

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 484/2019

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

Muhammad Nabi, Primary School Teacher at GPS Kafar Banda,  
Kohistan.

.... (Appellant)

VERSUS

1. District Education Officer (Male) Kohistan.
2. Director Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar.
3. Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar.

.... (Respondents)

Mr. Fazal Shah Mohmand  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

Date of Institution.....19.03.2019  
Date of Hearing.....20.10.2023  
Date of Decision.....20.10.2023

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 impugned order dated 25.05.2018 may kindly be modified to the extent of awarding the appellant all the benefits including salaries etc of intervening period w.e.f 16.12.2003 to 06.03.2018.”**



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Primary School Teacher on 19.12.1995 and was dismissed from service on 11.05.2012 against which he filed service appeal, which was accepted with direction to conduct denovo inquiry. Inquiry proceedings were initiated and thereafter appellant was reinstated in service and the period w.e.f 26.12.2007 till retirement was treated as extra ordinary leave without pay. Feeling aggrieved, appellant filed departmental appeal, which was not responded to; 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 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 further argued that the impugned order is illegal and void ab-initio. He further argued that appellant was dismissed from service through an illegal order, rather void, and as such he is entitled to the benefits of the intervening period.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant was dismissed from service due to his willful absence. He also remained an absconder during his involvement in criminal case and violated service rules, hence, the appellant is not entitled for back benefits.




6. Perusal of record reveals that appellant was dismissed from service on 11.05.2012 when he was serving as Primary School Teacher on the allegation of absence. Appellant challenged his dismissal order before this tribunal by filing service appeal bearing No. 43/2016 which was accepted and appellant was reinstated into service for the purpose of denovo inquiry. Accordingly denovo inquiry was ordered by respondent vide order dated 07.03.2018 wherein only questionnaire was given to the appellant to answers it. Appellant was reinstated into service by considering absence period from 16.12.2003 to 06.03.2018 as extra ordinary leave without pay vide order dated 25.05.2018. Appellant feeling aggrieved from portion of treating absence period and intervening period as extra ordinary leave without pay, filed departmental appeal, which was not responded by the respondent. Record further reveals that appellant was charged in a criminal case and remained absconders from 11.05.2012 to 06.03.2018, therefore, in our humble view when appellant had not surrendered before law, then he cannot claim back benefits, specially leave with pay for the said period, being fugitive from law, therefore, this period is rightly considered as extra ordinary leave without pay. Now coming towards intervening period i.e 11.05.2012 to 06.03.2018, when appellant surrender himself before law and was arrested by law enforcing agencies, and was granted bail by the court of law, in our view, appellant is entitled for all the back benefits of that intervening period and this be counted as leave with pay as respondent had not reinstated appellant despite the fact that he surrendered before law and was later acquitted from the charge on the basis of which he was



dismissed from service and the charge of his absence was due to being nominated in a criminal case. Respondents failed to establish on record that the appellant was on gainful business during intervening period. Reliance is placed on 2015 SCMR 77.

7. As a sequel to above discussion, the appeal in hand is partially allowed and appellant is held entitled for all back benefits of intervening period i.e 11.05.2012 to 06.03.2018. Costs shall follow the event. Consign.

8. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 20<sup>th</sup> day of October, 2023.*

  
(FAREEHA PAUL)  
Member (E)

Kaleemullah

  
(RASHIDA BANO)  
Member (J)