

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

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

*Service Appeal No.822/2022*

Date of presentation of Appeal.....17.05.2022  
Date of Hearing.....13.11.2023  
Date of Decision.....13.11.2023

**Ms. Roheela Sayal**, Associate Professor (BPS-19) GGDC No. 2  
Hayatabad, Peshawar.....*Appellant*

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar
2. The Secretary to Government of Khyber Pakhtunkhwa Higher Education Department Civil Secretariat, Peshawar.....(*Respondents*)

----

**Present:**

MUHAMMAD AMIN AYUB,  
Advocate

... For appellant

ASIF MASOOD ALI SHAH,  
Deputy District Attorney

... For respondents.

----

**JUDGMENT**

**MUHAMAMD AKBAR KHAN MEMBER (E)**:- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*“That on acceptance of the instant appeal, the impugned order dated 08.12.2021 communicated to the appellant on 07.01.2022 passed by respondent No. 2 may graciously be set aside and appellant may be allowed her original pay with effect from the due date with all back benefits.”*

02. Brief facts of the case are that appellant was serving as Associate Professor (BPS-19) in Government Girls Degree College No.2, Hayatabad, Peshawar. On the complaint of One Ms. Jamila Khanum, Principal Government Postgraduate College, Kohat, she was charged with the allegation that she had violated the Prevention of Electronic Crimes, Act 2016. In this respect, inquiry officers were nominated who conducted inquiry, resultantly, she was issued with a show cause notice. Accordingly, the appellant submitted reply of the same and a final show cause notice was also issued. Consequently, minor penalty of withholding of two annual increments for two years, was imposed upon appellant vide impugned order dated 08.12.2021. Feeling aggrieved, the appellant filed departmental appeal on 08.01.2022 which was not responded within statutory period of 90 days. Therefore, she filed the instant service appeal.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the respondents had not treated the appellant in accordance with law, rules and policy on the subject in violation of Article-4 of the Constitution of Islamic Republic of Pakistan, 1973; that as per Rule-4 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the competent authority in this case was the Chief Minister, whereas, the appellant had been proceeded against departmentally by the Chief Secretary Khyber Pakhtunkhwa; that no

regular inquiry had been conducted and no evidence had been recorded in presence of the appellant nor she had been awarded any chance of cross-examination, which is violation of Article 10-A of the Constitution and the same Article also provides for the right and fair trial but the appellant had not been treated fairly. Learned counsel for the appellant further contended that no opportunity of personal hearing had been given to the appellant and she had been condemned unheard. Learned counsel for the appellant relied on 2007 PLC (C.S) 597, 2007 SCMR 1643, 2009 SCMR 339, 2016 SCMR 963, 2019 SCMR 640 & 2020 PLC (C.S) 1291.

05. Learned Deputy District Attorney on the other hand contended that all the allegations had been proved against the appellant and she had been treated within the four corners of law/rules in vogue. That formal inquiry had been conducted by the officers nominated by the competent authority, therefore, she had been treated in accordance with law and rules. He submitted that the appellant had been proceeded as per Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 as well as Prevention of Electronic Crimes Act, 2016 as the appellant had used derogatory and unethical remarks against the Principal on social media which had been proved against the appellant, therefore, the penalty had rightly been imposed upon the appellant.

06. Perusal of record reveals that disciplinary proceedings against the appellant was initiated against the violation of Prevention of Electronic Crimes Act, 2016 for criticizing Ms. Jamila Khanum, Principal, Government Postgraduate Girls College, Kohat on social media/facebook which has been termed as misconduct under rule 3 of the Khyber Pakhtunkhwa Government

Servants (Efficiency & Disciplinary) Rules, 2011. The charge leveled against the appellant in the charge sheet and the statement of allegations is criminal in nature and cognizable under Prevention Electronic Crimes Act, 2016 which is a national level law and required to be substantiated through a specialized agency. Section 30 of the Act *ibid* provides as under;

**Power of Investigation.**--- Only an authorized officer of the investigation agency shall have the powers to investigate an offence under this Act.

*Provided that the Federal Government or the Provincial Government may, as the case may be, constitute one or more joint investigation teams comprising of an authorized officer of the investigation agency and any other law enforcement agency for investigation of an offence under this Act and any other law for the time being in force.*

07. We are of the firm opinion that since the only charge against the appellant is violation of the Prevention of Electronic Crimes Act, 2016, therefore, the matter was required to be probed through specialized agency and trialed by the competent court of law as provided under the Act *ibid*. We are therefore, constrained to allow the appeal as prayed for and set aside the impugned order. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of November, 2023.*



(Rashida Bano)  
Member (J)



(Muhammad Akbar Khan)  
Member (E)

ORDER

13.11.2023 01. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (04) pages, we are therefore, constrained to allow the appeal as prayed for and set aside the impugned order. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of November, 2023.*



(Rashida Bano)  
Member (J)



(Muhammad Akbar Khan)  
Member (E)