

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT SWAT.

Service Appeal No. 7909/2021

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

Mr. Fakhrul Abadin, Ex-Chowkidar, GPS Aloch No. 1 District Shangla.
..... **(Appellant)**

Versus

1. **The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.**
2. **The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The District Education Officer (Male), District Shangla.**
..... **(Respondents)**

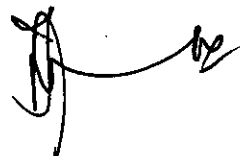
Mr. Umar Farooq Mohmand,
Advocate ... For appellant

Mr. Muhammad Jan,
District Attorney ... For respondents

Date of Institution..... 22.12.2021
Date of Hearing..... 08.11.2023
Date of Decision..... 08.11.2023

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 dated 03.04.2014 whereby the appellant was dismissed from service, against which no action was taken on his departmental appeal within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned order dated 03.10.2014 might be set aside and the appellant might be reinstated into service with all back benefits or in alternate, he might be compulsory retired



from service with all consequential benefits, alongwith any other remedy which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Chowkidar (BPS-01) in the respondent department after fulfilling all the codal formalities and posted at GPS Aloch No. 1. The schools, as well as other governmental institutions, were closed due to insurgency in the area. After successful military operation, the area was cleared from the outlaw groups and the appellant was willing to join his service but the respondents issued the impugned order dated 03.10.2014, whereby major penalty of dismissal from service was awarded to him. Feeling aggrieved, he filed departmental appeal before the appellate authority but the same was not decided; hence the present appeal.

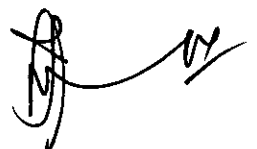
3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that codal formalities required for the major penalty were not fulfilled by the respondents. Neither any notice nor chance of personal hearing or defence was provided to the appellant before passing the impugned order. According to him, the Inquiry Officer neither recorded any statement of witnesses in the presence of the appellant nor afforded an opportunity to cross-examine them and he was condemned unheard, thus the



impugned order was illegal and liable to be set aside. 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 impugned order was passed on 03.10.2014 against which the appellant filed departmental appeal on 07.09.2021 which was badly time barred and hence the present appeal was incompetent. On factual side, learned District Attorney argued that insurgency occurred in the years 2008 and 2009 as a result of which educational institutions and other offices were closed for certain period but later on in the year 2010, schools and offices were re-opened and official work started. The learned District Attorney informed that the appellant was also performing his duty in his respective school and marked his attendance till March 2013, when he submitted an application for earned leave (without pay) for two years (730 days) from 11.04.2013 to 10.04.2015, accompanied with an affidavit on judicial stamp paper to the effect that he would not proceed abroad during the leave period. He further informed that the leave application was forwarded by the ASDEO Circle on 09.04.2013 but without obtaining proper NOC and sanction of earned leave, the appellant reportedly proceeded abroad and remained absent from duty. He further argued that three separate absence notices were issued to him on his home address through registered post but in vain. Another notice was published in the "Daily Mashriq" dated 03.09.2014 against the appellant but he failed to make any response and after completion of all codal formalities he was dismissed from service. Learned District Attorney requested that the appeal might be dismissed.



6. The appellant has preferred this appeal against an order of the District Education Officer (Male) District Shangla, vide which he has been removed from service. Arguments and record presented before us transpires that appellant, while serving as Chowkidar at GPS Aloch, applied for extraordinary leave from 11.04.2013 to 10.04.2015 (730 days) without pay. His application was forwarded by the Sub-Divisional Education Officer (Male) Primary, Alpuri Shangla to District Education Officer (E&S), District Shangla on 10.04.2013, but no action was taken on it and his leave was not sanctioned by the competent authority. The appellant, without waiting for the sanction order, absented himself from his lawful duty w.e.f. 11.04.2013. As stated by the learned District Attorney, it came to the knowledge of the respondent department that the appellant had gone abroad. Disciplinary proceedings were initiated against him and notices were issued at his home address as well as in a daily, after which his order of removal from service w.e.f. 11.04.2013 was issued on 03.10.2014. Against his removal order, the appellant preferred a departmental appeal on 07.09.2021, which was badly time barred.


7. The plea taken by the appellant in his departmental appeal, as well as his service appeal before this Tribunal, is that the schools as well as other government institutions in the area were closed during that time due to militancy and when it was cleared after military operation, he reported to join his duty but was not allowed to do so, rather he was removed from service. The appellant did not deny the stance of the respondents that he attended the school till April 2013. Another stance of the respondents is also correct that there was no issue of militancy during 2013, and the same had

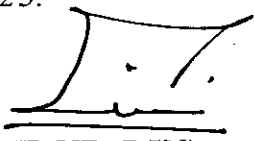


also not been denied by the appellant. It has been noted that the period of absence of the appellant starts from 11.04.2013 and the impugned order was issued on 03.10.2014, after fulfilling the required formalities. Under the rules he had to prefer his departmental appeal within thirty days but the same was done on 07.09.2021, which shows that he was not at his home or the place of duty. Had he been at any of these two places, he would not have taken seven long years to submit his departmental appeal. He has not presented any sound reason for his delayed representation.

8. In view of the above discussion, the appeal in hand is dismissed, being groundless. Costs shall follow the evident. Consign.

9. *Pronounced in open court at Camp Court, Swat and given under our hands and seal of the Tribunal this 08th of November, 2023.*


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


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


Fazle Subhan, P.S


S.A 7909/2021

08th Nov. 2023 01. Mr. Umar Farooq Mohmand, 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 dismissed being groundless. 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 08th day of November, 2023.*


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


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

Fazle Subhan, P.S