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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1459/2022

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

Mst. Nabeela W/O Adalat Khan (Ex-Family Welfare Assistant) R/O
Village Jambil Kokarai, Tehsil Babozai, District, Swat.

.... (Appellant)

VERSUS

1. The Director General, Population Welfare Department Government of Khyber Pakhtunkhwa.
2. District Population Welfare Officer Saidu Sharif, Swat.
3. Government of Khyber Pakhtunkhwa through Secretary Population Welfare Department at A-Block Abdul Wali Khan Multiples Civil Secretariat, Peshawar.

.... (Respondents)

Mr. Momina Noreen
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....12.07.2023
Date of Hearing.....17.11.2023
Date of Decision.....17.11.2023

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 below:



“On acceptance of this appeal, the orders dated 24.02.2022 and 12.05.2022 may kindly be struck down and the appellant may kindly be re-instated with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Family Welfare Assistant (project post) vide order dated 31.10.2016. Later on through promulgation of Khyber Pakhtunkhwa Regularization Act, 2018, services of the appellant were regularized vide order dated 17.09.2018. She was absented from duty w.e.f 03.04.2021 to 30.04.2021 due to suffering from Covid-19. Departmental proceeding was initiated against her, which was culminated into minor punishment for stoppage of one annual increment for two years. Due to involvement of her brother-in-law in criminal case she alongwith her family moved to Karachi and was remained absent from her lawful duty. Again departmental proceedings were initiated and after fulfillment of all codal formalities she was removed from service vide order date 24.02.2022. Feeling aggrieved, she filed departmental appeal on 12.05.2022, which was not decided within statutory period of ninety days. Appellant filed instant appeal which was remitted back to the department with direction to the respondents to consider and decide the departmental representation within sixty days vide order dated 04.04.2020. On 12.05.2023 departmental representation of appellant filed, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel



for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the actions and inactions of the respondents are illegal, ultra vires, ultra shariah and against the established norms of justice, hence not tenable in the eyes of law. He further argued that impugned order is against the law and facts, therefore, liable to be set aside. He further argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973. He contended that absence of appellant not willful rather it was beyond her control, as her family were under threats of the locals of the area due to involvement of her brother-in-law in criminal case. He submitted that appellant was condemned unheard which is against the principal of '*audi alteram partem*'.

5. Learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that had been frequently remained absent from official duty as evident from her service record which reveals that number of times explanation followed by subsequent warnings and even show cause were called from her during service. She was also awarded minor penalty of stoppage of one annual increment for two years along with deduction of pay and allowances. He further contended that the incident of involvement in criminal case was took place in the month of August 2021 wherein the appellant was called upon explanation about her absence from duty vide letter date 05.10.2021. The

appellant admitted in her said reply that the situation is now normal and she will perform duties regularly. He further contended that after fulfillment of all codal formalities laid down in Rule 9 of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, she was removed from service vide order dated 24.02.2022. He submitted that instant appeal is barred by time, therefore, it might be dismissed.

6. Perusal of record reveals that appellant was serving in respondent/department as Family welfare Assistant initially as project employee whose services were regularized on 17/09/2018. That brother in law of the appellant was involved in criminal case bearing FIR No.202 registered under section 295-B PPC offence of moral turpitude registered on 17/08/2021 in Police Station Kokarai District Swat, due to public threats all family members of the appellant including her to save their lives shift to Karachi and she remain absent from duty unwillingly. Respondent/department initiated disciplinary proceedings against the appellant and appellant due to above mention reason could not appear before inquiry officer, who after *ex-parte* inquiry removed her from service vide order dated 24/02/2022. Appellant when came back and went to respondent No.2 office on 28/04/2022, she came to know about impugned order. Appellant filed departmental appeal which was not decided within statutory period. Therefore, appellant filed service appeal bearing No.1221/2022 which was remitted to respondent to decide departmental appeal within 60 days, respondent after receipt of order of this tribunal rejected her departmental appeal vide impugned order dated 12/05/2023.

7. Perusal of impugned order dated 24/02/2022 reveals that appellant was




proceeded under Rule 9 of (E&D) Rules, 2011 on the ground of willful absence from duty which read as;

“A notice was issued to her home address vide letter dated 27.01.2022 directing her to resume duty within 15 days of the receipt of the notice, in case of failure disciplinary action would be initiated against her under the rule ibid. And whereas, the official concerned did not report for duty within stipulated period and in order to proceed further under Rule 9 of the Khyber Pakhtunkhwa Efficiency & Discipline, Rule 2011, a notice was published in daily “Aaj” and “Chand” on 27.01.2022 directing her to resume her duty within 15 days of publication of the notice and intimate the cause of her absence, failing which ex-parte decision would be taken against her under the relevant law/rules.”


Record reveals that notice in accordance with Rule 9 of willful absence from duty was sent to the appellant vide No.F.NO(7)/Admn/2021-22/2901-05 dated 03/01/2022 with direction to explain her position regarding willful absence from duty within 15 days of receipt of notice otherwise she will be proceeded against under E&D Rules but she did not turn up in response of notice that's why notice of absence was published in two leading newspaper i.e. Daily Chand and Daily Aaj on 27/01/2022. Appellant contention is that due to involvement of his brother-in-law in a moral turpitude case under 295-B PPC, she along with her family shifted to Karachi due to threats to their life.

8. It is pertinent to note that accused in the criminal case was brother-in-law of the appellant nor her husband or her brother due to which she was under attack or threat by enemies or local. So reason advance for her absence to justify it does not appeal to a prudent mind.



9. As a sequel to above discussion, we dismiss the instant appeal being devoid of merits. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


Kaleemullah


(RASHIDA BANO)
Member (J)

08.09.2023

1. Junior to counsel for the appellant present. Mr. Asad Ali Khan learned Assistant Advocate General for the respondents present.

2. Written reply on behalf of respondents submitted which is placed on file. A copy of the same is handed over to junior counsel for the appellant. Adjourned. To come up for rejoinder/arguments on 17.11.2023 before D.B. P.P given to parties.


(Rashida Bano)
Member (J)


*KaleemUllah

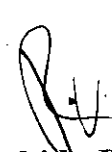
ORDER

17.11.2023 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned District Attorney alongwith Mr. Ahmad Yar Khan, Assistant Director for the respondents present.

2. Vide our detailed judgement of today placed on file, we dismiss the instant appeal being devoid of merits. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of November, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)

Kaleemullah