

Ph: 9220581
Fax:9220406

REGISTERED
No. C.A. 1941/2023 – SCJ
SUPREME COURT OF PAKISTAN.

Islamabad, dated 11/12/2023, 2023.

(10)
From

The Registrar,
Supreme Court of Pakistan,
Islamabad.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 10063

Dated 22-12-2023

To

✓ The Registrar,
K.P.K., Service Tribunal,
Peshawar.

Subject: CIVIL APPEAL NO. 1941 OF 2023.
OUT OF
CIVIL PETITION NO. 80-P OF 2016.

Government of Khyber Pakhtunkhwa, through Chief Secretary,
Peshawar and others.

Versus

Engineer Inayatullah.

On appeal from the Judgment/Order of the K.P.K., Service
Tribunal, Peshawar dated 17.12.2015 in Appeal No.1508/2012

Dear Sir,

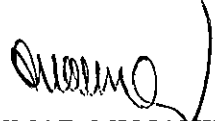
I am directed to forward herewith a certified copy of the
Order/Judgment of this Court dated **05.12.2023**, converting into appeal
the above cited civil petition and allowing the same, in the terms stated
therein, for information and necessary action.

I am also to invite your attention to the directions of the Court
contained in the enclosed Order for immediate compliance.

Please acknowledge receipt of this letter along with its
enclosure immediately.

Encl: Order:

Yours faithfully



(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

134/23

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Amin-ud-Din Khan
Justice Athar Minallah

Civil Petition No.80-P of 2016

(Against the judgment dated 17 December 2015 passed by Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.1508/2012)

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar & others

....Petitioners

Versus

Engineer Inayatullah

....Respondent

For the petitioners:

Mr. Sultan Mazhar Sher Khan, Addl. A.G.
Khyber Pakhtunkhwa.

For respondent:

Mr. Muhammad Yasir Khattak, ASC.

Date of Hearing:


5 December 2023

ORDER

Qazi Faez Isa, CJ. Notice was issued to the respondent who is in attendance through learned Mr. Muhammad Yasir Khattak, ASC. Learned Additional Advocate General Khyber Pakhtunkhwa ('AAG') states that the respondent admittedly was absent from duty for a period of one year and fifteen days and that the penalty for such absence is provided in Rule 9 of the Government Servants (Efficiency and Discipline) Rules, 2011 ('Rules') which is reproduced hereunder:

Procedure in case of wilful absence. - Notwithstanding anything to the contrary contained in these rules, in case of wilful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgment on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an *ex-parte* decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.'

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

Learned AAG submits the respondent was removed from service pursuant to rule 9 of the Rules.

2. The learned counsel for the respondent submits that the word *may* has been used in rule 9 of the Rules. We enquired from learned counsel for the respondent to show us if the respondent had advanced any reason to mitigate the stipulated penalty (of removal from service) and which had persuaded the Khyber Pakhtunkhwa Service Tribunal (**'the Tribunal'**) to convert the penalty of removal from service to one of compulsory retirement. In response, the learned counsel referred to paragraph 6 of the appeal which is in respect of something else. The impugned judgment also did not give reasons for reducing the stipulated penalty. On the contrary the Tribunal had held that *'the appellant [respondent herein] has not categorically denied his absence for sometime, therefore, we would like to modify the impugned orders and removal from service into his compulsory retirement'*. We fail to understand how on the basis of an admission rule 9 of the Rules was disregarded, and all the more so when nothing was said in the respondent's appeal to justify his very long absence from duty.

3. Undoubtedly, the Tribunal is vested with jurisdiction to pass a lesser punishment than the one prescribed in rule 9 but it must do so with some justifiable reason. In the instant case there was no reason let alone a justifiable reason. The Tribunal acted contrary to the law and the order of the Tribunal is not sustainable, and comes within the purview of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973 as it involves a substantial question of law of public importance. Therefore, this petition is converted into an appeal and allowed by setting aside the impugned judgment, resultantly the respondent stands removed from service.

Sd/-
Sd/-
Sd/-

Islamabad
5 December 2023.
(Umair)

Umair
11/12/23

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad