

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD.**

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

Service Appeal No.1379/2019

Date of presentation of appeal.....21.10.2019
Dates of Hearing.....26.09.2023
Date of Decision.....26.09.2023

**Ghufran S/O Lajeel, Chowkidar, Government Primary School
Waliabad Palas, District, Kohistan.**

.....**Appellant**

Versus

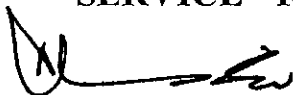
1. **Government** of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer (Male)** Kolai, Pallai, District Kohistan.
.....**(Respondents)**

Present:

Mr. Sardar Muhammad Akmal, Advocate.....For the appellant.

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

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE REMOVAL OF APPELLANT
WHEREBY THE RESPONDENT NO.3 UNDER
OFFICER ORDER NO. 2965-71 DATED 27.06.2019,
REMOVED THE APPELLANT FROM SERVICE
WITHOUT CONDUCTING A REGULAR INQUIRY.
THIS ACT OF RESPONDENT IS PREMATURE,
ILLEGAL, WITHOUT JURISDICTION, AGAINST THE
SERVICE RULES AND NATURAL JUSTICE AND**



WITHOUT SUFFICIENT REASON AND ON FLIMSY GROUNDS, WHICH IS LIABLE TO BE SET ASIDE.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: We have an appeal before us brought by Ghufran son of Lajeel, who alleges that he was appointed as Chowkidar in the Government Primary School Waliabad on 25.04.1996; that during service, the appellant had suddenly fallen ill and started treatment from Ayub Medical Complex, Abbottabad; that the doctor advised the appellant to take complete bed rest; that during the treatment, the appellant had verbally informed the Head Teacher of the said school about his illness and also submitted an application for grant of medical leave, which was not honored; that the appellant was awarded major penalty of removal from service on the ground of his willful absence from duty vide impugned order dated 27.06.2019; that feeling aggrieved, the appellant preferred departmental appeal on 08.07.2019 against the impugned order, which was not responded and then he filed this appeal.

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 Deputy 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 Deputy District Attorney controverted the same by supporting the impugned order.



5. When confronted with the situation that the appellant seems to have been proceeded against his ~~the~~² alleged ~~with~~² absence for the periods mentioned in the impugned order but procedure under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 had not been adopted by the authority nor any enquiry was conducted into the contention of the appellant that he had fallen ill and had also submitted an application for grant of medical leave. In the circumstances the impugned action cannot sustain. We deem it appropriate that a proper enquiry should be conducted by the department duly associating the appellant with the proceedings. The department shall also verify the genuineness of the medical prescription chits attached with the appeal and shall also enquire into the fact whether application for medical leave was received or not and if received what had happened to that. In the circumstances, we allow this appeal, reinstated the appellant for the purpose of enquiry and remit the matter back to the department for enquiry in accordance with law and rules within sixty (60) days of receipt of this order. Date of the receipt of order shall be communicated to the Registrar of the Tribunal. The result of the enquiry shall also be transmitted to the Tribunal. The issue of back benefits will be subject to the final outcome of the enquiry. Costs shall follow the event. Consign.

6. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 26th day of September, 2023.*



KALIM ARSHAD KHAN
Chairman
Camp Court Abbottabad



SALAH UD DIN
Member (Judicial)
Camp Court Abbottabad

ORDER

26th Sept, 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we allow this appeal, reinstated² the appellant for the purpose of enquiry and remit the matter back to the department for enquiry in accordance with law and rules within sixty (60) days of receipt of this order. Date of ~~the~~² receipt of order shall be communicated to the Registrar of the Tribunal. The result of the enquiry shall also be transmitted to the Tribunal. The issue of back benefits will be subject to the final outcome of the enquiry. Costs shall follow the event. Consign.

3. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 26th day of September, 2023.*



(Salah Ud din)
Member(Judicial)
Camp Court Abbottabad

Adnan Shah, P.A



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad