

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 4947/2021

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

**Kamran Khan son of Mukaram Khan R/O Aqrab Dag Islam Gul  
Tehsil Ekka Ghund District Mohmand, Ex-Chowkidar GPS Aqrab  
Dag No. 2 Ekka Ghund, Mohmand. .... (Appellant)**

Versus

1. District Education Officer District Mohmand.
2. Director Education, E&SE Department, Khyber Pakhtunkhwa,  
Peshawar.
3. District Accounts Officer, District Mohmand at Ghallanai.  
..... (Respondents)

Mr. Yousaf Ali,  
Advocate ... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney ... For respondents

Date of Institution..... 14.04.2021  
Date of Hearing..... 12.09.2023  
Date of Decision..... 12.09.2023

**JUDGEMENT**

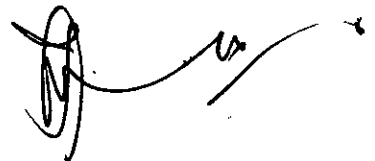
**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 27.04.2020, whereby major penalty of removal from service was imposed upon the appellant and his departmental appeal was not decided within the statutory period. It has been prayed that on acceptance of the appeal, the impugned order of removal from service might be set aside and the appellant be reinstated into service with all back benefits.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant had been appointed vide order dated 03.12.2002. He performed his duties with full zeal and devotion. Respondent No. 1 initiated proceedings against him under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and resultantly he was removed from service vide impugned order dated 27.04.2020 against which he filed departmental appeal on 18.12.2020 which was not decided within the statutory period, hence the instant service appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy 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 been performing his duty and receiving his monthly salary as was evident from the attendance register and pay slip for the month of October, 2020. He argued that no show cause notice was served upon the appellant nor regular inquiry was conducted before passing the impugned order. He further argued that the appellant was not treated in accordance with law, rules and policy on the subject and was discriminated, contrary to the provisions contained in Articles 4, 25 and 27 of the Constitution of Islamic Republic of Pakistan, 1973. He requested that the appeal might be accepted as prayed for.



5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was absent from his duty since 21.02.2015 without intimation to the respondents. He further argued that during the monitoring visit of the Assistant District Education Officer, he was found absent and was reported to be gone abroad upon which the respondents initiated departmental proceedings against him. Show cause notice was issued to him on 13.03.2020 which was not responded. Later on, the respondents vide official letter dated 21.03.2020 issued a charge sheet to the appellant through which he was directed to submit reply in his defense but he failed to do so. The learned AAG informed that after that, absence notice was published in daily "Mashriq" and daily "Aaj" Peshawar dated 10.04.2020, wherein he was again directed to appear before the competent authority to show the reason of his willful absence but even then, he did not bother to submit reply to the charge sheet as well as the show cause notice. He further argued that after fulfilling all the codal formalities he was removed from service vide order dated 27.04.2020,.

6. The appellant has impugned the order dated 27.04.2020 vide which major penalty of removal from service was imposed upon him. Record shows that the appellant was appointed as Chowkidar in Government Primary School, Islam Gul Killi, Mohmand Agency, on contract basis, on 03.12.2002. After the merger of FATA with the Khyber Pakhtunkhwa Province, during a monitoring visit of Assistant District Education Officer, the appellant was found absent from his duty. It was reported that he was



absent since 21.02.2015 and that he had gone abroad. Departmental proceedings were initiated against him and he was issued show cause notice and also a charge sheet, and when no response was received, absence notice was issued in two dailies on 10.04.2020 but the appellant did not bother to respond to that also. Hence, order of removal from service was issued on 27.04.2020. Under the relevant rules, the appellant was bound to prefer departmental appeal within thirty days of the receipt of the impugned order but instead he submitted departmental appeal on 18.12.2020, which according to him was not responded but the reply submitted by the respondents shows that it was duly responded and regretted vide notification dated 05.08.2020.

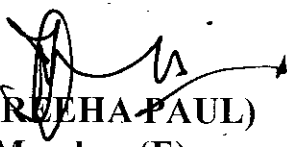
7. Record presented before us shows that the respondent department completed all the codal formalities before imposing the major penalty. The appellant should not forget an important point that he was a civil servant and was bound by law and rules. He was found absent from his lawful duty, and being abroad was proved by his travel history that was acquired by his department. Many chances were given to him to report to his duty or appear before the competent authority but he did not bother to respond to the show cause notice, charge sheet and absence notice in two dailies, which is not an acceptable behavior for a civil servant. The non-responsiveness of the appellant and submission of departmental appeal at a belated stage, after passage of almost eight months, strengthens the stance of the respondents that he was abroad. This bench also feels that had he

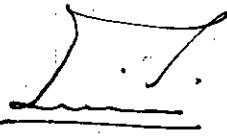


been not abroad, he could have responded to any of the notices issued for him, but he miserably failed to do so.

8. In the light of above discussion, the appeal in hand is dismissed, being groundless. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 12<sup>th</sup> day of September, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)

*\*Fazle Subhan, P.S\**

S.A 4947/2021

12<sup>th</sup> Sept. 2023 01. Mr. Yousaf Ali Advocate for the appellant present. Mr. Asif

Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is dismissed being groundless. Costs shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 12<sup>th</sup> day of September, 2023.*



(FAREEHA PAUL)  
Member (E)



(SALAH-UD-DIN)  
Member (J)

*\*Fazle Subhan, P.S\**