

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
 SALAH UD DIN ... **MEMBER(Judicial)**

Service Appeal No.7636/2021

Date of presentation of Appeal.....21.10.2021
Date of Hearing.....26.02.2024
Date of Decision.....26.02.2024

Mr. Abdul Baqi, son of Lal Khan, Ex-PSHT, Government Primary School Sikandar Dadeer, Tehsil Dassu, District Kohistan Upper.....(*Appellant*)

Through legal heirs:

1. Bibi Maryam (Widow)
2. Bakh Juma Bibi (Daughter)
3. Abubakar (Son)
4. Bibi Saida (Daughter)
5. Abu Dardar (Son)
6. Mayour Zada (Son)



Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education Peshawar.
2. **Director** Elementary & Secondary Education, Peshawar.
3. **Muhammad Amin**, District Education Officer, (Male) Kohistan at Dassu.....(*Respondents*)

Present:

Mr. Muhammad Tasleem Khan, Advocate.....For the appellants
Mr. Asad Ali Khan, Assistant Advocate GeneralFor respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO.3023-30 DATED 10.03.2021 ISSUED BY RESPONDENT NO.3 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE OF APPELLANTS ON THE GROUND OF ALLEGED UNSPECIFIED ABSENCE FROM DUTY WAS IMPOSED WITHOUT ANY INQUIRY AND INTENDING OPPORTUNITY BEING HEARD WITHOUT AND BEYOND TO THE LAW, SUCH CONDUCT OF THE RESPONDENTS IS ILLEGAL AND VOID AB INITIO.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The deceased appellant's case in brief is that he was serving in the Education Department as PSHT; that on 02.04.2021, he filed application for retirement on medical grounds which application was signed/ sanctioned on 09.06.2021. That in the month of April, 2021, show cause notice was issued to the appellant which was replied by him. That vide impugned order dated 10.06.2021, appellant was removed from service. Feeling aggrieved, he filed departmental appeal but the same was not responded, rather the respondents issued a Notification dated 08.07.2021 w.e.f 01.04.2019 for the absenteeism, the mechanism to be observed for penalty of civil servant. Therefore, he filed the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

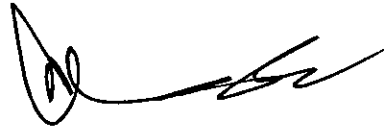
4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

5. The absence of appellant which is just of four days is not denied by him, however, the misconduct is not so grave to entail major punishment

of removal from service the proceedings have been conducted in accordance with provisions of Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Besides, the appellant had applied for pension on medical grounds which process was initiated and had been taken to a greater extent which fact had not been denied by the respondents. The punishment imposed upon the appellant for absence of just four days is too harsh.

6. Therefore, the appeal is allowed, major penalty of removal from service is converted into minor penalty of stoppage of one annual increment for one year without cumulative effect and the appellant is considered as posthumously reinstated into service for the purpose of pensionary benefits. The appellant has died during the pendency of appeal, therefore, legal heirs of the appellant are entitled for the due pensionary benefits of the appellant. Costs shall follow the event. Consign.

7. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 26th day of February, 2023.*



KALIM ARSHAD KHAN
Chairman
Camp Court Abbottabad



SALAH UD DIN
Member (Judicial)
Camp Court Abbottabad

ORDER

26th Feb, 2024

1. Learned counsel for the legal heirs of the deceased appellant and Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

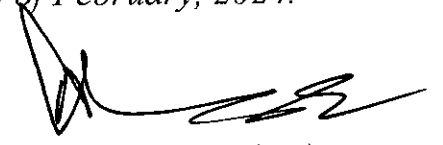
2. Vide our detailed judgment of today placed on file, the appeal is allowed, major penalty of removal from service is converted into minor penalty of stoppage of one annual increment for one year without cumulative effect and the appellant is considered as posthumously reinstated into service for the purpose of pensionary benefits. The appellant has died during the pendency of appeal, therefore, legal heirs of the appellant are entitled for the due pensionary benefits of the appellant. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 26th day of February, 2024.*



(Salah Ud Din)
Member (J)

Camp Court Abbottabad



(Kalim Arshad Khan)
Chairman

Camp Court Abbottabad