

ORDER

11.10.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan,

District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (04) pages, we see no merit to entertain the appeal and, therefore, dismiss the instant appeal. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 11th day of October, 2023.*



(Rashida Bano)
Member (J)




(Muhammad Akbar Khan)
Member (E)

reason for absence on part of the appellant. The appellant has taken the ground that he was abducted from his native village and remained in captivity from 07.09.2017 to 07.08.2018, however to substantiate his claim, the appellant failed to produce substantial evidence. The only proof he submitted is a copy of press clip of 31st, January 2009 regarding his abduction in captivity for 90 days but the period of his captivity was more than 08 years back when he was not in government service. Another press clip of Daily "Ausaf" Peshawar dated 08th September 2017 reveals that the appellant held a press conference himself in Bannu in which he claimed to have remained under captivity from September, 2017 to August, 2018. No report regarding his abduction in any police station or in any other agency is available nor the matter reported to the departmental authorities by his family and relatives despite issuance of notices and publications in the newspapers regarding his absence from duty.

07. In view of the above discussion/findings we see no merit to entertain the appeal and, therefore, dismiss the instant appeal. Costs shall follow the event: Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 11th day of October, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

conducted nor the appellant was provided opportunity of personal hearing and the appellant was condemned unheard, therefore, the impugned order is illegal, without lawful authority being violative of principle of natural justice.

05. Learned District Attorney on the other hand contended that if the appellant was presumably abducted, at least his family should have reported the accident to the department, which they failed to do despite having receiving the notices; that the major penalty of removal from service was imposed after fulfilling the requirements specified in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

06. Perusal of record reveals that the appellant was appointed on 15.05.2017. During probation period (after 2 months and 24 days) of joining service he requested for one day casual leave on 21.07.2017 and thereafter remained absent from duty. Controlling officer of the appellant i.e. District Zakat Officer, D.I.Khan reported absence of the appellant to the competent authority in the Head office Peshawar vide letter dated 19.09.2017. A notice was sent to the appellant at his available address to resume duty and explain reasons for his absence. Since no reply was received from the appellant the competent authority initiated disciplinary proceedings under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 by issuing a formal notice at his available address asking him to resume duty within 15 days. The notice was delivered through registered post at two available addresses of the appellant at Hayatabad, Peshawar and his native village Waziristan Agency. Thereafter under the rules ibid after finding no response from the appellant, notices were published in two leading local newspaper Daily "Mashirq" and Daily "Aaj. Upon expiry of the notice the competent authority imposed major penalty of removal from service as per Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The only point before the Tribunal is to determine valid

Or any other relief deemed appropriate by this Honourable Tribunal under the circumstances may please also be granted”.

02. Brief facts of the case are that the appellant was appointed as Junior Clerk in Zakat, Ushr, Social Welfare, Special Education Women Empowerment Department, Peshawar vide order dated 15.05.2017. The appellant was removed from service vide order dated 13.02.2018 on the allegations of absence from duty w.e.f. 21.08.2017. Feeling aggrieved, the appellant filed departmental appeal on 09.09.2018 which was rejected on 17.09.2018, hence preferred the instant service appeal on 27.09.2018.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant was abducted by some militants w.e.f. 07.09.2017 and was released/recovered in the month of August 2018, therefore, the absence of the appellant was not deliberate rather it was beyond the control of the appellant; that the impugned order dated 13.02.2018 states that the appellant has been removed from service for his long willful absence from duty which is not true as the appellant was being incarcerated by the terrorists illegally against the will of the appellant and in circumstances the appellant could not attend his duty; that the appellant has not been treated in accordance with law and the impugned order has been passed in violation of fundamental rights and Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973; that the impugned order dated 13.02.2018 issued by respondent No. 2 which is illegal and without jurisdiction, hence liable to be set aside. Learned counsel for the appellant further contended that the impugned order has been passed at the back of the appellant because neither proper inquiry was

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1206/2018

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Mr. Fahim Ullah Khan S/o Jaffar Ali Khan R/o Village Haider Khel,
P.O & Tehsil Mir Ali, North Waziristan Agence, Presently Residing at
House No. 344, Street No. 05, Sector N-2, Phase-4, Hayatabad,
Peshawar.....(*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary,
Civil Secretariat Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Zakat,
Ushr, Social Welfare, Special Education and Women
Empowerment Department, Peshawar.....(*Respondents*)

Present:-

SAQUIB IFTIKHAR,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....27.09.2018
Date of Hearing..... 11.10.2023
Date of Decision..... 11.10.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal
has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal,
Act 1974 with the prayer copied as under;

*“That by way of acceptance of this appeal, this honourable court
may please set aside the impugned order of Removal from Service
dated 13.03.2018 and reinstate the appellant with all back benefits.*

