

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 552/2022

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

**Farman Ullah S/O Roohullah R/O Shori Khel, Badhber Sulema Khel  
Distrit Peshawar. .... (Appellant)**

Versus

1. Director, Elementary and Secondary Education Peshawar.
2. District Education Officer (Male) Peshawar.
3. Principal Government Higher Secondary School Shaheed Saqib Ghani No. 2 Peshawar Cantt.
4. District Accounts Officer Peshawar.
5. Provincial Government through Chief Secretary..... (Respondents)

Mr. Hamza Jehangir  
Advocate

... For appellant

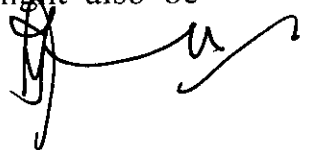
Mr. Habib Anwar  
Additional Advocate General

... For respondents

Date of Institution..... 01.04.2022  
Date of Hearing..... 01.11.2023  
Date of Decision..... 01.11.2023

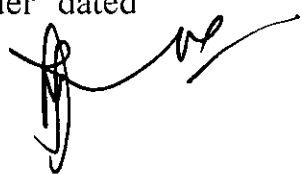
**JUDGEMENT**

**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/Endorsement dated 06.11.2021 passed by Respondent No. 2, whereby he regretted the payment of outstanding pay and other allowances for the period of suspension of the appellant and respondent No. 1 did not decide the departmental representation dated 10.12.2021 of the appellant within the statutory period of 90 days. It has been prayed that on acceptance of the appeal, the order dated 06.11.2021 might be declared illegal, against the law and justice, and not binding upon the rights of the appellant. He has further prayed that it might also be



declared that the appellant was entitled for the payment of salaries and other allowances for the period of his absence and treat the same period as spent on duty with full pay and allowances.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was a civil servant since 1995 and was appointed as SPET at GSSGHSS No. 2 Peshawar Cantt. Appellant was charged in a criminal case vide FIR No. 970 dated 18.12.2019 u/s 302-34-PPC P.S Badabher Peshawar. Consequently the respondent No. 2 suspended him from his service vide order dated 06.06.2020 till the final order of the Court. After the said incident, appellant being a law abiding citizen, adopted a legal procedure and applied for pre-arrest bail but during the pendency of said BBA petition, threats of dire consequences and frequent attempts of killing were made upon him. In order to save his life, he opted not to appear in court as well as in the school. After quite some time when he appellant came to know that there was an apprehension of his arrest by the local police, he again appeared before the court and applied for bail before arrest. During the pendency of the same, a compromise was effected between the parties and all the legal heirs of the deceased as well as the complainant of the case pardoned the appellant and BBA was confirmed. The respondent No.2 passed another order dated 10.12.2020, through which the suspension allowance was allowed to the appellant if he was regular and on duty and not absconder. In the meanwhile, he was acquitted by the court of Honorable Additional District and Sessions Judge Peshawar vide order dated. 20.03.2021. After acquittal, he submitted the attested copies of the case in the office of respondent No. 2, who passed the order dated

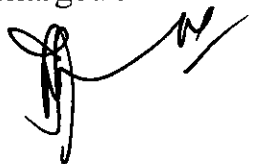


10.04.2021 vide which he was reinstated in service, whereas the period of abscondence was left to be decided later. Feeling aggrieved, the appellant requested the respondent No. 2 vide application dated 12.04.2021 for release of salary, which was regretted vide order dated 15.09.2021 and the absence period was considered as extra ordinary leave without pay. Another request of the appellant was also regretted vide letter dated. 06.11.2021. Feeling aggrieved, the appellant filed departmental representation before the respondent No. 1 but no order was passed on the same within 90 days as per rules; 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 Additional Advocate General for the respondents and perused the case file with connected documents in detail.

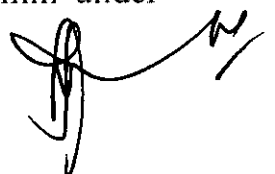
4. Learned counsel for the appellant, after presenting the case in detail, argued that that criminal case was resolved by the competent court of law in which the appellant was acquitted and that the impugned order was passed without appreciating the evidence and facts of the case. No proper enquiry was ever conducted by the respondents. He further argued that the absence of the appellant from duty was because of the threats to his life of dire consequences and that it was a fact was that he was regularly appearing for hearings before the court. He requested that the appeal might be accepted as prayed for.

5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was charged in



a criminal case and the respondent department suspended him according to the law and rules. After suspension, the appellant remained absconder, and therefore he was considered as willfully absent from his duty. The department passed order dated 10.12.2020 and sent to the appellant through concerned school but as he was absconder, therefore he did not receive the same. The learned AAG argued that the appellant was reinstated in service on 10.04.2021 and later on his abscondence/ intervening period was considered as extraordinary leave without pay from 01.04.2020 to 31.12.2020 . He requested that the appeal might be dismissed.

6. Appellant, while posted as SPET at GHSS No. 2 Peshawar Cantt. was charged in FIR dated 18.12.2019. Instead of presenting himself for arrest, he became an absconder. The learned Additional Sessions Judge-XV, Peshawar, keeping in view the efforts of arriving at some compromise, confirmed the pre-arrest bail of the appellant, already granted to him on 04.09.2020, on 22.12.2022. The official respondents had already issued a suspension order of the appellant on 06.06.2020 vide which he was suspended w.e.f. 18.12.2019. Vide a subsequent order dated 10.12.2020, suspension allowance was allowed to him under the rules, with the condition that if he was regular, on duty and not an absconder. Later, after his acquittal on 20.03.2021, another order was issued on 10.04.2021, vide which the appellant was reinstated in service and it was further mentioned that his absconder/intervening period would be decided later, which was decided and it was treated as Extra-ordinary leave, without pay. Record presented before us shows that the appellant remained an absconder after being charged in the FIR. The respondent department rightly placed him under




suspension from the date the FIR was lodged and the criminal proceedings were pending before the concerned court of law. As soon as those proceedings culminated in his acquittal, he was reinstated into service. The period of his absence has been treated as extraordinary leave without pay. As far as the plea taken in his service appeal is concerned, he has prayed for payment of salaries for the period of absence. His departmental appeal attached by him at page 41 of his service appeal shows that he is asking for release of salary for nine months, from 1st April 2020 to 31<sup>st</sup> December 2020. Another document annexed by him in his service appeal at page 44 is an appeal before the District Education Officer (Male) Peshawar for payment of salary. In that appeal, he himself admits that as a result of being charged in a criminal case, he could not perform his duty from 01.04.2020 to 31.12.2020.

7. In view of the clear admission on the part of the appellant that he remained absent from his lawful duty for nine months, the respondent department was justified to treat that period as extra-ordinary leave without pay. The appeal in hand is, therefore, dismissed being devoid of merit. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 1st day of November, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)


\*Fazle Subhan, P.S\*


S.A 552/2022

Ist Nov. 2023 01. Mr. Hamza Jehangir, Advocate for the appellant present.  
Mr. Habib Anwar, Additional Advocate General for the respondents  
present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the  
appeal in hand is dismissed being devoid of merit. Costs shall  
follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under  
our hands and seal of the Tribunal this 1<sup>st</sup> day of November,  
2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)

*\*Fazle Subhan, P.S\**