

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 593/2023

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

Mr. Faridoon Khan S/O Younas Khan, Ex. Chowkidar, office of District Health Officer, Peshawar. R/O Mohallah KandayBala, Village Pishtakhara Payan, Peshawar..... (*Appellant*)

Versus

1. Province of KPK through Secretary Health Department, Civil Secretariat, Peshawar.
2. Director General Health Services, KPK, Peshawar.
3. District Health Officer, GT Road, Peshawar.....(*Respondents*)

Shahzada Irfan Zia
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney

... For respondents

Date of Institution..... 20.03.2023
Date of Hearing..... 27.02.2024
Date of Decision..... 27.02.2024

JUDGEMENT

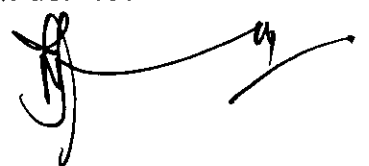
FAREEHA PAUL, MEMBER (E):The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 03.11.2022 whereby appointment of the appellant was dispensed with on the pretext of a fake and bogus resignation. It has been prayed that on acceptance of the appeal, the impugned order dated 03.11.2022 might be set aside and respondents might be directed to reinstate the appellant into service with all back benefits, 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 appointed as Chowkidar BPS-3, on the approval of the departmental selection committee under the quota of Retired Class IV Civil Servants vide order dated 04.06.2022, by respondents No. 3. Vide order dated 06.06.2022 passed by respondent No.3, he was directed to perform duties in the office of District Medical Entomologist in dengue emergency. While on official duty, he was informed by the officials of the office of respondent No.3 that his resignation from service was accepted vide order dated 03.11.2022 by respondent No.3. He visited the office of respondent No.3 and vindicated his plea and position that he never tendered any resignation and requested for the copy of the so-called resignation and the impugned order dated 03.11.2022. After some efforts, copy of the impugned order was given to him, without the copy of resignation. He approached the respondent No.2 through his departmental appeal along with application for condonation of delay on 16.12.2022. On his departmental appeal, the respondent No.2 called comments from respondent No.3, but no final order was passed by the authority within the statutory period of 90 days; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail argued that impugned order dated 03.11.2022 was illegal and void. According to him, the appellant never tendered any resignation from service and the so-



called resignation was fake, fabricated and bogus and manipulated by some official of the office of respondent No.3. He further argued that the appellate authority, on departmental appeal of the appellant, was under legal obligation to give the appellant an opportunity of personal hearing, but no such opportunity was given to him. In order to dig out the truth, competent authority and appellate authority both were duty bound to confirm the authenticity of the resignation through an independent inquiry committee but no such mandatory exercise was undertaken by the authorities, the learned counsel argued. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was inadvertently appointed under the Retired Son's Quota dated 04.06.2022 by the Respondent Department. After the appointment under the Retired Son's Quota, during the final scrutiny of documents, it was found that the appellant's father was an employee of the Population Welfare Department of the Federal Government of Pakistan and not the Health Department of provincial government. The appellant was informed about his status and in response he submitted his resignation to the respondent No.3 which was witnessed by four persons, amongst whom, one was his close relative, Hashmat Bibi, whose thumb impression was also there on the resignation. Learned District Attorney argued that the appellant admitted his fault and that his resignation was accepted by the Competent Authority. He requested that the appeal might be dismissed.


6. Through this service appeal the appellant has impugned an order of the District Health Officer (DHO) Peshawar dated 03.11.2022 vide which the



resignation tendered by the appellant had been accepted. According to the appellant, he never tendered that resignation and that it was some manipulation done by someone in the office of DIHO Peshawar. Arguments and record presented before us transpires that he was appointed as Chowkidar by DIHO Peshawar on 04.06.2022 on retired son quota. As stated by the learned District Attorney, he was appointed erroneously on the said quota as his farther was not an employee of the respondent department. When the error in his appointment was highlighted, he preferred tendering his resignation which was accepted. On the other hand, learned counsel for the appellant insisted that he never tendered his resignation and drew attention to the four witnesses by stating that there was no such example of witnesses for a resignation.

7. After hearing the arguments from both the sides, we have arrived at a conclusion that as a controversy has arisen on the resignation of the appellant, it would be in the fitness of the matter to probe into it in order to arrive at an informed decision. The appeal is, therefore, referred to the respondent department to conduct a proper inquiry into the matter of resignation, under the rules, by giving full opportunity to the appellant to present his case and cross examine the witnesses and complete the exercise within sixty days of receipt of this judgment. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 27th day of February, 2024.*


(FAREEHA PAUL)
Member (E)

FuzleSubhan P.S



(RASHIDA BANO)
Member (J)

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27th Feb. 2024 01. Shahzada Irfan Zia, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Safiullah, Focal Person for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal is referred to the respondent department to conduct a proper inquiry into the matter of resignation, under the rules, by giving full opportunity to the appellant to present his case and cross examine the witnesses and complete the exercise within sixty days of receipt of this judgment. 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 27th day of February, 2024.*


(FARZEEN PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS