

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 416/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Abdur Rasheed, PSHT, Government Primary School Agra  
Malakand.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. Director, Elementary & Secondary Education, Peshawar.
3. District Education Officer (Male), Malakand.

.... (Respondents)

Mr. Uzma Syed  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

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Date of Institution.....16.03.2022  
Date of Hearing.....18.10.2023  
Date of Decision.....18.10.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of instant appeal, the respondents may be directed to release/reimburse, the outstanding**

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**salaries from 28.07.2017 to 15.02.2018 or whichever is found correct after calculation, forthwith.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was a Primary School Head Teacher (BPS-15) at Government Primary School Agra, Malakand. During service, departmental inquiry was initiated against the appellant on the ground of certain alleged purchase for the school, against which he was awarded major penalty of compulsory retirement from service vide order dated 28.07.2017. Feeling aggrieved, he filed departmental appeal before appellate authority, upon which major penalty was converted into one post reduction of time scale from BPS-15 to BPS-14 and intervening period was treated as leave without pay. Hence, the instant service appeal

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

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He contended that appellant is at the verge of retirement and sudden stoppage of salary is illegal and against the fundamental rights of the appellant. He submitted that respondents have not exercised power and authority in accordance with law in light of clause 24-A of General Clauses Act.

5. Conversely, learned District Attorney contended that major penalty of compulsory retirement from service was imposed upon the appellant under Rule 4(b)(ii) on the charges of misconduct, willful absence, corruption,


embezzlement of PTC fund. He further contended that respondents in accordance with service rules and keeping in view the age factor of appellant relaxed his major penalty of compulsory retirement into reduction to a lower post.

6. Perusal of record reveals that appellant was serving as PSHT BPS-15 and posted at GPS Agra Malakand when departmental inquiry was initiated against him due to certain purchases made by him in his official capacity for the school. Appellant deposited the amount of purchased item in the relevant head upon direction of EDO, but at the same time appellant was awarded major penalty of compulsory retirement vide order dated 28.07.2017. Appellant filed appeal on 29.07.2017 to Director (E&SE) Khyber Pakhtunkhwa, Peshawar (respondent No. 2) which was partially accepted and major penalty of compulsory retirement from service was converted into major penalty of reduction to a lower post i.e PSHT (BPS-15) to SPST (BPS-14) for a period of two years subject to condition of recovery of Rs. 503040/- and treating intervening period as leave without pay vide order 16.02.2018. Appellant filed appeal for recovery of his salaries of intervening period, which was rejected. Appellant seeks recovery of his salaries of intervening period from the date of his compulsory retirement i.e 28.07.2017 to 15.02.2018, one day before order of his conversion of compulsory retirement into reduction to lower post i.e 16.02.2018. It is admitted fact that appellant after order of his compulsory retirement on 28.07.2017 remains no more a civil servant and he was not entitled to serve till 16.02.2018, when his penalty was converted into reduction to lower post and he was reinstated which fact is evident from

order/notification dated 22.03.2018 of District Education Officer (M), Malakand. Moreover, inquiry upon the direction of Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa conducted on 01.10.2021, wherein it is held that appellant through forgery marked his attendance and signed before the name of Mr. Fazli Khaliq. So, appellant's conduct disentitled him from grant of salaries of intervening period. It is held that after his compulsory retirement order and before his reinstatement, appellant was not civil servant from 28.07.2017 to 15.02.2018. Therefore, he is not entitled for salaries of the said period.

7. As a sequel to above discussion, the appeal in hand is hereby dismissed being devoid of merits. Cost shall follow the events. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18<sup>th</sup> day of October, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)