

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 998/17

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Aman Ullah, Ward Orderly, Khyber Teaching Hospital Peshawar.
..... (Appellant)

Versus

1. Hospital Director, Khyber Teaching Hospital, Peshawar.
 2. Medical Superintendent, Khyber Teaching Hospital, Peshawar.
 3. Director Finance, Khyber Teaching Hospital, Peshawar.
 4. Director General Health, KPK, Peshawar.
 5. Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
-(Respondents)

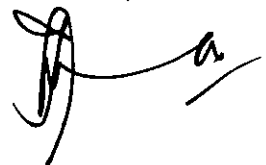
Arbab Saiful Kamal, ... For appellant

Mr. Asif Masood Ali Shah, ... For respondents
Deputy District Attorney

Date of Institution..... 23.08.2017
Date of Hearing..... 20.12.2023
Date of Decision..... 20.12.2023

JUDGEMENT

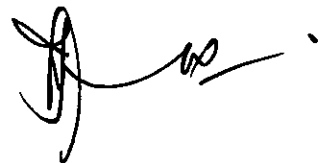
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 08.06.2017 whereby respondent No. 1 rejected the representation dated 25.04.2017 of the appellant for release of his monthly salaries alongwith all services benefits with effect from 08.05.2003 till 03.12.2013 i.e date of reinstatement of the appellant. It has been prayed that on acceptance of the appeal, the impugned order dated 08.06.2017 might be set aside and the appellant be allowed monthly salaries



w.e.f. 08.05.2003 till 03.12.2013 i.e the date of his reinstatement with all service benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was working as Ward Orderly in Khyber Teaching Hospital, Peshawar since 1988. He was suspended by respondent No. 2 vide order dated 08.05.2003 on account of involvement in criminal case. He was falsely implicated and was later on acquitted from the case by the competent court of law vide order/judgment dated 20.06.2012. After acquittal, the appellant was reinstated into his service by respondent No.2 vide order dated 03.12.2013 but no order regarding back benefits i.e. salaries, seniority, increments etc was made, which badly affected his legitimate rights. He preferred representation dated 19.12.2013 for allowing back benefits/salaries but in-spite of direction of the hon'ble Peshawar High Court for deciding the application according to law and rules, the same was not decided. The appellant pursued the matter by moving applications dated 25.02.2014 and 25.04.2017 for allowing the back benefits/salaries but the respondents turned a deaf ear towards his grievance. Representation dated 25.04.2017 before respondent No.1 was rejected on 08.06.2017, copy of which was received by the appellant from the office of respondent No.1 on 25.07.2017; hence, the instant service appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.



4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant was falsely implicated in a criminal case and was later acquitted by the court of law. He further argued that from the date of FIR till acquittal of the appellant, he remained behind the bar. Learned counsel contended that under the rules, the appellant had the legitimate right to receive his salaries during the period of his suspension and that basic rights of the appellant were guaranteed by the Constitution of Pakistan but the same had been denied to him. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the impugned order was issued on 08.06.2017 whereas the instant appeal had been filed on 22.08.2017 which was time barred. He argued that the appellant was a habitual offender and absentee. He further argued that the Hon'ble Peshawar High Court directed to consider the case of the appellant for back benefits according to law and rules and hence his case was considered by the Board of Governors of the institution, but being an autonomous body, they had not adopted the Fundamental Rules of the government, therefore, he was not allowed the salary and other benefits of the period he remained under suspension. He requested that the appeal might be dismissed.

6. From the arguments and record, presented before us, it transpires that the appellant, while serving as Ward Orderly in the Khyber Teaching Hospital, Peshawar was involved in a criminal case vide FIR dated 24.03.2003. He was placed under suspension vide an office order dated



08.05.2003 issued by the Medical Superintendent of the hospital. The appellant remained behind the bar and was later on acquitted by the honorable Lahore High Court vide its judgment dated 20.06.2012. Through an office order dated 03.12.2013 of the Medical Superintendent, Khyber Teaching Hospital, Peshawar, he was reinstated in service, with immediate effect but the back benefit of service were not allowed to him, against which he preferred a writ petition before the honorable Peshawar High Court, which was decided vide order dated 11.02.2014 on the confirmation by the learned counsel for the respondents that the application preferred by the appellant would be decided according to the law and rules. Record produced by the appellant shows that through a letter dated 08.06.2017 of the Hospital Director, Khyber Teaching Hospital, request of the appellant was regretted on the ground that by that time the KTH has become an autonomous institution and hence any opinion of the Law Department that the appellant was entitled to back benefits was not binding on them. Moreover, according to the same letter the institution had not adopted the Fundamentals Rules of the government.


7. There is no dispute on the fact that the appellant is a civil servant and the same has been admitted by the Director General Health Services, Khyber Pakhtunkhwa also in his letter dated 27.03.2015 addressed to the Secretary to Government of Khyber Pakhtunkhwa, Health Department. It is strange to note that the Hospital Director and Board of Governors of the Khyber Teaching Hospital did not realize this fact and straightaway refused the back benefits to the appellant on the ground that they are not bound to accept the opinion of Law Department which indirectly meant that they



rejected the opinion given by the Provincial Government. They should have kept in view the status of the appellant as civil servant, on whom Fundamental Rule 53 (b) was applicable under which he was entitled to full amount of his salary and all other benefits and facilities provided to him under the terms of his service, during the period of suspension . There is no question whether the institution and its board has adopted the Fundamental Rules or not; they are meant for civil servants and the appellant, being a civil servant, has to be treated under these rules.

8. In view of above, the appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 20th day of December, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

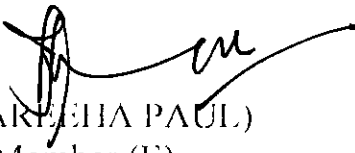
Fazle Subhan, P.S


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20th Dec. 2023 01. Arbab Saiful Kamal, Advocate for the appellant present.
Mr. Asif Masood Ali Shah, Deputy District Attorney for the
respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the
appeal in hand is allowed as prayed for. Cost shall follow the
events. Consign. .

03. *Pronounced in open court in Peshawar and given under
our hands and seal of the Tribunal on this 20th day of
December, 2023.*


(FARKHAH PAUL)
Member (I)


(RASHIDA BANO)
Member (J)

Fazal Subhan PS