

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT ABBOTTABAD.

Service Appeal No. 566/2023

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

Mst. Naseem Akhtar wife of Akhtar Nawaz (Ex-PHST) Resident of
 Bagh Near Sub Jail, Tehsil and District Battagram. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) ,Battagram. (Respondents)

Mr. Muhammad Hamayun Khan,
 Advocate ... For appellant

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

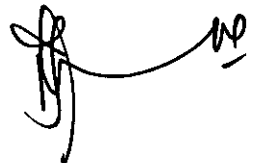
Date of Institution..... 14.03.2023
 Date of Hearing..... 13.12.2023
 Date of Decision..... 13.12.2023

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 05.12.2022 passed by respondent No. 3, whereby back benefits were refused to the appellant w.e.f. 01.12.2015 till 26.06.2019. It has been prayed that on acceptance of the instant service appeal, the impugned order dated 05.12.2022 might be set aside and the appellant be given back benefits w.e.f. 01.12.2015 to 26.06.2019, 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 was initially appointed as PTC on 11.01.1995. On 01.12.2015, the DEO (F) Battagram, as competent authority, issued the order of removal from service of the appellant on 01.12.2015. After exhausting departmental remedy, the appellant filed service appeal No. 378/2016, before the Service Tribunal which was accepted vide judgment dated 20.12.2018, the impugned order dated 01.12.2015 was set aside and the appellant was reinstated in service with the direction to the competent authority to conduct denovo inquiry strictly in accordance with law and rules within a period of ninety days from the date of receipt of the judgment. The appellant was reinstated into service and posted at the same school i.e. GGPS Joz from the date of her removal from service. In the light of the judgment, respondent No. 3 initiated denovo proceedings against the appellant which were not concluded within the stipulated period of ninety days. In the meanwhile, she submitted an application for retirement on medical grounds. On 17.07.2020, respondent No. 3 issued premature retirement order of the appellant and she was retired from service w.e.f 01.08.2020. On 22.12.2021, inquiry committee submitted its report on the basis of which back benefits were refused to the appellant, after two years of her retirement. Feeling aggrieved, she preferred departmental appeal on 08.12.2022, before respondent No. 2 but no order was passed on it, 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 whole proceedings were against the direction issued by the Service Tribunal in its judgment dated 20.12.2018, wherein the competent authority was directed to conduct and conclude the departmental proceedings within 90 days but the respondents issued the impugned order after four years in clear violation of law and directions of the Tribunal. He further argued that the competent authority issued the impugned order in respect of back benefits of the appellant in a cursory manner and it was liable to be set aside. 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 in compliance of the judgment of the Service Tribunal, respondent No. 3 constituted the de-novo inquiry committee several times during 2019, but it was the pandemic era of Covid-19 and due to closure of schools and offices, those inquiries could not be completed. He further argued that the denovo enquiry was conducted and it was recommended that she did not deserve the claimed back benefits. He requested that the appeal might be dismissed.

6. Arguments and record presented before us shows that the appellant, while serving as Primary School Teacher, was proceeded against departmentally in 2015 and removed from service. After doing the needful at the departmental level, she preferred a service appeal in 2016 which was




accepted by this Tribunal and vide its judgment dated 20.12.2018, respondents were directed to conduct denovo inquiry strictly in accordance with law and rules within a period of ninety days of the receipt of the judgment. The issue of back benefits was made subject to the outcome of the denovo inquiry. In the light of that judgment, the appellant was reinstated in service vide an order dated 26.06.2019. After that the respondents were bound to conduct denovo inquiry within ninety days, but the record presented before us shows that the inquiry proceedings were initiated vide a notification dated 12.06.2019, according to which a committee was constituted for the said purpose. Another notification was issued on 21.08.2019, constituting a committee with a different composition for the same purpose, i.e conducting denovo inquiry. A notification dated 29.08.2019 was issued, available on record, for the denovo inquiry of the appellant, with another composition of the inquiry committee. Another document presented before us shows that one Saira Tabassum, being the inquiry officer, inquiring into the matter of the appellant, submitted her inquiry report bearing diary No. 240 dated 10.06.2020. Finally, another inquiry report dated 22.12.2021 was presented before us, which according to the learned Deputy District Attorney, was the final report based on which impugned order was issued. During this entire process of appointing different inquiry officers/ committees, the appellant submitted an application for pre-mature retirement on medical grounds, which was accepted and she was retired from service with effect from 01.08.2020 vide an order dated 17.07.2020.




7. From the entire proceedings presented before us, it transpires that the department took three years to implement the judgment of this Tribunal, where it was required to complete the process within ninety days of the receipt of the judgment. It further shows that while conducting the denovo inquiry, the procedure was not fully adopted i.e no charge sheet or statement of allegations was issued to the appellant, neither was she associated with the Inquiry nor was she given any opportunity of personal hearing. It was further noted that when the competent authority retired the appellant during the course of the denovo inquiry, how could they continue the inquiry under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 when the appellant was no more in government service? When asked to clarify the point, the learned Deputy District Attorney frankly admitted that the competent authority could not do so under the law and rules. This clearly shows that the entire procedure had been conducted in a cursory manner without giving any heed to the law and rules.

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

9. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal this 13th of December, 2023.*


(FARIEHA PAUL)
Member (E)
Camp Court, Abbottabad



(SALAH-UD-DIN)
Member (J)
Camp Court Abbottabad


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13th Dec. 2023 01. Mr. Muhammad Hamayun Khan, 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 is allowed as prayed for. Cost shall follow the event. Consign.

03. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 13th day of December, 2023.*


(FAREEHA PAUL)
Member (E)
Camp Court, Abbottabad


(SALAH-UD-DIN)
Member (J)
Camp Court, Abbottabad

Fazle Subhan, P.S