP) REMOVAL FROM  
SERVICE (SPECIAL POWERS) ORDINANCE, 2000  
AGAINST THE OFFICE ORDER NO.1478-82 DATED  
04.07.2011 COMMUNICATED TO THE APPELLANT IN  
THE MONTH O F DECEMBER, 2011 WHEREBY THE  
PENALTY OF REMOVAL FROM SERVICE HAS BEEN  
AWARDED W.E.F 16.08.2010 AGAINST WHICH THE  
DEPARTMENTAL APPEAL DATED 26.12.2011 WAS  
NOT RESPONDED SO FAR.**

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## **JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN:** Brief facts of the case as set in the memorandum and grounds of appeal are that appellant was appointed as Sub engineer (BPS-11) in the Irrigation Department vide order dated 17.11.2006; that, while working against the said post, he applied for extraordinary leave (EOL) without pay, the application was accepted and he was granted EOL, the leave was extended from 16.08.2009 to 15.08.2010. In the meanwhile, the appellant fell ill due to which he was unable to resume duties. Resultantly, notices were issued to him by the department but the same were not received to him. That the appellant applied twice for medical leave on 08.01.2011 and 25.01.2011 and his case was sent to Standing Medical Board (SMB). That without waiting for the report of SMB, an absence notice was issued in the newspaper and vide order dated 04.07.2011 the appellant was removed from service.

02. Feeling aggrieved from the removal order, the appellant filed departmental appeal on 26.12.2011, which was not responded to, therefore,, the appellant filed the instant service appeal.

03. 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.

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



05. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

06. Perusal of record reveals that the appellant, while serving as Sub Engineer (BPS-11), applied for leave without pay, after its expiry, he filed another application to the authority for medical leave. In the meantime, his case was sent to the Standing Medical Board. Admittedly, before the report of the Board, he was removed from service. The issue in this case is that the appellant has been removed from service under the Removal from Service (Special Powers) Ordinance, 2000, but the relevant provisions have not been fully followed by the department, which are mandatory in the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. Section-3 of the said Ordinance is as under:

*"(2) Before passing an order under sub-section (1), the competent authority shall,-*

*(a) by order in writing, inform the accused of the action proposed to be taken with regard to him and the grounds of the actions; and*

*(b) give him a reasonable opportunity of showing cause against that action within seven days or*



*within such extended period as the competent authority may determine"*

For the purpose, an inquiry is must, which is to be conducted as provided in Section-5 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. Section-5 is reproduced below:

*" 5. Power to appoint an Inquiry Officer or Inquiry Committee.—(1) Subject to the provisions of sub-section (2), the competent authority shall before passing an order under section 3, appoint an Inquiry Officer or Inquiry Committee to scrutinize the conduct of a person in Government service or a person in corporation service who is alleged to have committed of the acts or omissions specified in section.3. The Inquiry Officer, or, as the case may be, the Inquiry Committee, shall-*

- (a) communicate to the accused charges and statement of allegations specified in the order of inquiry passed by the competent authority.*
- (b) require the accused within seven days from the day the charge is communicated to him to put in a written defence;*
- (c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him; and*

*(d) hear the case from day to day and no adjournment shall be given except for special reasons to be recorded in writing and intimated to the competent authority."*

Although, the procedure provided in Section-3 (2) has been followed by issuing notice regarding showing cause for absence etc. but the procedure for inquiry under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000, which has already been reproduced above, has not been followed.

07. Therefore, the impugned action cannot be sustained. Thus, by accepting the instant service appeal, we direct the reinstatement of the appellant for de-novo inquiry which is to be conducted under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000, within 60 days of the receipt of copy of this judgment. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Consign.

**08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15<sup>th</sup> day of September, 2023.***



**KALIM ARSHAD KHAN**

Chairman



**MUHAMMAD AKBAR KHAN**

Member (Executives)