

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1071/2023

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

Mst Rozina Rahim W/O Ihsanuddin, JCT / FMT, Basic Health Unit, Adezai.
R/o Gulbahar No.1, Peshawar City.....(*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Health, Health Department, Civil Secretariat, Peshawar.
2. Director General Health Services, Khyber Road, Peshawar.
3. District Health Officer. Peshawar.....(*Respondents*)

Mr. Bilal Ahmad Kakaizai,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

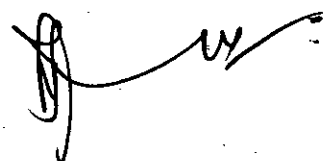
Date of Institution..... 10.05.2023

Date of Hearing..... 05.03.2024

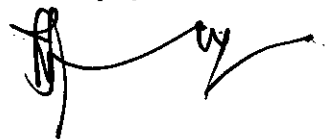
Date of Decision..... 05.03.2024

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 13.01.2023, whereby the competent authority has treated the absence period in respect of appellant w.e.f 01.10.2010 till 27.01.2022 as leave without pay and against the appellate order dated 21.02.2023, which is otherwise an inconclusive order. It has been prayed that on acceptance of the appeal, the appellant be paid her monetary back benefits and service benefits of the intervening period mentioned above, alongwith pay since reinstatement order, 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 performing duties as Junior Clinical Technician/FMT. During the course of employment she was made a rolling stone between different Departments and was verbally instructed to report in other office but the department did not give any order in respect of place of posting of the appellant and at last she, in February 2013, was verbally asked by the Department that her services had been dispensed with, however no written order was given to her. Appellant filed service appeal No. 1005/2013 before the Tribunal, which was disposed of on 18.02.2016 with the direction to the Appellate Authority to decide the fate of the departmental appeal within a period of one month after receipt of copy of that Order. The department failed to act according to the directions of the Tribunal contained in the order dated 18.02.2016, hence the appellant filed an Execution Petition. On 28.08.2017, a representative of the department present before the Bench stated at the bar that the departmental appeal of the petitioner was decided and regretted on 16.08.2017. Appellant once again filed Service Appeal No.1096/2017, which was decided in her favour on 16.10.2019 and impugned order of removal dated 16.08.2017/09.05.2017 was set aside and she was reinstated into service with the direction to conduct de-novo proceedings within a period of 90 days from the date of receipt of that judgment. Thereafter, within 90 days, the department failed to conduct any proceedings against the appellant, hence she automatically became eligible for reinstatement as well as payment of back benefits. On 27.01.2022, she was ordered to be reinstated into service, with immediate effect. Vide an order dated 13.01.2023, the intervening period i.e. w.e.f. 01.10.2010 till 27.01.2022 was treated as leave without pay. That act of



the department was not only against the order of the Service Tribunal, but the same was also an illegal and unlawful order. Departmental Appeal was filed by the appellant on 09.02.2023. The reply to the departmental appeal was given to the appellant vide order dated 21.02.2023; hence the instant service appeal.

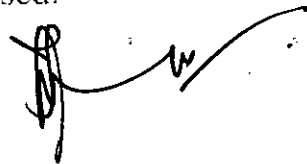
3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that treating the intervening period w.e.f 01.10.2020 till 27.01.2022 as leave without pay was illegal, unlawful, void, ineffective and against the principles of natural justice. He argued that despite joining and performing the duties, appellant had not been paid her legitimate salaries even from the date of reinstatement i.e 27.01.2022. He further argued that the appellant did not willfully absented herself from duty, rather she was forced to sit at home by the illegal and unlawful action of the department, hence stoppage of her benefits and salaries etc. as well as treating her intervening period as absence was not warranted under the law. He further argued that the appellant was retained on the payroll of the department, even during the period of absence as she was promoted as well by the department during the alleged absence period. 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 the appellant was not performing her duties and was habitually absent. Due to her prolonged absence from duty

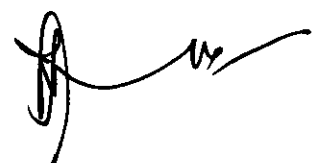


she was relieved by the Medical Superintendent of Sufwat Ghayoor Children Hospital Peshawar vide order dated 23.09.2010, which was sufficient to prove her performance. He further argued that after providing opportunity of personal hearing, the departmental appeal of the appellant was regretted by respondent No. 2 and disciplinary proceedings were ordered against her vide order dated 09.05.2017. The appellant, in order to justify her prolong^{ed} willful absence, produced a medical certificate and on verification, it was found bogus by the MS DHQ Hospital, D.I.Khan vide letter dated 23.02.2017. Departmental proceedings under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 were initiated against her and after observing all the codal formalities, she was removed from service by respondent No. 3 vide order dated 16.08.2017. He further argued that after receiving the judgment of the Tribunal, the appellant was reinstated into service by the respondents vide order dated 27.01.2022 for the purpose of denovo inquiry. After conducting a denovo inquiry and providing opportunity of personal hearing and defense, the allegations stood proved but another chance was given to her and she was reinstated into service vide order dated 19.01.2023, however, the period w.e.f. 01.10.2010 till reinstatement was treated as leave without pay because of her conduct for which she was removed from service. He further argued that it was a settled principle that pay was permissible to only those who performed duties i.e no work no pay, as laid down by the august Supreme Court of Pakistan in 2003-SCMR-228. He requested that the appeal might be dismissed.



6. The appellant, while serving as Junior Clinical Technician in the respondent department, was removed from service in 2013. She approached this Tribunal and vide its judgment dated 18.02.2016, respondent department was directed to decide her departmental appeal. When no action was taken on it, an execution petition was filed by the appellant and during its hearing the departmental representative informed that her appeal was rejected by the competent authority. Another service appeal was filed as a result of which vide judgment dated 16.10.2019, directions were issued to the respondents to conduct denovo inquiry within a period of 90 days of the receipt of the judgment. After that, appellant was reinstated into service on 27.01.2022. Vide another order dated 13.01.2023, the period between 01.10.2010 to 27.01.2022 was treated as leave without pay. Through this service appeal, the appellant has prayed for payment of all the monetary and service benefits for the period from 01.10.2010 to 27.01.2022, alongwith her pay since her reinstatement into service.


7. From the arguments and record presented before us, it is clear that the appellant, vide judgment of this Tribunal dated 16.10.2019, was reinstated into service with the direction to the respondents to conduct denovo inquiry in the mode and manner as prescribed under Government Servants (Efficiency & Discipline) Rules 2011, within a period of 90 days from the receipt of copy of the judgment. Issue of back benefits was subject to the outcome of denovo inquiry. For conducting a denovo inquiry, under the rules, a charge sheet and statement of allegations had to be served upon the appellant. In this case, neither any such record had been annexed by the respondents in their reply,



nor produced before us during hearing. An inquiry report dated 11.9.2020 has been produced by both the appellant and the respondents, which they claim is the denovo inquiry conducted in the light of judgment of this Tribunal. Perusal of that inquiry report shows that no charge sheet and statement of allegations had been served upon the appellant. It further shows that no opportunity of defence was provided to her. It has been noted that the respondent department did not act in accordance with the directions of this Tribunal. Even if we keep those directions aside, the respondent department miserably failed to conduct the denovo inquiry as per rules. They failed to fulfill the requirements of a fair trial, despite the fact that a chance was given to them in the form of conducting a denovo inquiry.

8. In view of the above, the impugned order is set aside and the appellant is allowed the salary and service benefits as prayed for. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 05th day of March, 2024.*


(FARZHA PAUL)
Member (E)



(RASHIDA BANO)
Member(J)

SA 1071/2023

05th Mar. 2024 01. Mr. Bilal Ahmad Kakaizai, 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 06 pages, the impugned order is set aside and the appellant is allowed the salary and service benefits 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 05th day of March, 2024.*


(FARZEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS