

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 1071/2022

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

Faiz Rasan SPST GPS Ferozpur Takht Bhai, District Mardan.

..... (Appellant)

**Versus**

1. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) Mardan.
4. SDEO (M) Takht Bhai, Mardan. ....(Respondents)

Mr. Hamza Amir Gulab,  
Advocate

... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

Date of Institution.....	20.06.2022
Date of Hearing.....	04.03.2024
Date of Decision.....	04.03.2024

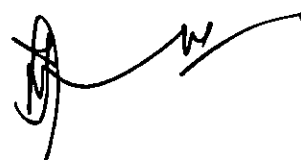
**JUDGEMENT**

**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 04.03.2022 of respondent No. 3 whereby penalty of compulsory retirement was imposed upon the appellant against which his departmental appeal/representation was not responded by the appellate authority. It has been prayed that on acceptance of the appeal, the appellant might be reinstated into service with all back benefits.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was inducted in Education Department in the year 1997 as PST and served as SPST GPS Ferozur in BPS- 14. He was having 25 years of service at his credit. On 13.01.2022, SDEO (M) Takht Bhai (respondent No. 4) visited the school and alleged that the appellant was busy in playing with his mobile phone and his child studying in class 4 had long hair. Vide letter dated 11.02.2022, the appellant was served with show cause notice regarding misbehavior and indiscipline in providing information/response. He replied to the show cause notice and statements of Mr. Ayub Khan PSHT and Mr. Hamil Ahmad SPST of the concerned school were also attached with the reply wherein both the teachers stated that the appellant was only giving information regarding his son's form-B from the phone for uploading the same in soft form to ASDEO Circle, hence he was not playing with his mobile phone. After receiving the reply to show cause notice, DEO (Male) Mardan directed the appellant to attend personal hearing on 05.03.2022 at 1.00 PM, but without waiting for personal hearing, vide order dated 04.03.2022, he was awarded major penalty of compulsory retirement. Feeling aggrieved, the appellant preferred departmental appeal which was not responded within the statutory period of ninety days; hence the instant service appeal.

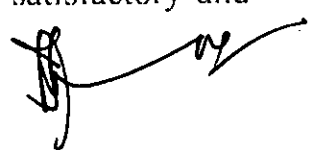
3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.



4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order was illegal, ultra vires, unfounded, void ab initio and unlawful. He further argued that neither the appellant was served with any statement of allegations nor associated with the inquiry proceedings. He was also not afforded with opportunity of personal hearing and was punished in a slipshod manner. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that during the visit of the SDEO, the appellant was found sitting outside the class room, playing with his smart phone, his class room was very weak and students were found dirty. When inquired about the situation, the attitude of the appellant was discourteous and primitive to his superiors. He further argued that in his reply to show cause notice, the appellant narrated his psychological troubles, therefore, he was dangerous to teach the minor students. He further argued that the appellant did not appear for personal hearing and after fulfillment of all the codal formalities, he was compulsorily retired from service. He requested that the appeal might be dismissed.

6. The appellant, while serving as Senior Primary Teacher (BS-14) at GPS Ferozpur, was proceeded against departmentally and awarded punishment of compulsory retirement from service vide an order dated 04.03.2022. Arguments and record present before us transpires that the SDEO (Male) Takht Bhai visited the school on 13.01.2022 and found the appellant busy with his cell phone. He found the overall condition of the school not satisfactory and



submitted his report to the District Education Officer (Male) Madan, based on which a show cause notice was issued to the appellant on 11.02.2022. It was stated in the notice as follows:-

- "a. *During the visit of the school by SDEO (M) concerned you showed misbehavior and indiscipline in providing information/response.*
- b. *In exercise of the power conferred by the KPK Government Servants (Efficiency & Discipline) Rules, 2011, the Competent Authority is hereby pleased to serve you with the instant show cause notice regarding your ill manner with the direction to submit your defense in writing within 07 days of the issuance of this notice as to why the minor/major penalty of Rule 4(a)/(b) of the said rules should not be imposed upon you and also intimate whether you desire to be heard in person."*

In response to the show cause notice, the appellant submitted his reply in detail, in which he admitted that he had some mental and psychological issues and the extent of those issues was such that sometimes he even forget the way to his home. After getting his reply, the ADEO (M) Mardan directed him to appear before him for personal hearing on Friday, 5<sup>th</sup> March 2022 at 1.00 pm. The departmental representative present before us clarified that the date for personal hearing was mentioned wrong and it was in fact Friday, the 4<sup>th</sup> of March that he was called for personal hearing. As stated by the learned counsel for the appellant, the impugned order dated 04.03.2022 was issued without giving the opportunity of personal hearing to him. The reply submitted by the respondents states that he was called, but the appellant did not appear for personal hearing. The impugned order, on the other hand, presents a different



picture. It states that in response to the show cause notice, the appellant was called for personal hearing and that he appeared before the DEO (M) Mardan for the same. When confronted on the conflicting statements given by the respondents viz-a-viz the impugned order, the learned Deputy District Attorney as well as the departmental representative could not respond.

7. After going through the details of the entire case, it is clear that major penalty has been imposed upon the appellant in an extremely cursory manner. Before taking any such action in which imposition of major penalty is involved, it would have been in the fitness of the matter to conduct a proper inquiry. Moreover, keeping in view the 25 years of service of the appellant, and his admission that he has certain mental and psychological issues, would it not have been better to refer him for medical board?

8. In view of the above discussion, the impugned order is set aside and the appellant is reinstated into service for the purpose of a proper departmental inquiry under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 with the direction to the respondent department to fully associate him in the inquiry proceedings, which shall be completed within 60 days of the receipt of this judgment. The issue of back benefits is subject to the outcome of inquiry. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 04<sup>th</sup> day of March, 2024.*

  
(FARVEEHA PAUL)  
Member (I)

\*FazleSubhan P.S.\*


  
(RASHIDA BANO)  
Member(J)

SA 1071/2022

04<sup>th</sup> Mar. 2024 01. Mr. Hamza Amir Gulab, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the impugned order is set aside and the appellant is reinstated into service for the purpose of a proper departmental inquiry under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 with the direction to the respondent department to fully associate him in the inquiry proceedings, which shall be completed within 60 days of the receipt of the judgment. The issue of back benefits is subject to the outcome of inquiry. 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 04<sup>th</sup> day of March, 2024.*

  
(FARIEHA PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member(J)

\*Fazal Subhan PS\*