

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**CAMP COURT SWAT**

Service Appeal No. 523/2023

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

Najmul Huda D/o Said Farosh Ex-SST GGHS Shadam Buner, R/o Village Nawagai, Tehsil Mandanr District Buner.....(*Appellant*)

**VERSUS**

1. District Education Officer (F) Buner.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
4. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa at Peshawar.....(*Respondents*)

**Present:-**

MUHSTAQ AHMAD KHAN ALIZAI,  
Advocate --- For Appellant

MUHAMMAD JAN,  
District Attorney --- For respondents.

Date of Institution.....03.03.2023  
Date of Hearing..... 07.12.2023  
Date of Decision..... 07.12.2023

**JUDGMENT.**

**MUHAMMAD AKBAR KHAN, MEMBER(E):-** Brief facts of the case are that, the appellant joined respondent department in the year 1996 and was promoted to the post of SST on 01.11.2014; that on February, 2022 the appellant faced some domestic issue due to which she was seeking early retirement but the office of respondent No. 1 verbally informed that she had a lot of leave at her credit, therefore, appellant filed application for leave on

02.03.2022 before respondent No. 1; that the appellant was never informed that her application for leave was either rejected or not entertained; that in October, 2022 the appellant wanted to join her duty but she came to know that she had been removed from service. Feeling aggrieved from the impugned order dated 13.10.2022, the appellant filed departmental appeal before the respondent No. 3. The appellant was called for personal hearing but she was not heard on the date fixed and was adjourned to 20.12.2022. That on the said date the appellant was heard in person by the appellate authority but no order was passed on the appeal of the appellant within the statutory period, hence preferred the instant service appeal.


02. 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.

03. Learned counsel for the appellant contended that the impugned order dated 13.10.2022 is against the law, rules and norms of natural justice; that the appellant had performed her duties for more than 25 years; that the appellant has not been treated in accordance with law and rules and as such respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan. Learned counsel for the appellant further contended that proper charge sheet/statement of allegations was not issued to the appellant. No Show Cause Notice was issued to the appellant and no chance of personal hearing was provided to the appellant. She has, therefore, been condemned unheard. He submitted that no regular inquiry has been conducted in the

matter which is mandatory obligation on the part of competent authority. That the procedures contained in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 have not been followed by the respondents which is contrary to the law on the subject hence liable to be set aside. Learned counsel for the appellant relied on 2006 PLC (C.S) 953, 2008 PLC (C.S) 1055, 2008 SCMR 214, PLJ 2009 SC 1013, PLJ 2016 Tr.C. (Services) 335, 2007 SCMR 152, 2008 PLC (C.S.) 77, 2009 SCMR 1197 & 2011 PLC (C.S.) 808.

04. Learned District Attorney for the respondents controverted the assertions made in the service appeal as well as arguments of the learned counsel for appellant and contended that the appellant was treated in accordance with law and rules; that the appellant absented herself from lawful duty, therefore, a first notice was issued to the appellant on 11.05.2022 but the appellant did not reply to the said notice and remained absent from duty while another notice was issued to his home address on 13.06.2022 but again the appellant did not reply to the notice. That two notices were published in daily Urdu Newspaper "Mashriq" dated 15.08.2022 and Daily "Azadi" Swat dated 17.08.2022 to resume duty but the appellant failed to resume her duty. He further contended that the appellant never performed her duty and remained absent from duty as mentioned in the impugned order. Since all the codal formalities were fulfilled before passing the impugned order, the appeal in hand may therefore, be dismissed, he concluded.

05. Perusal of record and contention of the appellant during course of arguments reveal that the appellant faced compelling personal reasons hindering her performance of duty. She was living in such a situation that compelled her to opt for getting early retirement as she had completed 25 years of Government Service. On the advice of her well wishers in her parent department she applied for two years earned leave with effect from 02.03.2022 to 01.03.2024 which was forwarded by the Principal to DEO (Female) District Buner. However, the fate of the application for leave is not forthcoming on record as no intimation regarding its rejection was conveyed to the Principal of the school where the appellant posted. Consequently disciplinary proceedings were initiated against the appellant for her absence and after observing codal formalities she was removed from service vide impugned order dated 13.10.2022. The appellant preferred departmental appeal dated 04.11.2022 and she was provided opportunity of personal hearing by the appellate authority on 20.12.2022 but no order by the appellate authority was passed on the departmental appeal of the appellant.

 We observe that the appellant served the respondent department for 25 years and 7 months with full devotion. We have gone through her service record which speaks unblemished service on her part. The actual period of absence of the appellant comes to 8 months and we feel that the imposition of major penalty of removal from service does not correspond to the 8 months absence. She applied for leave and the reasons were in the knowledge of her immediate controlling officers. We also observe that leave sanctioning authority in her case was Director Elementary & Secondary Education (respondent No. 2) to whom the application was required to be submitted for


consideration but respondent No. 1 never submitted the matter rather communicated/reported absence of the appellant from duty which is not a just act on part of the respondent. Nowhere in the notices issued and published it is mentioned that she applied for leave which was regretted and she proceeded on leave without approval of the same. She is rather shown as willfully absent which speaks malafide on part of her immediate superiors i.e. Principal of the School and DEO (Female) Buner (respondent No. 1). In the aforementioned circumstances we believe that the appellant who had a long unblemished service of about 26 years had by force of her domestic circumstances was unable to perform duty and had applied for leave which was not duly processed.

06. In view of foregoing findings we accept the appeal in hand by setting aside the impugned order dated 13.10.2022. The appellant is reinstated into service and her absence period from 01.03.2022 till the date of judgment shall be treated as leave without pay. Costs shall follow the event. Consign.

07. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 07<sup>th</sup> day of December, 2023.*



(Rashida Bano)  
Member (J)  
Camp Court Swat



(Muhammad Akbar Khan)  
Member (E)  
Camp Court Swat

ORDER

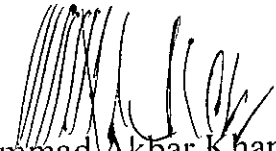
07.12.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (05) pages, we accept the appeal in hand by setting aside the impugned order dated 13.10.2022. The appellant is reinstated into service and her absence period from 01.03.2022 till the date of judgment shall be treated as leave without pay. Costs shall follow the event. Consign.

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