

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No.1372/2022

Date of presentation of Appeal.....20.09.2021
Date of Hearing.....30.10.2023
Date of Decision.....30.10.2023

Muhammad Nabi, Chowkidar (BPS-01), GGPS, Sigloo Seo, Kohistan(Appellant)

Versus

1. **The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
2. **The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The District Education Officer (F), District Kohistan, Khyber Pakhtunkhwa.....(Respondents)**

Service Appeal No.1373/2022

Date of presentation of Appeal.....20.09.2021
Date of Hearing.....30.10.2023
Date of Decision.....30.10.2023

Imran Khan Chowkidar (BPS-03), GGPS Tayeb Abad, District Kohistan(Appellant)

Versus

1. **The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
2. **The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The District Education Officer (F), District Kohistan, Khyber Pakhtunkhwa.....(Respondents)**

Service Appeal No.1374/2022

Date of presentation of Appeal.....20.09.2021
Date of Hearing.....30.10.2023
Date of Decision.....30.10.2023

Hijab Khan, Ex-Chowkidar, GGPS, Thoti, Kohistan(Appellant)

Appeal No.1375/2022 titled "Muhammad Sabi & others - vs - The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others" decided on 30.10.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Salah-Ud-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Versus

1. **The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
2. **The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The District Education Officer (F), District Kohistan, Khyber Pakhtunkhwa.....(Respondents)**

Service Appeal No.1375/2022

Date of presentation of Appeal.....20.09.2021
Date of Hearing.....30.10.2023
Date of Decision.....30.10.2023

Muhammad Kabeer, Ex-Chowkidar, GGPS, Karang, District Kohistan(Appellant)

Versus

1. **The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
2. **The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The District Education Officer (F), District Kohistan, Khyber Pakhtunkhwa.....(Respondents)**

Present:

Mr. Noor Muhammad Khattak ,Advocate.....For appellants
Mr. Asif Masood Ali Shah Deputy District AttorneyFor respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 09.09.2021 WHEREBY MAJOR PENALTY OF COMPULSORY RETIREMENT FROM SERVICE HAS BEEN IMPOSED UPON THE APPELLANTS AND AGAINST THE APPELLATE ORDER DATED 05.09.2022 WHEREBY THE DEPARTMENTAL APPEALS OF THE APPELLANTS HAVE BEEN REJECTED.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment all the above four appeals are going to be decided as all are similar in

nature and almost with the same contentions, therefore, all can conveniently be decided together.

2. The appellants' cases in brief are that appellants were appointed and were serving in the Education Department as Chowkidars. In the meanwhile, they were compulsorily retired from service vide order dated 09.09.2021. Feeling aggrieved of the said impugned order, they filed departmental appeals, but the same were rejected, hence, the present service appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order.

6. It appears from the impugned order dated 09.09.2021 that the appellants were compulsorily retired from service on the basis of alleged absence from duty, reported by the Education Monitoring Authority (EMA). The same shows that there are some flaws in it. There is nothing available on the files which could show that any inquiry was conducted, whereas, the proceedings appear to be for absence of the appellants but rules have not been followed.



It is otherwise a well settled legal proposition that regular inquiry is must before imposition of major penalty which includes provision of full opportunity of defense to be provided to the civil servant which however was not done in the case of appellant. Reliance is placed on 2009 PLC (CS) 650.

7. Therefore, instant service appeals are accepted. The matters are remitted to the Department for conduct of proper inquiry, which is to be done within 60 days of the receipt of this judgment. Needless to mention that the appellants shall be provided proper opportunity of defense during the inquiry proceedings. Appellants are reinstated in service for the purpose of proper inquiry. The issue of back benefits shall be subject to the outcome of inquiry. (Copy of this judgment be placed on files of above mentioned connected service appeals). Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 30th day of October, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH-UD-DIN
Member (Judicial)