

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No.151/2022

Date of presentation of Appeal.....02.02.2022
Date of Hearing.....08.12.2023
Date of Decision.....08.12.2023

Javed Iqbal, Ex-Reader (Now Junior Clerk) at District Court, Swabi at Lahor.....(Appellant)

Versus

1. **Worthy Registrar, Peshawar High Court, Peshawar.**
2. **District & Sessions Judge, Swabi.(Respondents)**

Present:

Akhundzada Asad Iqbal, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor the respondents
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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST ORDER DATED 08.07.2021 WHEREBY THE APPELLANT WAS AWARDED MAJOR PENALTY OF REDUCTION TO THE POST JUNIOR CLERK.

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Javed Iqbal, Ex-Reader (Now Junior Clerk) at District Court, Swabi at Lahor.....(Appellant)

Versus

1. **Worthy Registrar, Peshawar High Court, Peshawar.**
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Present:

Akhundzada Asad Iqbal, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor the respondents

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**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
ORDER DATED 08.10.2021 WHEREBY THE APPELLANT
WAS REMOVED FROM SERVICE.**

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, this appeal and the connected appeal No.152 of 2022 are being decided because both are between the same parties and almost with the same issue, therefore, can be conveniently decided together.

2. Appeal No.151/2022:

According to the memorandum and grounds of appeal, the appellant was serving as Senior Clerk (BPS-14) in the District Judiciary, Swabi. In the meanwhile, a show cause notice was issued to him. Consequently, vide order dated 08.07.2021, he was awarded major penalty of reduction from the post of Senior Clerk/Reader to the Junior Clerk (BPS-11). Feeling aggrieved, he filed departmental appeal which was not responded, hence, the instant service appeal.

3. Appeal No.152/2022:

According to the memorandum and grounds of appeal, the appellant was initially penalized as "Reduction to Lower Scale" and later on, in consequence to the allegations of being absent from duty w.e.f 18.05.2021, vide order dated 08.10.2021, he was removed from service w.e.f the date of absence i.e. 18.05.2021. Feeling aggrieved, the appellant filed departmental appeal which remained un-responded. Hence, the connected service appeal.

4. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance and contested the

appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

5. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

6. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

7. It appears that for the same charge of absence from duty from 18.05.2021 the appellant was first penalized and awarded punishment of reduction to the post of Junior Clerk (BPS-11) under rule 4(b)(i) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 vide order dated 08.07.2021 and further proceedings were directed to be continued under rule 9 of the above rules posting the matter for 10.07.2021. These proceedings were conducted in a file named Admin File No.50. What happened on 10.07.2021 or thereafter is not known. Another Admin File No.65 was then opened on the note put up by the Superintendent on 12.07.2021. On 13.07.2021, the District & Sessions Judge, Swabi adjourned the matter to 17.07.2021 for perusal and consideration. On 17.07.2021, the District & Sessions Judge, Swabi passed the following order:

"1. Instant proceedings, initiated in follow up of order dated 08.07.2021 in Court File No.50/Admn of 2021, propose disciplinary action against the accused official Javed Iqbal under Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 (the Rules).

2. The accused official, as per report received from learned AD&SJ-II Lahor vide No.814 dated 03.07.2021; is absent from duty since

18.05.2021 without leave. Notice in terms of Rule 9 has been signed and issued against the accused official for joining duty within 15 days, at his home address through registered post AD. Copy of the notice is placed on file.

3. Come up for further proceedings on 06.08.2021 (09:00 hrs)."

8. The order sheets of 06.08.2021 and onwards have not been placed on file by either side nor the original record was produced. However, vide order dated 08.10.2021, the appellant was removed from service and direction was also issued to reimburse the pecuniary loss caused by him on account of receiving salary/financial benefits received since 18.05.2021. But when once the appellant was penalized for his alleged absence from 18.05.2021 vide order dated 08.07.2021 and he was demoted to the post of Junior Clerk, there was no justification for vexing him for the second time on the same allegation of his absence from 18.05.2021, by removing him from service vide subsequent order dated 08.10.2021. The subsequent order of the District & Sessions Judge, Swabi is completely silent regarding any absence of the appellant after 08.07.2021 at the time of awarding him major punishment of reduction to the post of Junior Clerk rather the subsequent removal order also speaks about the absence of the appellant from 18.05.2021 i.e. the date, which was admittedly the date of absence initially and for which absence the appellant was proceeded under rules 5(1)(b)(ii) and 7 of the above Rules and consequently penalized under rule 4(b)(i) of the rules and awarded punishment of reduction to the post of Junior Clerk. There is no denying the fact that again proceedings under rule 9 of the rules for the same absence period/date of absence (18.05.2021) were conducted, which amounts to double jeopardy/vexing twice or penalizing twice and by no cannons of law, justice and equity second punishment on the same

omission was justified nor warranted. Yes, in case, after the first punishment awarded on 08.07.2021 for absence from duty on or from 18.05.2021, the appellant again willfully absented after 08.07.2021 for fifteen days, he could have been proceeded afresh for any absence after 08.07.2021 but that does not seem the case here as the order dated 08.10.2021 is also for the same period/date (18.05.2021) and there is nothing said that after 08.07.2021, the appellant again remained absent and was accordingly proceeded against under the provisions of rule 9 of the rules. We thus reiterate that a civil servant could not be penalized twice for the same omission or commission. Reliance is placed on the judgment of the Supreme Court of Pakistan reported as 2022 SCMR 1387 titled "Sohail Ahmad versus Government of Pakistan through Secretary of Interior Ministry, Islamabad and others", wherein the Supreme Court has held as under:

"11. Whereas under Article 13 of the Constitution of Pakistan, it is clearly provided that no person shall be prosecuted or punished for the same offence more than once or shall when accused of an offence, be compelled to be a witness against himself. In the case in hand, it is apparent that the appellant was vexed twice for the same alleged offence of making false complaint against his colleagues who were found innocent after inquiry. The punishment of transfer as well as declaring him junior while upsetting the seniority through another office order issued in continuation are for the one and the same cause is also hit by the doctrine of double jeopardy which provides a legal defence to shield a person from being tried again for the same indictments after an acquittal or conviction. The word 'double jeopardy' originates from the rule 'Nemo bis punitur pro eodem delicto,' which means "no one should be punished twice for the same offence" and another common-law rule 'Nemo debet bis vexari,' which

means "a man must not be put in peril twice for the same offence." It is also based on rule of conclusiveness and finality based upon the maxim of Roman jurisprudence 'Interest reipublicae ut sit finis litium' (it concerns the state that there be an end to law suits)."

9. We are, therefore, constrained to allow the connected appeal No.152 of 2022 and set aside the impugned order dated 08.10.2021 thereby reinstating the appellant into service with consequential benefits.

10. Coming to this appeal (No.151/2022), the appellant was issued show cause notice on 02.06.2021 by the District & Sessions Judge, Swabi that he was found absent from duty without any information or prior permission vide report No.724 dated 06.05.2021, No.735 dated 18.05.2021, 740 dated 20.05.2021 and 742 dated 24.05.2021 of AD&SJ-II, Lahor. The appellant submitted reply and explained that his real brother met with an accident in which his children were also injured and the appellant rushed to the hospital to look them after and thus he remained busy with them and that was why he was unable to perform duties. The appellant admitted his absence and did not utter a single word about his applying for any leave or seeking permission. Not explaining the absence of different dates by the appellant cannot be ignored rather a civil servant is under obligation to obtain leave in case he is in need of that. The action taken vide the impugned order dated 08.07.2021 is, therefore, quite justified. However, the punishment awarded to the appellant is shown to have been given under rule 4(b)(i) of the rules. Rule 4(b)(i) is reproduced below:

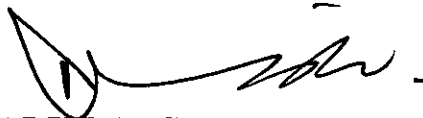
"(b) Major penalties: 1 [(i) reduction to a lower post or pay scale or to a lower stage in a time scale for a maximum period of five years: Provided that on a restoration to

original pay scale or post, the penalized Government servant will be placed below his erstwhile juniors promoted to higher posts during subsistence of the period of penalty;]"

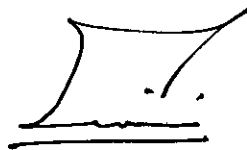
When we see the punishment awarded to the appellant under the above rule that does not seem to be in accordance therewith because while awarding punishment under this provision the authority has to specify the period for such punishment whereas no period has been specified in the impugned order dated 08.07.2021. Thus while maintaining punishment of reduction of the appellant to the post of Junior Clerk (BPS-11), we hold that the same shall be for two years.

11. While deciding both the appeals we direct that costs shall follow the events. Copy of this judgment be placed in connected appeal No.152/2022. Consign.

12. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 8th day of December, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH-UD-DIN
Member (Judicial)

Mutazem Shah

S.A #.151/2022

ORDER

8th Dec. 2023

1. Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

2. Vide our consolidated judgment of today placed on file, while awarding punishment, the authority has to specify the period for such punishment whereas no period has been specified in the impugned order dated 08.07.2021. Thus while maintaining punishment of reduction of the appellant to the post of Junior Clerk (BPS-11), we hold that the same shall be for two years. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 8th day of December, 2023.*



(Salah-Ud-Din)
Member (J)



(Kalim Arshad Khan)
Chairman

Mutazem Shah