

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 811/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Zakia Minhas, Junior Clerk (BPS-11), CCPO, Peshawar. (*Appellant*)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
 2. The Capital City Police Officer, Peshawar.
 3. The Senior Superintendent of Police Coordination, Peshawar.
-(*Respondents*)

Mr. Taimur Ali Khan,
Advocate ... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney ... For the respondents

Date of Institution.....	04.04.2023
Date of Hearing.....	16.02.2024
Date of Decision.....	16.02.2024

JUDGEMENT

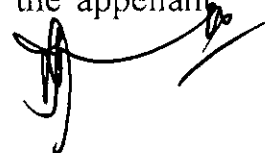
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 14.03.2023, whereby the departmental appeal of the appellant for back benefits in the shape of salaries, with effect from 21.01.2019 to 04.05.2021, was rejected, and against the order dated 30.09.2021, whereby the period she remained out of service, w.e.f from 21.01.2019 to 04.05.2021, was treated as without pay and against the order dated 05.05.2021, whereby the appellant was reinstated into service w.e.f 15.12.2020 instead of 21.01.2019, the date on which she was dismissed from service. It has been prayed that on



acceptance of the appeal the orders dated 14.03.2023 and 30.09.2021 might set aside and the order dated 05.05.2021 might be modified to the extent of reinstating the appellant into service w.e.f 21.01.2019, instead of 15.12.2020, and the respondents might be directed to grant back benefits in the shape of salaries, along with other emoluments, to the appellant for the period when she remained out of service w.e.f. 21.01.2019 to 04.05.2021 by treating that period as on full pay, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was working in the respondent department as Junior Clerk since 2008. Charge sheet, on some baseless allegations, was issued to her and inquiry was conducted against her, which was not according to the prescribed procedure. She was dismissed from service vide order dated 21.01.2019 and her departmental appeal was also rejected on 25.04.2019. She filed a service appeal No. 592/2019 against the orders dated 21.01.2019 and 25.04.2019 before the Service Tribunal and vide judgment dated 15.12.2020, the appeal was allowed and the impugned orders were set aside. The appellant was reinstated into service while the respondents were required to conduct a proper/denovo enquiry against her within three months from the date of receipt of copy of that judgment. The issue of grant of back benefits was to be settled in view of denovo enquiry and the ensuing order.

3. The denovo inquiry was conducted against the appellant on 06.02.2021 and the inquiry officer gave conclusion/recommendation that no solid evidence, nor any witness, was produced against the appellant.



which could prove that she was involved in immoral activities. Her previous service record was also examined and no entry of such blame was found. She was not found guilty in the matter. She was reinstated into service w.e.f 15.12.2020 for the purpose of denovo inquiry vide order dated 05.05.2021 and despite the fact that denovo inquiry was conducted against her and the inquiry officer submitted his report on 06.02.2021, in which she was found not guilty, an order dated 30.09.2021 was passed, wherein the period she remained out of service, w.e.f 21.01.2019 to 04.05.2021, was treated as without pay. Although the appellant was reinstated w.e.f. 15.12.2020, her salaries for the period w.e.f 15.12.2020 to 04.05.2021 were also not granted to her. Feeling aggrieved, she filed departmental appeal for back benefits in the shape of salaries alongwith other emoluments for the period during which she remained out of service, which was rejected on 14.03.2023; hence the instant service appeal.

4. Respondents were put on notice. They submitted written reply/comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant, after presenting the case in detail, argued that the orders dated 14.03.2023, 30.09.2021 and 05.05.2021 were against the law, facts, norms of justice, material on record and recommendation of the Inquiry Officer, therefore not tenable in the eyes of law. He further argued that the allegations/charges were not proved against the appellant and she was not found guilty in the inquiry



proceedings, therefore depriving her of her service benefits was not lawful. He argued that absence of the official during the period of dismissal/removal was not voluntary on her part but it was due to the order of the authority which restrained her from performing her duty. He further argued that the appellant was reinstated into service w.e.f. 15.12.2020 but salaries alongwith other emoluments were not granted to her. She remained unpaid for the period from dismissal from service till reinstatement despite the fact that she gave an affidavit that she was not employed anywhere during that period. Learned counsel for the appellant requested that the appeal might be accepted.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that in compliance of the directions of the Tribunal, de-novo enquiry was conducted by SSP Coordination, Peshawar, as a result of which her service had been restored and the period she remained out of service was treated as without pay. He requested that the appeal might be dismissed.

7. This is the second round of litigation. Arguments and record presented before us shows that the appellant was dismissed from service on certain allegations against which she preferred service appeal before this Tribunal. She was reinstated into service vide judgment of Tribunal dated 15.12.2020 with directions to the respondents to conduct proper/denovo inquiry against her within three months of the receipt of the copy of judgment. The issue of grant of back benefits to the appellant was to be settled in view of the denovo inquiry and the ensuing order. In the light of judgment of the Tribunal, the appellant was reinstated into





service w.e.f 15.12.2020, denovo inquiry was conducted and the inquiry officer concluded that no solid evidence nor any witness was produced against the appellant to prove that she was involved in immoral activities. According to the I.O. her previous record was also examined and no evidence was found regarding the allegations against her.

8. In the light of the report of denovo inquiry an order dated 30.09.2021 was passed, that has been impugned before us. Despite the fact that the inquiry officer has clearly stated in his report that the charges could not be proved against the appellant, the competent authority not only issued a warning to her but also treated the period she remained out of service as without pay. Here a question arises that why the appellant was out of service, the answer to which is that she was dismissed on some allegations which were not even proved against her. Then how can we penalize her for her absence which was not deliberate, rather she was compelled to be out of service by her competent authority and for that she cannot be punished for that period by treating it as without pay.

9. In the light of above discussion, the appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 16th day of February, 2024.*


(FARVEHA PAUL)
Member (I)



(RASHIDA BANO)
Member (J)

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16th Feb. 2024 01. Mr. Taimur Ali Khan, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Suleman, S.I (Legal) for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS