

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 4963/2021

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

Umar Hayat Son of Purdil Khan, PST-GPS Ghandan Miana, Education  
Department, Khyber Pakhtunkhwa.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary/Chief Minister, Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar
3. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. Assistant Director Establishment (Male), Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
5. District Education Officer (Male), Peshawar.
6. Inquiry Officer, Principal Government Higher Secondary School, Nodeh Payan, Peshawar.

.... (Respondents)

Mr. Abid Ayub  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

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Date of Institution.....12.04.2021  
Date of Hearing.....13.12.2023  
Date of Decision.....13.12.2023

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:

**“To set aside the impugned orders dated 16/11/2020  
& 16/03/2021 and grant the arrears & salaries to the**



**appellant w.e.f 12/09/2011 to 29/03/2017 and to pass orders for granting the back benefits to the appellant.”**

2. Brief facts of the instant case are that appellant was serving in the Education Department at GPS Kagawala, Peshawar up to 31.05.2004. In the meanwhile, due to enmity, he absented himself from duty. That when the circumstances favored the appellant, he appeared before the respondents and submitted application for arrival and arrears on 12.09.2011. That an inquiry was conducted and the inquiry officer favored the appellant as there was no FIR etc. against him, therefore, he was not removed nor any show cause notice was served upon him. That the Inquiry Officer recommended that the period w.e.f 31.05.2004 to 12.09.2011 might be treated as leave without pay. The said report was submitted by the Inquiry Officer on 20.09.2012 but no remarks were given on the said report and the matter was kept mum for five years. That on 29.03.2017, appellant was adjusted at GPS Kagawala Peshawar and fresh inquiry was ordered to be conducted in the appellant's case regarding the intervening period w.e.f 01.06.2004 to 16.03.2017. That inquiry was conducted and the inquiry officer recommended the period w.e.f 01.06.2004 to 11.09.2011 as leave without pay while the period w.e.f 12.09.2011 to 29.03.2017 as on duty. Upon the said recommendations the office order was notified. That the appellant moved an application for the period which was considered as on duty, but the same application was filed. Feeling aggrieved, he filed departmental appeal which was rejected, 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, learned counsel for private respondents 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 impugned order issued by the respondents is against the settled rules and also against the principal of natural justice because no opportunity of personal hearing was provided to the appellant, thus, the impugned order is not maintainable. He further contended that appellant clarified his absence through documentary evidence to enquiry officer who recommended that the impugned period shall be considered as on duty but this aspect was not taken into consideration by the respondent at the time of passing impugned order, which is not tenable in the eyes of law.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant was willfully absent from his duty and he did not perform his duty till the reinstatement so he did not entitled for the salaries of that period. He further contended that appellant himself admitted that he was absent and it is maxim that no work no pay, therefore, the competent authority rejected the appeal of the appellant.


6. Perusal of record reveals that appellant was appointed as E.T in respondent department on 07.10.1989 who was regularly performing his duties till 31.05.2004. When on 01.06.2004 blood feud enmity of his family started in which some of his family members murdered and he alongwith his other family member charged in criminal case. Appellant submitted leave application to respondent due to threat to his life for long leave but no proper order was passed upon said application. Appellant after settlement of his family enmity submitted application for joining his duties on 12.09.2011. Respondent order and initiate inquiry upon arrival of the appellant vide order



dated 28/03/2012 as during intervening period neither leave application was sanctioned nor any disciplinary action initiated against appellant. Respondent No.6 inquiry officer vide his report dated 20.09.2012 held that appellant was not involved in a criminal case and due to brutal murder of his family member he was falsely charged by their enemies and appellant is still on service as he was not removed from service. He recommended intervening period i.e. 31.05.2004 to 12.09.2011 to be treated as leave with pay. Appellant was adjusted by respondent No.5 against the vacant post of PST GPS Kagawala Peshawar with immediate effect vide order dated 29.03.2017 with further order of fresh inquiry to decide the factum of intervening period 01.06.2004 to 16.03.2017 by appointing respondent No.2 as inquiry officer who submitted his report and recommended absence period of the appellant from 01.06.2004 to 01/09/2011 be treated as extra ordinary leave without pay under Rule 12(3) of Revised Leave Rules, 2011 and period from 12/09/2011 till adjustment of appellant i.e. 16.03.2017 be treated on duty. Respondent No.5 in consequence to above recommendation issued order accordingly on 26.07.2017. However claim of appellant for arrears was filed on 16.11.2020. Appellant filed appeal by challenging order dated 16.11.2020 & requested for grant of arrears of period which was on duty i.e. 12.09.2011 to 29.03.2017 which too was rejected vide order dated 09.03.2021 on the ground that appellant had not performed duties physically.

7. It is pertinent to mention here that when appellant reported for arrival and it was established on record from very first inquiry report dated 20/09/2012 that appellant is on duty and was not removed or dismissed from service then it was incumbents upon the authority to adjust appellant but they kept pending matter till 29/03/2017 for the reason best known to them.


Moreover when authority vide order dated 28/03/2012 initiated inquiry



proceeding by appointing respondent No.6 as inquiry officer he must order of adjusting/posting of the appellant for the purpose of inquiry but he did not do so. When appellant was not removed or dismissed from service and he submitted application for arrival, he physically presented himself for performance of his duties but by not adjusting to post him to a specific school is the act on at the part of authority for which appellant cannot be penalized. It is the authority domain to transfer, post or adjust a civil servant which is out of control of the civil servant. Therefore, to penalized civil servant for simple reason that he physically not performed duties and is not entitled for the service benefits in shape of arrears is unjustified and against the settled rules. Therefore, in our humble view impugned order dated 16/03/2021 is not in accordance with law, hence set-aside.

8. For what has been discussed above, we are unison to accept the appeal by setting aside the orders dated 16.11.2020 and 16.03.2021 and appellant is held entitled for arrears of period on duty i.e. 12/09/2011 to 29/03/2017. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of December, 2023.*


  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**  
13.12.2023

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 accept the appeal by setting aside the orders dated 16.11.2020 and 16.03.2021 and appellant is held entitled for arrears of period on duty i.e. 12/09/2011 to 29/03/2017. Cost shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of December, 2023.*

**(Muhammad Akbar Khan)**  
Member (E)

  
**(Rashida Bano)**  
Member (J)