

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**  
**AT CAMP COURT ABBOTTABAD.**

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

*Service Appeal No. 1088/2022*

Date of presentation of Appeal.....04.07.2022  
Date of Hearing.....22.01.2024  
Date of Decision.....22.01.2024

Sajjad Ahmad, Son of Dilawar, Ex-Warder (BPS-07) attached to Central Prison Haripur..... (Appellant)

**VERSUS**

1. The Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent, Headquarters Prison, Peshawar.
3. The Superintendent, Central Prison, Haripur ..... (Respondents)

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MUHAMMAD ARSHAD KHAN TANOLI,  
Advocate

--- For appellant.

ASIF MASOOD ALI SHAH,  
Deputy District Attorney

--- For respondents.

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):-** The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;


*"On acceptance of the instant service appeal, the impugned orders bearing No. 1763 dated 29.03.2022 and No. 15892-95 dated 18.05.2022 passed by respondents may kindly be set aside declaring them as illegal, unlawful, without lawful authority, without jurisdiction and of having no legal effect. Consequently, appellant be reinstated into service with all back benefits."*



02. Brief facts of the case are that the appellant was appointed as Warder in the Khyber Pakhtunkhwa Prison Department vide appointment order dated 03.10.2019. The appellant alongwith 13 other employees were issued show cause notice on the allegation of absent from duty w.e.f 14.02.2022 to 20.02.2011 (07 days) without permission of competent authority and he was removed from service vide impugned order dated 29.03.2022. Feeling aggrieved from the impugned order dated 29.03.2022, the appellant filed departmental appeal which was rejected vide order dated 18.05.2022, hence preferred the instant service appeal on 04.07.2022.

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 and learned Deputy 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 orders are patently illegal, void, unlawful, without lawful authority, without jurisdiction and of have no legal effect; that before awarding major punishment of removal from service the mandatory requirement of Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has not been followed; 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. 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 removal from service order is unlawful, illegal void ab-initio and not sustainable in the eye of law.

05. On the other hand, learned Deputy 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 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 19.12.2021 to 05.02.2022 i.e. (58 days) without prior permission or leave from the competent authority which was unbecoming of a personnel of disciplined force. He was also provided opportunity of personal hearing but he does not bother to appear before the competent authority. Moreover, Show Cause Notice was also issued to the appellant. Since all the codal formalities were fulfilled before passing the impugned order, the appeal in hand may therefore, be dismissed, he concluded.

06. During scrutiny of record it came to surface that one Mohsin Anees, who was similarly placed employee had filed Service Appeal



bearing No. 883/2022 titled “Mohsin Anees Versus Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department Peshawar and others”, which was allowed by this Tribunal vide judgment dated 22.02.2023. Para-5, 6 & 7 of the said judgment is reproduced below:-

*A perusal of the record would show that show-cause notice dated 17.05.2021 was issued to the appellant by Superintendent Circle Headquarters Prison Haripur on the allegation that he had remained absent from duty with effect from 06.03.2021 to 04.04.2021 (29 days) without permission of the competent Authority. According to the said show-cause notice, the competent Authority had dispensed with further inquiry and had directed the appellant to submit reply within 07 days of receipt of the show-cause notice. The alleged absence of the appellant was constituting the charge of habitual absence as mentioned in clause-d of Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, however the appellant was held liable for committing grave misconduct, which is mentioned in clause-b of Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. According to the available record, the matter was then kept on back burner without any outcome. It was on 07.02.2022 that another show-cause notice was issued to the appellant showing him absent with effect from 09.12.2021 to 28.12.2021 and 01.01.2022 to 31.01.2022 (51 days) without seeking any permission of the competent Authority.*

*The available record does not show that the appellant was given any intimation by the competent Authority for personal hearing, which was allegedly scheduled on 22.03.2022. In his departmental appeal, the appellant had taken the plea that his absence from duty was on account of severe illness of his father as well as his appearance in the M.A examination. The stance so taken by the appellant in his departmental appeal, required probe through a proper inquiry, however the departmental appeal of the appellant was rejected in a cursory manner without touching the grounds so taken by the appellant in his departmental appeal. August Supreme Court of Pakistan in its judgment reported as 2004 SCMR 316 has held that in case of imposing of major penalty, the principle of natural justice requires that a regular inquiry be conducted in the matter and opportunity of personal hearing and defense be provided to the civil servant proceeded against. The*

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*impugned orders are thus not sustainable in the eye of law and are liable to be set-aside.*

*In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders. The appellant is reinstated in service and the matter is remanded back to the competent Authority for conducting of de-novo regular inquiry into the matter within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall follow the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.*

07. In view of the above judgment rendered by this Tribunal dated 22.02.2023 in *Service Appeal bearing No. 883/2022 titled "Mohsin Anees Versus Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department Peshawar and others"*, The instant appeal is allowed by setting aside the impugned orders. The appellant is reinstated in service and the matter is remanded back to the competent authority for conducting of de-novo regular inquiry by providing chance of personal hearing and defense within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

08. *Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal on this 22<sup>nd</sup> day of January, 2024.*



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



(Rashida Bano)  
Member (J)  
Camp Court Abbottabad


ORDER


22.01.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file consisting of (05) pages, the instant appeal is allowed by setting aside the impugned orders. The appellant is reinstated in service and the matter is remanded back to the competent authority for conducting of de-novo regular inquiry by providing chance of personal hearing and defense within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Costs 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 22<sup>nd</sup> day of January, 2024.*

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

  
(Rashida Bano)  
Member (J)  
Camp Court Abbottabad