

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT SWAT

Service Appeal No. 369/2018

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

Muhammad Rahman S/o Saif ur Rehman R/O Village Koz Kalay, P.O
Martung, Tehsil Puran, District Shangla. (*Appellant*)

VERSUS

1. District Elementary & Secondary Education, Khyber Pakhtunkhwa,
Peshawar
2. District Education Officer (Male) District Shangla.
3. Sub-Division Education Officer (Male), Primary Education, District
Shangla.
4. District Account Officer, District Shangla.

.... (*Respondents*)

Mr. Hafiz Ashfaq Ahmad
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....13.03.2018
Date of Hearing.....08.12.2023
Date of Decision.....08.12.2023

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 the instant service appeal the orders passed by respondent No.2 dated 23.01.2014 & the order passed by respondent No.1 dated 12.02.2018 being arbitrary, illegal and based on malafide may kindly be set-aside and the appellant may kindly be order to retire from service w.e.f 02-12-2014 and till then the arrears and all



back benefits may kindly be awarded to the appellant as he applied for sanction of LPR from 03-12-2013 to 02-12-2014 which was properly endorsed by respondents. Any other remedy which is just appropriate may also be awarded though not specifically prayed for.”

2. Brief facts of the case are that appellant was appointed as Chowkidar at GPS Asharo Sar vide order dated 15.03.1998 and till 23.01.2014, was performing his duty in different schools at Shangla. That appellant was transferred to GPS Sarkob but his transfer was again cancelled and he was serving at GGPS Martung. Again vide order dated 17.08.2009 he was transferred to GGPS Sarkob and the services of the appellant were once again restored at GGPS Martung vide order dated 08.03.2010. That on 23.10.2023 the appellant submitted an application for LPR which was endorsed by the official respondents while verifying his service book up to 23.10.2023. That the appellant on the same day, submitted application for encashment of LPR which was processed by the District Officer, but on 01.11.2013, the appellant was served with a show cause notice. That the appellant submitted reply of the show cause notice but he was compulsorily retired from service vide order dated 23.01.2014. Feeling aggrieved, he filed departmental appeal, which was rejected on 15.02.2018, 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 appellant has not been treated in accordance with law and rules. He further argued that there is no



adverse entry in the service book of the appellant till submission of his application for LPR as rightly verified by respondent No.3, thus both the impugned orders are illegal against law, and liable to be set aside. He submitted that appellant duly submitted his application for encashment of LPR on 23.10.2013 and was on his duty, where baseless show cause notice was served upon the appellant which was duly replied by him. He further submitted that the appellant was condemned on mere suspicious and conjecture and the order of removal from is only based on anticipation and malafide on behalf of respondents. Lastly, he submitted that the appellant was condemned unheard, which is against the norms of natural justice, therefore, instant appeal might be accepted.

5. Conversely, learned District Attorney for the respondents has contended that the appellant has been treated in accordance with law and rules. He further contended that the appellant tried to evade the impending penalty and before the culmination of disciplinary proceedings submitted the LPR case which was duly submitted by the Sub Division Education Officer (M) (respondent No.3) to District Education Officer (M) (respondent No.2) for sanction but the enquiry process was already initiated on 26.07.2013 hence, the LPR case was stopped at the proper time of escape by the appellant. He further contended that legal procedure being adopted and adverse entries to the effect of compulsory retirement vide impugned order dated 23.01.2014 and subsequent rejection of appeal by the appellate authority vide impugned order dated 15.12.2018 have been made in the service book of the appellant.

6. Perusal of record reveals that appellant was serving in the respondent department since his appointed on 14.03.1988. Appellant was transferred from GPS Sarkob vide order dated 04.08.2009 to Martung. Appellant was



again transferred to Sarkob from Murtang vide order dated 08.03.2010 resultantly appellant assumed charge at Sarkob on 12.03.2010. Appellant on 23.10.2013 submitted application for LPR which was endorsed by official respondent after perusal of service book of the appellant which was verified upto 23.10.2013, case of the appellant was put to DEO Shangla for encashment of LPR vide endorsement No.957 dated 23.10.2013 but on 01.11.2013 appellant was served with a show notice on the allegation of misconduct with the following charges;

(A) Misconduct. You defied the transfer order and did not resume duty at proper place of your post at GPS Sarkob as follows.

(B) Absence from duty. You remained persistently absent from your duty at proper place of your posting since December 2008 till date.

(C) The SDEO(M) has recorded your LPR and sanction of retirement w.e.f 03.12.2014 but the inquiry officer Mr. Nisar Ahmad found you absent from duty during the aforementioned period and recommended you for retiring pension.

7. So appellant was charged with inefficiency, corruption, absence and misconduct. Appellant was compulsorily retired from service vide order dated 23.01.2014 by ignoring reply of appellant. Appellant contended that he was regularly performing his duties at Murtang. It is clear from record that appellant was frequently transferred and re-transfer from Sarkob to Martung and Martung to Sarkob. It is admitted situation on record that till filing of application for LPR i.e. 23.10.2013 no explanation, show cause notice and disciplinary action was initiated against the appellant by the department and his service was duly verified till 23.10.2013 by the officer concerned. Appellant was receiving his pay till 23.10.2013, if he in fact was absent then

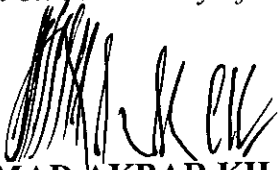
why no disciplinary action was taken against him. When appellant applied for LPR, disciplinary proceeding was initiated by issuing show cause notice on 02.11.2013. Although in the charge sheet there is reference to enquiry officer Mr, Nisar Ahmad, who found him absent but perusal of said inquiry reveals that same was fact finding inquiry and not a proper regular inquiry. Now respondent cannot take benefit from their own negligence and omission by penalizing appellant because if appellant was in fact absent from the duty then respondent are under legal obligation to initiate disciplinary proceedings against him but they failed to do so well within time and now they by awarding impugned penalty to the appellant want to cover up their negligence and fault. It is incompetency on the part of respondents who failed to dig out the real truth at proper time. In our humble when during service period he was not penalized then after applying for LPR, the time which a civil servant wants to say good bye in a very pleasant way with dignity and honor, initiation of departmental disciplinary proceedings against him is not in accordance with the principal of natural justice and humiliating. Appellant is a low paid class-iv employee who served the department since 1988 and give peak time of his life to the department. Therefore department should treat him synoptically.

8. It will be in the interest of things/justice that appellant be retired from the date for which he requested instead of his compulsory retirement with effect from 28.02.2010. Appellate authority decided/rejected departmental appeal of the appellant vide order dated 15.02.2018 on merit without raising question of limitation. Therefore, now respondent cannot agitate the question of limitation before this tribunal and stopped by their own conduct under the principal of estoppel.




9. In view of above discussion, we are unison to set aside the impugned order and appellant stand retired from service w.e.f 02.12.2014 as is requested by him vide application dated 23.10.2013. Respondents are directed to issue retirement order and prepare pension case of the appellant within thirty days of receipt of copy of this judgment. Costs shall follow the event. Consign

10. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 8th day of December, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court, Swat

*Kaleemulah


(RASHIDA BANO)
Member (J)
Camp Court, Swat

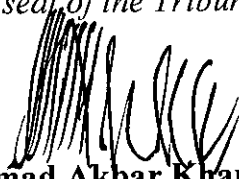
ORDER


08.12.2023

1. Appellant alongwith his counsel present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to set aside the impugned order and appellant stand retired from service w.e.f 02.12.2014 as is requested by him vide application dated 23.10.2013. Respondents are directed to issue retirement order and prepare pension case of the appellant within thirty days of receipt of copy of this judgment. Costs shall follow the event. Consign

3. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 8th day of December, 2023.*


(Muhammad Akbar Khan)
Member (E)
Camp Court, Swat


(Rashida Bano)
Member (J)
Camp Court, Swat