

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

**Service Appeal No. 1240/2022**

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

Mst. Fozia Nourcen D/O Wali Khan Drawing Mistress (DM) GGMS, Rehman Abad, Kohat. .... (*Appellant*)

Versus

1. The District Education Officer (Female) Kohat.
2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar. .... (*Respondents*)

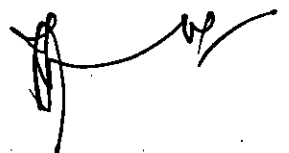
Mr. Muhammad Amin Khattak Lachi,  
Advocate ... For appellant

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

Date of Institution..... 22.08.2022  
Date of Hearing..... 05.03.2024  
Date of Decision..... 05.03.2024

**JUDGEMENT**

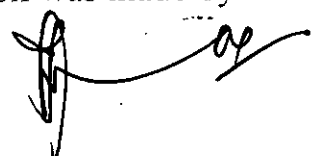
**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 24.01.2017 whereby the appellant was removed from service with effect from the date of absence from duty and against the inaction of respondents whereby departmental appeal of the appellant was not responded within statutory period. It has been prayed that on acceptance of the appeal, the impugned order dated 24.01.2017 might be set aside and the respondents might be directed to reinstate the appellant 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 D.M on 13.12.1999 by respondent No. 1 in GGMS, Darmalak, District Kohat. She was promoted to BPS- 15 through order dated 18.03.2009. She applied for leave, without pay, due to unavoidable circumstances and domestic issues which was granted by the department from 02.09.2014 to 29.02.2016 (18 months). She again applied for leave, without pay, which was granted as per information given to her. She was of the view that leave had been granted, but the department started proceedings against her and she was dismissed from service on 24.01.2017, but the impugned order was not communicated to her. Feeling aggrieved, she preferred departmental appeal which remained pending after completion of 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 issued by respondent No. 1 was in sheer violation of the fundamental rights guaranteed to the appellant as envisaged under the Constitution of Islamic Republic of Pakistan 1973. He argued that the appellant was not treated in accordance with law and rules. No show cause notice, charge sheet and statement of allegations were issued to her nor regular inquiry was conducted. He further argued that in case of absence from duty, publication in two newspapers was must, but no such publication was made by



the respondents and that before passing the impugned order no opportunity of personal hearing was given to the appellant which was mandatory under the law. 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 never applied for extension of leave and deliberately remained absent from duty. He argued that disciplinary proceedings were initiated in an absolute transparent way; three absence notices were issued to the appellant on 08.03.2016, 10.10.2016 and 07.11.2016 but the appellant turned a deaf ear to all those notices. Thereafter a notice was also published in daily Mashriq dated 25.05.2017 with the direction to the appellant to resume her duty within 15 days but she failed to do so. Show cause notice was also served upon her on 02.08.2017. A communication was conveyed to the appellant vide letter dated 18.08.2017 to be present before the competent authority for personal hearing but no response was received. He further argued that the appellant filed departmental appeal after lapse of three years which could not be entertained being time barred. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant was removed from service on the ground of willful and unauthorized absence vide an order dated 24.01.2017. While serving as Drawing Master (BS- 15), the appellant applied for 18 months leave without pay from 02.09.2014 to 29.02.2016, which was sanctioned by the competent authority. On expiry of that leave, according to the learned counsel for the appellant, she applied for extension of her leave, without pay, but the receipt of any such application in




the department has been denied by the respondents. No application for extension of leave is available with the appeal, neither any receipt of the department could be produced before us during the course of hearing to ascertain that such application was submitted by the appellant to her competent authority. The respondent department completed all the codal formalities under the rules and awarded major penalty of removal from service to the appellant.

7. One must not forget an important point that the appellant was a civil servant, bound by a set of rules under the Khyber Pakhtunkhwa Civil Servants Act, 1973. Mere applying for a leave is not enough, rather it has to be got sanctioned by the competent authority before proceeding on such leave. In case of the appellant, she did not bother to pursue the extension of her leave, if the same was submitted to her competent authority by her, and remained absent without informing her high ups. She did not even bother to respond to the absence notices as well as the notice for personal hearing before the District Education Officer (Female) Kohat. When confronted about the absence, learned counsel for the appellant admitted that she was absent and when further confronted about her whereabouts during absence period, he frankly admitted that she was ex-Pakistan. When she was not in the country, then how can she claim that no absence notice was ever sent to her or received by her. Moreover, the admission by the learned counsel for the appellant about her absence and being ex-Pakistan is enough to prove the misconduct on her part for which she has been rightly proceeded against by the respondent department.



8. In view of the above discussion, the appeal in hand is dismissed, being devoid of merit. Cost shall follow the event. Consign.

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

  
(FARIHA PAUL)  
Member (E)

*\*FazleSubhan P.S\**


  
(RASHIDA BANO)  
Member(J)


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05<sup>th</sup> Mar. 2024 01. Mr. Muhammad Amin Khattak Lachi, 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 appeal in hand is dismissed, being devoid of merit. 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 05<sup>th</sup> day of March, 2024.*

  
(FAREEH PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

\*Fazal Subhan PS\*