

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
CAMP COURT, SWAT.**

Service Appeal No. 420/2018

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Muhammad Daud son of Mian Bakht Jan, resident of village Katan Payeen, P.O Darora, District Dir Upper.....(*Appellant*)

Versus

1. Executive Engineer Irrigation Division, District Dir Lower.
2. The Superintending Engineer Irrigation Department, Malakand Division at Swat.
3. The Secretary C&W Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Mr. Imdadullah
Advocate ... For appellant

Mr. Muhammad Jan ... For respondents
District Attorney

Date of Institution..... 20.03.2018

Date of Hearing..... 06.11.2023

Date of Decision..... 06.11.2023

JUDGMENT:

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 18.08.2016, whereby the appellant was dismissed/removed from service and departmental appeal filed by him on 06.12.2017 remained pending before the Respondent No. 2 till filing of the service appeal. It has been prayed that on acceptance of the appeal, the order passed by respondent No.1 be declared as illegal, against law and void ab-initio by setting aside the same and the appellant might be reinstated in service with all back benefits.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Beldar (BS-1), on son's quota on 07.09.2011 in the office of Dir Irrigation Division and posted in the office of Sub-Divisional Officer Dir Irrigation Sub-Division, Dir Upper in pursuance of orders of Peshawar High Court. Respondents did not release the salary of the appellant, therefore, he preferred a service appeal in the Service Tribunal, which was allowed. When the respondents failed to release the salary, the appellant filed a COC petition before the Tribunal and during its proceedings on 04.12.2017, the respondents informed that they had released his salary up to 02.02.2016. They further informed that he had been dismissed from service on 18.08.2016 with effect from 03.02.2016. The appellant preferred departmental appeal on 06.12.2017 which was not responded; hence the instant service appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

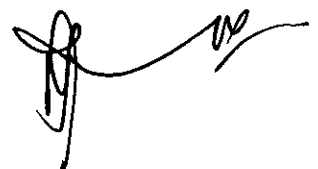
4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order was illegal, against the law, void ab-initio and without lawful authority. According to him, the appellant was not informed of the order or any show cause notice, and no opportunity of hearing was provided to him. He further argued that the appellant was not



informed about the proceedings, if any, and termination order was made in his absentia. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was appointed as Beldar, BPS-01, in compliance with the Honorable Peshawar High Court Peshawar's judgment dated 02.11.2010. He clarified that the appellant was appointed on initial recruitment and not on son quota as was clear from his appointment order. The learned District Attorney argued that the appellant remained absent from duty and the immediate officer & in-charge Sub Engineer always complained against him, therefore he was warned orally several times to be punctual. Finally on the report of Sub Engineer and Sub Divisional Officer, he was dismissed from service on the grounds of willful absence. He requested that the appeal might be dismissed.


6. Arguments and record presented before us transpires that the appellant was appointed as Beldar in the Irrigation Department in 2011. The department withheld his salary, for which he approached this Tribunal in 2012. His service appeal was allowed. During the hearing of his Execution Petition on 04.12.2017, the Tribunal was informed that his salaries up to 02.02.2016 had been paid to him. It was further informed that he had been dismissed from service w.e.f 03.02.2016 vide an order dated 18.08.2016. As the required action of payment of salaries had already been taken, the execution petition was disposed of, however he was at liberty to seek his legal remedy against the order dated 18.08.2016. The appellant



preferred a departmental appeal against his order of dismissal from service, which was not responded and therefore, he preferred the instant service appeal.

7. Perusal of record shows that the respondent department did not follow the provisions of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011. Record is silent on any charge leveled against the appellant in the form of a charge sheet and statement of allegations or a show cause notice. From the reply of the respondent department, it appears that it was based on some complaint of the in-charge Sub-Engineer on the alleged absence from duty of the appellant that he was warned orally and directed to be punctual. Later on, he was dismissed from service, on the report of Sub-Engineer and Sub Divisional Officer. The learned District Attorney, when asked to produce any document to indicate if any disciplinary proceeding was initiated against the appellant on his willful absence, he admitted frankly that no such document was available on record and that no codal formalities had been fulfilled before passing the order of dismissal. -

8. There is no second opinion that the appellant is a civil servant and there are certain rules to govern his service. The respondent department was bound to act within the parameters set by those rules. It has been noted that they miserably failed to follow the rules and neither conducted any inquiry nor served any show cause notice and thus condemned the



appellant without providing him an opportunity of personal hearing, which is against the spirit of a fair trial.

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

10. *Pronounced in open court at Camp Court, Swat and given under our hands and seal of the Tribunal on this 06th day of November, 2023.*



(FAREEHA PAUL)
Member (E)
Camp Court, Swat.



(SALAH-UD-DIN)
Member(J)
Camp Court, Swat.


Fazle Subhan, PS


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06th Nov. 2023 01. Mr. Imdadullah, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment 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, Swat and given under our hands and seal of the Tribunal on this 06th day of November, 2023.*


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


(SALAH-UD-DIN)
Member (J)
Camp Court, Swat

Fazle Subhan, P.S