

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 7128/2021

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Mst. Safia Sultana Ex-PSHT D/O Akbar Saeed GGPS, Amir Wali,  
District Lakki Marwat, presently R/O Sarga Khero-khel, Lakki  
Marwat. .... (Appellant)

Versus

1. The Secretary to Government of Khyber Pakhtunkhwa, E&SE  
Department, Peshawar.
2. The Director (E&SE) Department, Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer (Female), Lakki Marwat.  
..... (Respondents)

Syed Nauman Ali Bukhari,  
Advocate

... For appellant

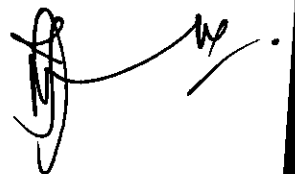
Mr. Asad Ali Khan,  
Assistant Advocate General

... For respondents

Date of Institution..... 27.07.2021  
Date of Hearing..... 04.12.2023  
Date of Decision... 04.12.2023

**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 10.12.2019, whereby the appellant was removed from service and against the rejection order communicated to the appellant through RTI on 01.07.2021, whereby her departmental appeal was rejected. It has been prayed that on acceptance of the appeal, the impugned order dated 10.12.2019 and 01.07.2021 might be set aside and the appellant might be reinstated in to service with all back



and consequential benefits, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the Education Department as PST vide order dated 24.07.2004 and was posted at GGPS, Khalil Jabo-Khel in District Lakki Marwat. She was transferred to GGPS Amir Wali. She fell ill and applied for medical leave on 17.10.2019. She was transferred to GGPS Naqibullah, Tajori Lakki Marwat in violation of ban imposed on transfers. She filed application on 04.11.2019 against the transfer order but was marked absent from duties at GGPS Naqibullah Tajori, District Lakki Marwat. Show cause notice was issued to her which was not properly communicated and she received the same on her own which was replied well in time on 13.11.2019. She was proceeded ex-parte without considering her reply to the show cause notice and removed from service on the allegation of willful absence without following proper procedure provided under Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. Feeling aggrieved, she filed departmental appeal on 07.01.2020, which was forwarded to DEO (F) Lakki Marwat by SDEO (F) Lakki Marwat with certain comments vide letter dated 30.01.2020 in which SDEO concluded that the penalty of removal imposed upon the appellant was harsh and not commensurate with her guilt. When no decision was received on the department appeal, she filed reminder on 29.01.2021 for disposal of appeal and again filed application on 04.05.2021 on which the departmental appeal of the appellant was rejected vide order dated 01.07.2021 without showing any

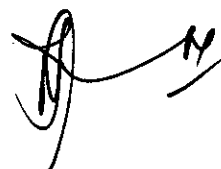


reason in violation of Section 24-A of the General Clauses Act; hence the instant service appeal.

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 Assistant Advocate General 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 orders dated 10.12.2019 and 01.07.2021 were against the law, facts, norms of justice and material on record, therefore, not tenable in the eyes of law and liable to be set aside. He further argued that in the show cause notice the words "habitual absentee" were used for which proper procedure was provided in Rule 5 read with rule 7 of the E&D Rules, which were totally ignored. No proper regular inquiry was conducted and the appellant was not associated with any inquiry proceedings, neither statement of witnesses were recorded in her presence nor she was provided opportunity to cross-examine the witnesses. The learned counsel argued that she was also not provided the inquiry report as per Rule 14 (c) of the E&D Rules. He further argued that no opportunity of personal hearing was provided to her and the impugned order was based on willful absence but the procedure of Rules-9 of E&D Rules was not followed. He requested that the appeal might be accepted as prayed for.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was habitual absentee. Several complaints were made against her and finally after



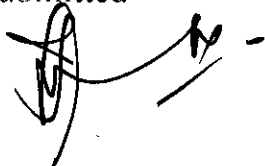
receiving written complaint from SDEO (F), show cause notice was issued to her but she did not bother to submit reply or appear personally to satisfy the competent authority. He further argued that after findings of disciplinary committee dated 09.12.2019, removal order of the appellant was issued by the competent authority. He further argued that the appellant was not given any leave nor she was eligible as no medical documents were annexed with the appeal. She was not present on her duty, therefore, her transfer order was made but she never joined her duty and was willfully absent. He further argued that the competent authority had rightly removed her from service due to non-performance of duty and misconduct. Moreover, the SDEO (F) Circle was not competent to receive the departmental appeal nor she could give her opinion. He informed that disciplinary proceedings were also initiated against the concerned SDEO(F) Circle for undue and biased conclusion to benefit the appellant in illegal manner. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant was appointed in the respondent department in 2004 as Primary School Teacher. While serving at Khalil Jabokhel, Lakki Marwat, she was transferred to Amir Wali, Lakki Marwat on 17.10.2019. On the very same date, she submitted an application for three months leave from 18.10.2019 to 18.01.2020 on medical ground. Record is silent whether the leave was sanctioned or not, but she was transferred from Amir Wali to Naqibullah Tajori, Lakki Marwat. An application dated 04.11.2019 is available on record through which she requested the District Education Officer (Female) Lakki Marwat to allow her to stay at Amir Wali and



further that she was in possession of certain funds which she had to spend. That application had been signed by the SDEO (F) Lakki Marwat on 11.11.2019 but it appear that no action was taken on it. A document dated 07.11.2019, provided by the respondents in their reply, shows that explanation was called because of absence from duty of various PSTs, including the appellant, and in its remarks column it was stated that she was absent from both the schools, Amir Wali as well as Naqibullah Tajori. On 09.11.2019, a show cause notice was issued, which mentioned both willful and habitual absence, with the tentative penalty of removal from service. Record provided by the respondents present minutes of meeting of Departmental Disciplinary Committee chaired by the DEO (F) Lakki Marwat according to which show cause notice was issued to the appellant, which was not responded and hence the DDC agreed to penalize her and on 10.12.2019, the impugned order of removal from service was issued.

7. First of all, it has been noted that there is a Departmental Disciplinary Committee which is looking into the matter of absence of staff and recommending for penalty. Minutes of that committee indicate that opportunity of personal hearing was provided after issuance of show cause notice alongwith statement of allegations, but the record is silent on personal hearing. Terms of reference of the Committee are also not available to ascertain who constituted it and what is the task assigned to them. Civil Servants are to be dealt with under Efficiency & Discipline Rules and those rules do not provide for such a departmental disciplinary committee. It was further noted that the SDEO (F) Lakki Martwat was a member of Departmental Disciplinary Committee and the appellant had submitted



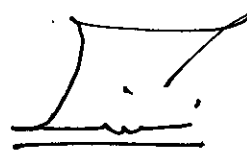
various applications through her to the DEO (F), to which no heed was paid. The DEO (F) never bothered to respond to any of them, be it in a negative mode.

8. Another question raised during the arguments was regarding the absence, whether it was willful or habitual? The learned AAG as well as the departmental representative could not clarify the same. They were further enquired about the dates on which the appellant was found absent and why they were not mentioned in the show cause notice or the order of removal from service, but unfortunately they could not respond.

9. From the above discussion, it is clear that the department took action in an extremely arbitrary manner. They failed to follow the procedure as they were not clear themselves whether they were taking action for habitual absence or willful absence and for what period or dates of absence the action was being taken. The service appeal is, therefore allowed as prayed for, by setting aside the impugned orders and reinstating the appellant with all back benefits. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 04<sup>th</sup> day of December, 2023.*

  
(FARDEHA PAUL)  
Member (E)


  
(SALAH-UD-DIN)  
Member (J)


S.A 7128/2021

04<sup>th</sup> Dec. 2023 01. Syed Nauman Ali Bukhari, Advocate for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand is allowed as prayed for, by setting aside the impugned orders and reinstating the appellant with all back benefits. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 04<sup>th</sup> day of December, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)

\*Fazle Subhan, P.S\*