

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.740/2017

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

Karim Khan S/O Fazal Rehman (Ex-Muslim Sweeper) MTI KTH PESHAWAR.
... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar.
 2. Director General, Health Department, Peshawar.
- ... (Respondents)

Mr. Abdur Rahman
Advocate ... For Appellant

Mr. Muhammad Jan
District Attorney ... For Respondents

Date of Institution.....13.07.2017
Date of Hearing.....06.11.2023
Date of Decision.....06.11.2023

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 07.12.2016 may be set aside and the appellant may kindly be reinstated in his service from the date of his removal from service with all back benefits.”

2. Brief facts of the case are that the appellant was appointed as Sweeper and was performing his duty upto the entire satisfaction of his superiors. That while performing his official duty, respondents passed impugned order dated 01.01.2021 whereby appellant has been dismissed from service. Feeling




aggrieved, appellant filed departmental appeal which was rejected. Thereafter, appellant filed revision petition, which has also met the same fate, 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 for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that impugned order passed by the respondents is illegal, malafiedly, without lawful jurisdiction and without lawful authority, hence liable to be set aside. He further contended that no opportunity of self-defense and cross examination was provided to the appellant.

5. Conversely, learned District Attorney contended the appellant is an institutional employee and he is not a civil servant and cannot avail the remedy under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. He further contended that the appellant is not an aggrieved person within the meaning of Section 2b of the Khyber Pakhtunkhwa Civil Servants Act, 1973 because he is an institutional employee, therefore, the instant appeal is not maintainable. He further contended that no departmental appeal against the final order has been filed, therefore, instant appeal is badly time barred.

6. Perusal of record would revealed that the appellant was appointed as Muslim Sweeper BPS-3 in institutional employee MTI/KTH Peshawar and rendered service for long 13 year but was removed from service vide order 07.12.2016. It is admitted fact on record that appellant was institutional employee of MTI KTH and was removed from service by Hospital Director



MTI KTH Peshawar vide order 07.12.2016. Appellant being employee of hospital autonomous body could not approach this Tribunal because in accordance with Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 only civil servants can approach this Tribunal for redressal of his grievance. It is, therefore, held that this Tribunal lacks jurisdiction to entertain instant appeal being employee of MTI and his proper forum is MTI Tribunal not service Tribunal, hence present appeal is dismissed for want of jurisdiction. Costs shall follow the event. Consign.

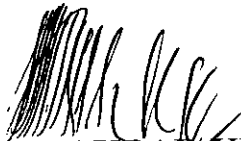
7. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER
06.11.2023

1. Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney Mr. Arif Saleem, Stenographer for the respondents present.
2. Vide our detailed judgement of today placed on file, the appeal in hand is dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of October, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah