

BEFORE THE HON'BLE SERVICE TRIBUNAL BENCH KHYBER
PAKHTUNKHWA SERVICE KHYBER PAKHTUNKHWA

Appeal No. 767/2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No.

9973

Dated

19-12-2018

M. Jamil

Versus

Principal GTC etc

WRITTEN ARGUMENT ON BEHALF OF
THE APPELLANT

Respectfully Sheweth:

FACTS OF THE CASE:

1. That appellant was permanent government servant as a Chowkidar since 31.01.2007 in Govt. College of Technology Kohat Road, Peshawar.
2. That appellant filed an application for grant of 1 years leave on half pay the same was allowed on completion of leaves appellant return to duty and attained his office, thereafter appellant once again filed another application for grant of 1 year leave on half pay but the same was rejected against which appellant filed a

departmental appeal and during the pendency of that appeal impugned order dated 08.12.2017 removal of the appellant was passed by respondent NO.1. **(Copy of departmental appeal available on page-12 and copy of impugned order of removal is on page-15 of appeal).**

3. That appellant filed departmental appeal dated 20.12.2017 against the impugned order the same was turn down, therefore appellant filed instant appeal dated 22.05.2018. **(Copy of final impugned order is on page 8 of appeal).**

Now appellant requests for setting aside the impugned order dated 23.05.2018 of respondents on following grounds:

GROUND S:

- A. That the impugned order dated 23.05.2018 of respondents is against law, rules and illegal one.
- B. That present appeal of appellant is within time as per law while departmental appeal of the appellant was also within time.

- C. That no charge sheet, no show cause notice or no any statement of allegation was ever issued neither served upon appellant, therefore appellant remained unheard.
- D. That no inquiry was conducted nor the appellant was ever issued any summon or notice of any inquiry office or committee nor any inquiry dispensation Order was ever intimated to appellant before imposing such major penalty.
- E. That no major penalty can be imposed without conducting a fair departmental inquiry and without giving a fair chance of defence to civil servant, even impugned order dated 08.12.2017 removal from service of appellant was passed during the pending of departmental appeal against not granting leaves to appellant.
- F. That appellant served to government of Khyber Pakhtunkhwa since 31.01.2007 which makes upto 10 years as a government servant with honesty, punctually and efficiently, therefore, if this Hon'ble Bench not consider appellant arguments for reinstate him on his post then may kindly be

changed/modified the impugned order in compulsory retirement then removal under section 4 Sub Section (b) Sub clause (ii) of Khyber Pakhtunkhwa Govt. Servant Rules, 2011. Moreover in the support of this pint appellant attached case law with this written argument.

It is, therefore most humbly prayer; that on acceptance of this argument impugned order may kindly be set aside and appellant may kindly be re-instate or passed an order of compulsory retirement of appellant, *with all benefits.*

Appellant

Through



Noor Muhammad Khan

Advocate High Court

Dated 19/12/2023

2018 S C M R 1998

[Supreme Court of Pakistan]

Present: Ejaz Afzal Khan and Faisal Arab, JJ

SECRETARY ESTABLISHMENT DIVISION and others---Petitioners

Versus

Dr. IMDAD ALI RAZA SEEHAR---Respondent

Civil Petition No. 589 of 2017, decided on 1st March, 2018.

(On appeal against the judgment dated 9.1.2017 passed by the Federal Service Tribunal, Karachi in Appeal No. 92/(K)CS/2013)

Civil service---

---Removal from service---Absence from duty---Unblemished service of more than 21 years---Effect---Removal from service converted to compulsory retirement---Respondent-employee at the relevant time was eligible to avail leave with full pay for upto 387 days and extraordinary leave up to five years, but without extension of leave he could not stay away from his duty even for a day let alone weeks and months---Respondent went abroad for higher education and then his mother allegedly fell ill for which the respondent required extension in his extraordinary leave---Questions whether respondent's mother was suffering from a disease which was incapable of being treated in the country and if he was alone in the family to attend to his mother had not been answered---Respondent, in the circumstances, could not go unpunished, but at the same time his unblemished service of more than 21 years could not be allowed to go unrequited---Supreme Court converted respondent's removal from service into compulsory retirement, and observed that it had become routine for high ranking officers to go abroad on different pretexts and stay there for good without knowing that their country, which had spent a great deal on them while holding examination for Civil Superior Service and providing them training in the academies, needed their undivided and whole hearted service more than any other entity; and that such a casual and even callous attitude towards the civil service could not be ignored lightly.

Rashid Hafeez, DAG for Petitioners.

Abid S. Zubcri, Advocate Supreme Court and Tariq Aziz, Advocate-on-Record for Respondent.

Date of hearing: 1st March, 2018.

ORDER

EJAZ AFZAL KHAN, J.---This petition for leave to appeal has arisen out of the judgment doted 9.1.2017 of the Federal Service Tribunal, Karachi whereby it allowed the appeal filed by the respondent in the terms as under:-

"For the foregoing reasons, we have come to the conclusion that the appellant has not been dealt in accordance with law, therefore, we have no hesitation in accepting the appeal, setting aside the impugned order doted 08.07.2013. Order accordingly. The respondents are directed to reinstate the appellant into service from the date of removal from service. The question of back benefits shall be decided by the competent authority in accordance with the instructions

contained at Serial No. 155, Vol.II of Estocode 2007, which mode had been approved by the Hon'ble Supreme Court of Pakistan in the case reported as 2010 SCMR 11."

2. The learned DAG appearing on behalf of the petitioner contended that where absence of the petitioner was a writ large on the face of the record and no plausible explanation was offered therefore, his misconduct was proved to the hilt, therefore, he having been found guilty of misconduct was rightly removed from service. He next contended that even if it is assumed that the respondent rendered more than ten years service he could not ask for extraordinary relief for more than three years as of right and that if such interpretation of the rule is allowed to prevail the entire edifice of civil service would collapse like a house of cards. The learned DAG lastly argued that disagreement with the Inquiry Officer in the matrix of the case and absence of reasons therefor cannot be blown out of proportion when unauthorized absence stood proved to the hilt.

3. Learned ASC appearing on behalf of the respondent contended that the respondent asked for extension of extraordinary leave before its expiration; that no decision was taken there and then and that the moment the respondent came to know that he is being proceeded against, he reported his arrival on 7.1.2006; that in the circumstances it cannot be held that he was guilty of misconduct; that the finding of the Inquiry Officer being in line with the admitted facts could not have been brushed aside by the Authority without recording any reason and that the impugned judgment being well reasoned on all essential aspects of the case merits no interference.

4. We have carefully gone through the record and considered the submissions of the learned DAG as well as learned ASC for the respondent.

5. Yes, the respondent at the relevant time rendered ten years service. He as such could avail leave with full pay upto 387 days and extraordinary leave upto five years. But extension could not be taken for granted. Nor could the unauthorized absence be justified on this ground. The respondent without extension of leave could not stay away from his duty even for a day let alone weeks and months. What were the circumstances justifying grant of extraordinary leave for three years and what were the circumstances justifying the extension of extraordinary leave. We have been told that in the first instance respondent went abroad for higher education and then his mother fell ill which called for extension in his extraordinary leave. But the questions whether his mother was suffering from a disease which was incapable of being treated in the country and that if at all it was so, was he alone in the family to attend his mother and bear the scourge have not been answered. It has become routine with the high ranking officers to go abroad on such pretexts and stay there for good without knowing that this country which has spent a great deal on them while holding examination for Civil Superior Service and providing training in the Academy needs their undivided and whole hearted service more than any other entity. Such a casual and even callous attitude towards the civil service tending to worsen it cannot be ignored so lightly. Respondent in the circumstances cannot go unpunished. But at the same time his unblemished service of more than 21 years cannot be allowed to go unrequited. We, therefore, convert this petition into appeal, allow it, set aside the impugned judgment and orders of the authority and convert his removal from service into compulsory retirement. Needless to say the service he rendered even after his reinstatement shall be counted towards his pensionary benefits.

MWA/S-34/SC

Order accordingly.