

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1203/2022

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

Kachkool Khan Ex-Driver (BPS-06) of Welfare Population Department
Khyber Pakhtunkhwa District Peshawar.....(*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary Social Population Welfare Department Khyber Pakhtunkhwa Peshawar.
3. District Population Welfare Officer Khyber Pakhtunkhwa Peshawar.
.....(*Respondents*)


Present:-

HABIB ULLAH MOHMAND,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....02.08.2022
Date of Hearing..... 16.11.2023
Date of Decision..... 16.11.2023

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 service appeal, the impugned order dated 29.03.2022 i.e. removal from service may kindly be declare as illegal against law against norms of justice and also be set aside and the appellant may graciously be reinstated in

the parent department alongwith with all back benefits wages etc, for sake of justice and for which the appellant is eligible and entitled under the law.”

02. Brief facts of the case are that the appellant was initially appointed as Driver (BPS-06) in EX-FATA in the year 2008; that after promulgation of 25th Constitutional amendment the services of the appellant were regularized. The appellant submitted application for grant of leave on 14.12.2021 with effect from 20.12.2021 to 20.02.2022 which was turned down by the respondent. He was removed from service on the allegation of absence from duty w.e.f 27.01.2022 vide impugned order dated 29.03.2022. Feeling aggrieved from the impugned order dated 29.03.2022, the appellant filed departmental appeal on 04.04.2022 which was not responded, hence preferred the instant service appeal on 02.08.2022.

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

04. Learned counsel for the appellant contended that the impugned order dated 29.03.2022 passed by the respondents is against the law, facts norms of natural justice, hence not tenable, therefore liable to be set aside; that the appellant has not been treated in accordance with law and impugned order passed by the respondents is without authority, without jurisdiction and coram-non-judice. 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. He 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. In the last, learned counsel for the appellant prayed that the impugned order of "removal from service" is unlawful, illegal, void ab-initio and not sustainable in the eye of law.

05. On the other hand, learned District Attorney contended that the impugned order had been passed after completion of all the codal formalities, hence the same is liable to be upheld; that after completion of all the codal formalities mentioned in rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the major penalty of removal from service has been imposed upon the appellant, as he remained willfully absent from his lawful duty w.e.f 27.01.2022 without any application/prior permission of leave; that a proper notice through registered AD vide letter dated 09.02.2022 was issued to the appellant, final show cause notice was issued regarding his absenteeism through daily "Nai Baat" dated 06.03.2022 and daily "Mashriq" Peshawar dated 08.03.2022 to resume his duty but he turned deaf ear hence all the proceedings against him were conducted within legal sphere. Therefore, he requested for dismissal of the instant service appeal.

06. Perusal of record reveal that the appellant was basically an employee of the defunct FATA Developmental Authority. He was adjusted in the respondent department after merger of FATA with the Khyber Pakhtunkhwa as a result of 25th Constitutional Amendment. The appellant submitted

application for two months long leave on 14.12.2021 (from 20.12.2021 to 20.02.2022). The application of leave was regretted by the competent authority and he was duly informed accordingly. The appellant however, did not pay heed to non-acceptance of his leave application and remained absent from duty. He was ordered in writing to resume duty and explain reason for absence. Upon non receipt of any response from the appellant the respondent No. 3 in his capacity as competent authority initiated disciplinary proceedings under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 which stipulates as under;

Procedure in case of willful absence.—Notwithstanding anything to the contrary contained in these rules, in case of willful 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.

07. Scrutiny of record reveals that the respondents have completely observed the procedure as stipulated in Rule-9 quoted above. The appellant was given ample opportunity to resume duty. He was issued notice through his given home address. Notices were published in two leading newspapers. The appellant did not respond at any stage. A civil servant, under the law, cannot claim leave as a right. Moreover, during course of the arguments the

appellant did not advance any cogent and justifiable reasons for his absence.

08. We do not find any merit to intervene in the matter and the instant appeal, therefore, stands dismissed being devoid of merit. Costs shall follow the event. Consign.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 16th day of November, 2023.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)


ORDER

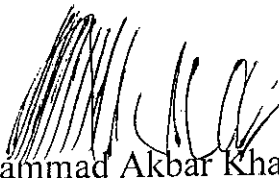
16.11.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan,

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 do not find any merit to intervene in the matter and the instant appeal, therefore, stands dismissed being devoid of merit. Costs shall follow the event. Consign.

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(Rashida Bano)
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