

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 459/2022

BEFORE: SALAH-UD-DIN KHAN --- MEMBER (J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Mr. Naeem Said, Ex-PST (BPS-12), GPS Shaloon, District
Torghar..... (Appellant)

VERSUS

1. The Secretary, Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (M), District Torghar
..... (Respondents)

Present:

MIR ZAMAN,
Advocate,

For Appellant.

MR. MUHAMMAD JAN,
District Attorney

For respondents

Date of Institution ... 16.03.2022
Date of hearing ... 25.10.2023
Date of Decision ... 25.10.2023

JUDGMENT.

MUHAMMAD 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 this appeal the impugned order dated
16.04.2015 communicated to the appellant on 10.12.2021 may
very kindly be set aside and the appellant be reinstated into*



service with all back benefits. Any other relief which this august Tribunal deems fit that may also be awarded in favor of the appellant.”

02. Brief facts of the case are that the appellant was appointed as Primary School Teacher in the respondent department on 22.02.2006 and was posted at GPS Sural, Torghar through corrigendum dated 04.03.2006. The appellant applied for Ex-Pakistan leave for the period of two years which was sanctioned w.e.f 10.08.2012 to 31.08.2014 vide order dated 26.12.2012. After completion of the leave period, the appellant re-joined his duty at GPS Shaloon Basikhail vide order dated 09.09.2014. The appellant time and again requested for release of his salary but instead of releasing salary, he was verbally informed that he has been terminated from service. Feeling aggrieved, the appellant preferred departmental appeal to respondent No. 2 which was not responded. Thereafter, the appellant preferred service appeal No. 873/2019 before this Tribunal; that during the pendency of the above mentioned service appeal, respondent department submitted their reply/comments alongwith the impugned order of removal from service dated 16.04.2015 which was communicated to the appellant on 10.12.2021. After receiving the impugned order dated 16.04.2015, the appellant withdrew his earlier service appeal with the permission to file fresh appeal against the impugned order dated 16.04.2015 which was accepted vide order dated 10.12.2021. Feeling aggrieved from the impugned order dated 16.04.2015, the appellant filed departmental

appeal on 11.12.2021 which was not responded, hence preferred the instant service appeal on 16.03.2022.

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 and learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellants contended that the impugned order dated 16.04.2015 is against the law, facts, norms of natural justice, hence not tenable and liable to be set aside; that no absence notice has been served upon the appellant before issuing the impugned order; that no publication whatsoever has been published by the respondents before passing the impugned order dated 16.04.2015 which is mandatory as per Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011; that no chance of personal hearing/defense has been provided to the appellant; that the appellant has not been treated in accordance with law and rules and as such violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan; that the impugned order dated 16.04.2015 has been issued by the respondent in violation of the principle of natural justice. Learned counsel for the appellant relied on 2008 SCMR 214, 2009 PLC (C.S) 634, 2017 SCMR 1880, 2021 PLC (C.S) 683 & PLJ 2016 Tr.C. (Services) 335.

05. Learned District Attorney controverted the plea and stance taken by the learned counsel for appellant and contended that after expiry


of the Ex-Pakistan leave, he was posted as PTC at GPS Shaloom Basikhail but as per report of Sub Divisional Education Officer, he did not submit his arrival report and remained absent from duty; that the major penalty of removal from service has been imposed upon the appellant, as he has been willfully absent from duty since 01.09.2014 without any application/prior permission or leave sanctioned after expiry of two years Ex-Pakistan leave without pay w.e.f. 01.8.2012 to 31.08.2014. He further contended that removal order was passed on 16.04.2015 and the appellant filed departmental appeal on 03.08.2018 which was barred by time; that final show cause notice was issued regarding his absenteeism through daily "Mashriq" Peshawar dated 05.03.2015 and 13.03.2015 for the purpose to resume his duty but he turned deaf ear hence all the proceedings against him were conducted within legal sphere.


06. Scrutiny of the case reveals that the appellant availed two years Ex-Pakistan leave without pay w.e.f. 01.08.2012 to 31.08.2014. He submitted his arrival after availing the said leave and was posted at Government Primary School Shaloom Basikhail vide order dated 09.09.2014 but he did not join/perform duty at the said School and remained absent. His absence report was submitted by the Sub Divisional Education Officer to the competent authority (District Education Officer) Male, Torghar. The competent authority proceeded against the appellant on account of his willful absence under Rule-9 of the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011. A Show Cause Notice dated 22.01.2015 was issued to him on his

available address i.e. GPS Shaloon Basikhail where he was posted. Thereafter absence notice was published twice in daily "Mashriq" dated 05.03.2015 and 13.03.2015. As the appellant did not respond to the Show Cause Notice and absence notice published in the newspaper, therefore, he was proceeded against and major penalty of removal from service was imposed upon him vide impugned order dated 16.04.2015. The stance of the appellant that he performed duty in the GPS Shaloon Basikhail and he did not receive any Show Cause Notice and remained unaware of publication of his absence notice are not tenable given the fact that the Show Cause Notice was issued at his available address GPS Shaloon Basikhail where he claims to have been performing his duties. Moreover, the respondents have placed entire record of attendance register of the said School where no presence/attendance of the appellant is available even for a single day.

07. In view of the above discussion we do not find the order impugned by the appellant dated 16.04.2015 repugnant to any provision of law and rules, therefore, the appeal in hand stands dismissed. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 25th day of October, 2023.*


(SALAH-UD-DIN)
MEMBER (J)


(MUHAMMAD AKBAR KHAN)
MEMBER (E)

ORDER

25.10.2023

01 Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today placed separately placed on file consisting of (05) pages, we do not find the order impugned by the appellant dated 16.04.2015 repugnant to any provision of law and rules, therefore, the appeal in hand stands dismissed. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 25th day of October, 2023.*



(SALAH-UD-DIN)
MEMBER (J)



(MUHAMMAD AKBAR KHAN)
MEMBER (E)