

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.
AT CAMP COURT SWAT.

Service Appeal No. 817/2023

Date of Institution ... 22.02.2023

Date of Decision... 02.10.2023

Akhtar Sher Bacha Class-IV Government Primary School Ochal Matta Swat.
... (Appellant)

VERSUS

The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa,
Peshawar and 02 others. ... (Respondents)

MR. UMAR KHITAB,
Advocate

--- For appellant.

MR. INAYATULLAH KHAN,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MRS. RASHIDA BANO

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts giving rise to filing of the instant appeal are that the appellant was appointed as Class-IV employee vide appointment order dated 26.11.2003. He was charged in case FIR No. 547 dated 29.10.2007 under sections 324/353/120-b/124-A, 436/427 PPC read with 3/4E.S.A/ 7ATA Police Station Kabal District Swat. The appellant was taken into custody by Pak-Army on 16.09.2009 and was released on 16.10.2018. Vide order dated 21.02.2019, he was also discharged by Judge Anti-Terrorism Court-I Malakand Division Swat in the criminal case registered against him. On 06.05.2019, the appellant submitted an application to the District Education Officer (Male) Swat for his adjustment, however an inquiry committee was constituted, which



conducted inquiry in the matter and submitted its recommendations to the District Education Officer (Male) Swat. On receipt of the recommendations, District Education Officer (Male) Swat issued show-cause notice to the appellant, however no order was passed on the inquiry report. The appellant was not adjusted against his post, therefore, he approached this Tribunal by way of filing Service Appeal No. 5790/2021, which was disposed of vide order dated 08.11.2022 in the following terms:-

"During the course of arguments, a consensus was developed that the appellant might make a fresh application to the District Education Officer (Male) Swat for redressal of his grievances, which if moved would be sympathetically considered and decided within next fifteen days in accordance with law. The appeal is disposed of in the above terms. The appellant is, however, at liberty to approach the court again if after considering his matter by the department, he still feels aggrieved of the same but in accordance with law. Consign.


2. Vide order bearing Endorsement No. 3865-68/P.F/891/M/DEO/ Swat dated 12.12.2022, the appellant was adjusted against his post, however the intervening period was treated as leave without pay. The appellant preferred departmental appeal against the same, however the same was not responded within the statutory period of 90 days, hence the instant service appeal.

3. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through

their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

4. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

5. We have heard the arguments of learned counsel for the parties and have perused the record.



6. A perusal of the record would show that upon submission of an application by the appellant for his adjustment on 06.05.2019, an inquiry committee was constituted for probe into the matter of absence of the appellant from duty. The report of the inquiry committee is available on the record, which would show that it has been affirmed during the inquiry that the appellant was in custody of Pak-Army with effect from 16.09.2009 to 16.10.2018. This fact has also been affirmed in the inquiry that the appellant has been discharged in the criminal case registered against him vide case FIR No. 547 dated 29.10.2007 under sections 324/353/120-b/124-A, 436/427 PPC read with 3/4E.S.A/7ATA Police Station Kabal District Swat. In such circumstances, the absence of the appellant from duty could not be considered as willful as he was unable to perform his duty being in custody of Pak-Army. Moreover, the available record does not show that any departmental action was taken against the appellant prior to

moving of an application by him for his adjustment. The District Education Officer (Male) Swat was thus not justified in treating the intervening period as leave with pay.

7. In view of the above discussion, the appeal in hand is allowed and the appellant is held entitled to all the salaries as well as other consequential benefits for the period with effect from 16.09.2009 till the date of passing of order of his reinstatement i.e 12.12.2022. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.10.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT SWAT



(RASHIDA BANO)
MEMBER (JUDICIAL)
CAMP COURT SWAT

ORDER
02.10.2023

Appellant alongwith his counsel present. Mr. Inayatullah Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed and the appellant is held entitled to all the salaries as well as other consequential benefits for the period with effect from 16.09.2009 till the date of passing of order of his reinstatement i.e 12.12.2022. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.10.2023



(Rashida Bano)
Member (Judicial)
Camp Court Swat



(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat