

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT D.I KHAN

Service Appeal No. 870/2022

BEFORE: **MR. KALIM ARSHAD KHAN** ... **CHAIRMAN**
MRS. RASHIDA BANO ... **MEMBER (J)**

Robina Bibi D/O Abdul Karim R/O Wanda Jani, Tehsil Paharpur, District
Dera Ismail Khan. (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Health, Peshawar.
2. Director Health Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer, D.I. Khan

.... (*Respondents*)

Mr. Rizwan Ullah Khan
Advocate

... For appellant

Mr. Asad Ali Khan
Assistant Advocate General

... For respondents

Date of Institution.....18.05.2022
Date of Hearing.....18.09.2023
Date of Decision.....18.09.2023

JUDGEMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of the instant service appeal respondents are directed to reinstate the appellant as LHW w.e.f 27.11.2019 as admissible under the rules with all back benefits w.e.f 27.11.2019 and to set aside the removal/dismissal order if any.”



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Lady Health Worker (LHW) on 15.04.2001 on contract basis at BHU Wanda Madat. Later on services of the appellant was regularized vide order dated 25.09.2014. The appellant was removed from service vide order dated 27.11.2019 by respondent No. 3. She filed application on 02.11.2020 before respondent No. 3 for reinstatement, upon which respondent No. 3 withdrew her removal order with direction to appear before the committee. Inquiry was conducted at the back of appellant without affording opportunity of self-defence and cross examination. Feeling aggrieved she filed departmental appeal, which was not responded, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that respondent conducted the inquiry at the back of the appellant, as no opportunity of personal hearing was afforded to her and she was condemned unheard. He submitted that respondents without adopting proper procedure of inquiry regarding removal of appellant is illegal, void and against the E&D Rules, 2011. He, therefore, requested for acceptance of instant service appeal.

5. The learned Assistant Advocate General argued that the appellant was removed from service in accordance with law and rules vide order dated 27.11.2019. Later on vide order dated 29.11.2019 previous order of removal from service was withdrawn on the basis of appearing before the committee

conducted by Project Director but appellant was failed to do so and inquiry report was submitted in which appellant was found guilty of poor performance and nonresident. He further argued that appellant was provided ample opportunities to clear her status but in vain.

6. Perusal of record reveals that appellant was removed from service by respondent No. 2 vide order dated 27.11.2019 on the ground of absence from duty. Appellant filed departmental appeal upon which respondent No.3 withdrew her removal from service order with direction to appear before the committee constituted by Project Director vide order dated 29.11.2019. It is demand of justice that when order of removal from service was withdrawn the purpose of giving chance to appellant before committee and to defend herself then inquiry committee for that purpose must issue notice and provide proper opportunity to the appellant to defend herself but inquiry committee again with doing so submitted his report.

7. Perusal of alleged inquiry report further reveals that it is a fact finding inquiry and not a regular one as although respondents alleged that appellant was charge sheeted and she was also issued statement of allegations but infact same was not conveyed to the appellant so we come to the conclusion that the disciplinary proceedings initiated against the appellant suggest that she was not afforded proper opportunity of defense. Neither charge sheet alongwith statement of allegations nor any show cause notice were ever served upon appellant. No regular inquiry was conducted as nothing was produced in this regard. Proceedings so conducted are also in a haphazard manner, therefore, the impugned order is set aside. The department shall conduct proper de-novo enquiry strictly in accordance with law and rules. Appellant is reinstated in service for the purpose of de-novo inquiry to be

conducted within 60 days of the receipt of this judgment with direction to respondents to decide the case through a speaking order. Needless to mention that the appellant shall be provided proper opportunity of defense and association during the inquiry proceedings. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

8. *Pronounced in open court at D.I.Khan and given under our hands and seal of the Tribunal on this 18th day of September, 2023.*



(RASHIDA BANO)
Member (J)
Camp Court, D.I.Khan



(KALIM ARSHAD KHAN)
Chairman
Camp Court, D.I.Khan