

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

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

*Service Appeal No.51/2019*

Date of presentation of appeal.....11.01.2019  
Dates of Hearing.....14.09.2023  
Date of Decision.....14.09.2023

**Mr. Bakht Hussain, Ex-Chowkidar, GGPS Kund (Totano Bandai),  
District Swat.....(Appellant)**

Versus

1. **The Secretary, Elementary & Secondary Education Department,  
Khyber Pakhtunkhwa, Peshawar.**
2. **The Director Elementary & Secondary Education, Khyber  
Pakhtunkhwa, Peshawar.**
3. **The District Education Officer (F), District Swat.  
.....(Respondents)**

Present:

Mr. Noor Muhammad Khattak, Advocate.....For appellant.

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

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**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST  
THE IMPUGNED ORDER DATED 04.01.2018 WHEREBY THE  
APPELLANT HAS BEEN REMOVED FROM SERVICE AND  
AGAINST THE APPELLATE ORDER DATED 24.09.2018  
WHEREBY THE DEPARTMENTAL APPEAL OF THE  
APPELLANT HAS BEEN REJECTED ON NO GOOD  
GROUNDS.**

**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts giving rise to the instant service appeal as per its averments are the appellant was initially appointed as Chowkidar in the respondent/department vide order dated 0.04.2010; that after appointment, the appellant assumed the charge of his post and started performing

duties at the Government Girls Primary School Kund, District Swat; that due to some unavoidable circumstances, the appellant moved an application for leave but the same was un-responded by the concerned authority; that due to the above mentioned reason the appellant became absent for a short period; that upon his reporting back the appellant was handed over the impugned order dated 04.01.2018, communicated to the appellant on 18.04.2018, whereby the appellant was removed from service with retrospective effect i.e. w.e.f. 03.03.2017; that the appellant, being aggrieved, preferred departmental appeal before respondent No.2 on 09.05.2018, but the same was rejected vide order dated 24.09.2018; that thereafter, the appellant filed writ petition No. 1024-M/2018 before the Peshawar High Court Bench Dar-ul-Qaza Swat, which was dismissed as withdrawn vide order/judgment dated 26.11.2018; that the appellant then filed the instant service appeal before this Tribunal on 11.01.2019.

2. 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 defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

4. 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).

5. In order to start disciplinary action the department claims to have issued charge sheet and statement of allegations but no copies of charge sheet and statement of allegations have been attached with the reply and only an unsigned and undated photocopy of the same is present on the file alongwith reply, which shows that Mr. Abdul Aziz Shaheen, ADEO (P&D) and Mst. Naheed Akhtar, SDEO(F) Circle Kabal,

Swat were appointed enquiry committee but there is no report of the enquiry committee placed on file. The Procedure laid down in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 should have been followed before imposing the penalty but the same has not been followed and penalty of removal from service was awarded to the appellant. As such the impugned order is not sustainable in the eyes of law. Though Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rule, 2011 was followed in this case but instead of publishing the notice in two leading newspapers, it was published only in one newspaper in contravention of instructions contained in vogue rules.

6. Therefore, while accepting this appeal, we set aside both the impugned orders and remit the matter back to the authorities to conduct proper de-novo enquiry strictly under the relevant rules within a period of sixty (60) days after receipt of copy of this judgment/order. The appellant shall also be associated with the enquiry proceedings. 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 to the Registrar of this Tribunal. Costs shall follow the events. Consign.

7. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 14<sup>th</sup> day of September, 2023.***



**KALIM ARSHAD KHAN**  
Chairman

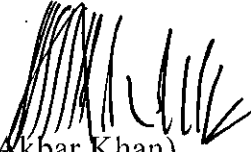


**MUHAMMAD AKBAR KHAN**  
Member (Executive)

## ORDER

14<sup>th</sup> Sept, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, while accepting this appeal, we set aside both the impugned orders and remit the matter back to the authorities to conduct proper de-novo enquiry strictly under the relevant rules within a period of sixty (60) days after receipt of copy of this judgment/order. The appellant shall also be associated with the enquiry proceedings. 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 to the Registrar of this Tribunal. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14<sup>th</sup> day of September, 2023.*



(M. Akbar Khan)  
Member(Executive)



(Kalim Arshad Khan)  
Chairman