

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, ABBOTTABAD

Service Appeal No. 995/2019

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER (E)

Muhammad Nadeem, Junior Clerk GHSS Kawai/GHS Maira Amjid Ali
District Mansehra. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Director Elementary & Secondary Education, Peshawar.
3. District Education Officer (Male), Mansehra.
4. Principal GHSS Kawai, Mansehra.
5. District Accounts Officer, Mansehra.(Respondents)


Mr. Muhammad Arshad Khan Tanoli,
Advocate ... For appellant

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

Date of Institution.....	31.07.2019
Date of Hearing.....	24.10.2023
Date of Decision.....	24.10.2023

JUDGEMENT

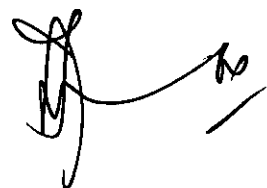
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 25.03.2019, whereby punishment of stoppage of one annual increment w.e.f. 01.12.2019 with accumulated effect was imposed and period of service w.e.f. 10.09.2018 to 25.03.2019 was converted into leave without pay. It has been prayed that on acceptance of the appeal, stoppage of one annual increment w.e.f. 01.09.2019 with accumulative effect might be restored and period of service w.e.f 10.09.2018 to 25.03.2019 be converted



into period of service and recovery already effected from the appellant might be refunded to him.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was adjusted from GHSS Kawai, Mansehra to GHS Maira Amjid Ali, Mansehra vide order dated 10.09.2018. He requested the respondent No. 4 for relieving to join GHS Maira Amjad Ali but he refused to relieve him until his replacement was provided by respondent No. 3. As a result, the appellant regularly served at GHSS Kawai w.e.f. 10.09.2018 to 25.03.2019, as per certificate issued to him by respondent No. 4. During that period, respondent No. 3 sent show cause notice and final show cause notice against the appellant through respondent No. 4 on 10.10.2018 and 27.11.2018 respectively, who did not deliver the same to the appellant and wrote a letter to respondent No. 3 that the appellant could only be relieved if his replacement was provided. Finally, the appellant received letter dated 22.12.2018 for personal hearing during which he was forced by respondent No. 3 to submit reply to the show cause notice alongwith affidavit as per his dictation. As a result, respondent No. 3 issued the impugned order dated 25.03.2019, wherein penalty of stoppage of one annual increment w.e.f. 01.12.2019, with accumulative effect, was imposed and the period w.e.f. 10.09.2018 to 25.03.2019 was treated as leave without pay. Feeling aggrieved, the appellant filed departmental appeal but of no avail; hence the instant service appeal.

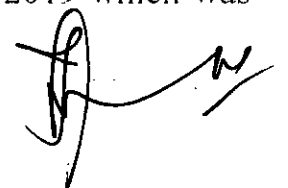
3. Respondents were put on notice. They submitted their written reply/comments on the appeal. We heard the learned counsel for the appellant



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 impugned order was illegal, against the law and issued without following the codal formalities. He further argued that the appellant was not relieved by respondent No. 4 to join his new assignment at GHS Maira Amjid. According to him, the matter of relieving of the appellant remained held-up and struck between respondents No. 3 & 4 while he was made a scapegoat and penalized for the fault not attributable to him and that the impugned order was passed by the authority who was not competent to do so. 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 transferred from GHSS Kawai to GHS Maira Amjad Ali by the competent authority vide order dated 10.09.2018 but he did not obey the order. On the complaint of Headmaster, GHS Maira Amjad Ali, respondent No. 3, vide letter dated 10.10.2018, a show cause notice was served upon the appellant but he failed to submit written statement within the stipulated period in his defence. Thereafter final show cause notice was served upon him but he again failed to submit his written defence. The learned DDA further argued that vide letter dated 26.12.2018, the appellant was directed to appear before the competent authority for personal hearing but he did not bother to appear. He was further telephonically informed on 21.02.2019 but there was no response. His reply to show cause notice alongwith affidavit was received on 12.03.2019 which was



not satisfactory and according to the learned DDA, he was rightly penalized by the competent authority after observing all the codal formalities. He requested that the appeal might be dismissed.

6. Record and arguments presented before us show that the appellant, while serving as Junior Clerk at GHSS Kawai, District Mansehra, was transferred to GHS Maira Amjid Ali vide order dated 10.09.2018 but he was not relieved by respondent No. 4, Principal GHSS Kawai, on the ground that his substitute had not been provided. On the other hand, the Principal GHS Maira Amjad Ali submitted a complaint against the appellant on 01.10.2018 that he had not joined his new position in that school, upon which disciplinary action was initiated by the District Education Officer (Male), Mansehra. Record available before us shows that show cause notice was issued by the Competent Authority. On that show cause notice, the name of the competent authority has not been mentioned. A letter dated 27.01.2018, through which show cause notice has been communicated to the Principal, GHSS Kawai, Mansehra, bears the designation of District Education Officer Mansehra, as the signatory, without mentioning the name, and signed by some officer. The same signature is appended on the Final Showcause Notice, as the Competent Authority. Another letter dated 22.12.2018 for personal hearing of the appellant bears the same signature but the designation has been mentioned as Deputy District Education Officer (Male), Mansehra.

7. In the absence of name of the competent authority and similar signatures against the designation of both the District Education Officer (Male), Mansehra and Deputy District Education Officer (Male) Mansehra, it appears



that the department has dealt with this case in an extremely flimsy manner. In addition to that they did not bother to consider the certificate provided by the Principal GHSS Kawai, Mansehra which clearly shows that the appellant served in that school and that he was not relieved from his position there. The relieving chit dated 31.03.2019 issued by the Principal GHSS Kawai is a further evidence that the appellant was relieved from that school on 31.03.2019 (a.n).

8. In view of the above discussion, the appeal in hand is allowed as prayed for. Costs shall follow the event. Consign.

9. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal this 24th day of October, 2023.*



(FAREEHA PAUL)
Member (E)
Camp Court, Abbottabad



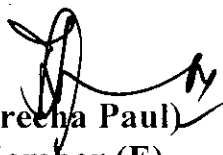
(KALIM ARSHAD KHAN)
Chairman
Camp Court, Abbottabad


ORDER

24th Oct. 2023 01. Mr. Muhammad Arshad Khan Tanoli, 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 of consisting of 05 pages, the appeal in hand is allowed as prayed for. Costs shall follow the event. Consign.

03. *Pronounced in open Court at camp court, Abbottabad and given under our hands and the seal of the Tribunal on this 24th day of October, 2023.*


(Fareeha Paul)
Member (E)
Camp Court, A/Abad


(Kalim Arshad Khan)
Chairman
Camp Court, A/Abad