

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 307/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mst. Tajmina W/O Majid Ur Rehman R/O Haider Khel, P.O & Tehsil Mir Ali,  
District North Waziristan. ... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education Department Peshawar.
3. District Education Officer (F), North Waziristan.
4. District Account Officer, North Waziristan.

... (Respondents)

Mr. Faheem Marwat  
Advocate

... For Appellant

Mr. Muhammad Jan  
District Attorney

... For Respondents

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Date of Institution.....23.01.2023  
Date of Hearing.....03.11.2023  
Date of Decision.....03.11.2023

**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 this appeal, the impugned order dated 08.06.2022 passed by respondent No.2 may graciously be set aside and service of the appellant may be restored with all back benefits.”**

2. Brief facts of the case are that appellant was appointed as SST (BPS-16) and serving the respondent department upto the entire satisfaction of

his superiors. The appellant also performed her duties as Assistant District Education Officer (ADEO) and has drawn her salaries on the same post till December 2021. Appellant face maternity issue in January 2022. Apart from the maternity issue, the appellant's salary was also transferred to the GGHS Zawab Kot without intimating the appellant. Salary of the appellant was stopped due to absence from new place of posting despite the fact that appellant was on maternity leave. Major penalty of removal from service was imposed upon the appellant vide impugned order 08.06.2022, against which, she filed departmental appeal on 21.06.2022, which was rejected vide order dated 04.10.2022; hence the instant service appeal.

2. 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 for the respondents and perused the case file with connected documents in detail.

3. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that being possession of valid medical documents which would clearly suggest that she was facing the maternity issue and denial from the established fact on the part of respondents is unlawful and against the norms of equity and justice.

4. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant regularly draw her salaries as ADEO in the office of DEO, North Waziristan since 2018, while she was transferred in the year 2018 from DEO office to School. He further contended that she had never performed her duty either at school or from DEO office since 2018. He submitted that

appellant has been removed from service in light of rule 3(d) of civil servants (E&D) Rules, 2011 and Rule 9 ibid rules.

6. Perusal of record reveals that appellant was performing her duties as SET since the year 2006. Lastly appellant was posted as Assistant District Education Officer (ADEO) and has drawn her salaries on the post till December 2021. Appellant faced some maternity issues in January 2022 and salary of the appellant was transferred to GGHS Zawab Kot Tehsil Shulam Khan without intimating appellant through proper transfer order from the competent authority and salary of the appellant was also stopped on the ground of absence from duty at Zawab Kot, despite the fact that no transfer order was given to appellant till issuing of impugned order dated 18.06.2022, vide which major penalty of removal from service was awarded without any notice or providing any opportunity of explanation or hearing. Appellant contended that she was performing her duties regularly as ADEO in Miran Shah. She placed on record her visit/attendance certificate etc, which shows that appellant annexed with appeal her medical documents and certificate to show her illness and found that if she remain absent for few days that was due to maternity issues and not willful or deliberate one. She performed her duty in year 2019 and 2020, which negate the allegations of absence from duty since year 2018. It is also pertinent to mention here that no specific date of absence was given in the show cause notice. Appellant was removed from service upon the allegation of absence but no proper procedure was provided under

Section 9 of (Efficiency & Discipline) Rules, 1973 was followed/adopted nor charge sheet or even show cause notice was served upon the appellant and appellant was not provided with opportunity of hearing.


7. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of audi alteram partem was always deemed to be imbedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

8. For what has been discussed above, impugned order is set aside and appellant is reinstated into service for the purpose of denovo inquiry with direction to respondents to provide opportunity of



hearing, self-defense and cross-examination be provided to the appellant with further direction to conduct denovo inquiry within sixty days after copy of receipt of this judgment. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 3<sup>rd</sup> November day of, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)