

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**MUHAMMAD AKBAR KHAN... MEMBER (Executive)**

*Service Appeal No.1621/2023*

Date of presentation of Appeal.....31.07.2023  
Date of Hearing.....16.04.2024  
Date of Decision.....16.04.2024

**Shah Hussain S/O Sultan Hussain, (Warder) Central Prison, Mardan.**  
**R/O Mohallah Boki, Kot Ismail Zai, P.O. Garhi Kapura, Tehsil &**  
**District Mardan. ....Appellant**

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar.
2. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent Central Prison, Mardan.
4. Superintendent Sub-Jail, Mardan. ....(Respondents)

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Present:

Mr. Kaleem Ullah, Advocate.....For the appellant  
Mr. Umair Azam, Additional Advocate General,.....For respondents

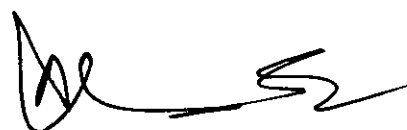
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**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974,  
AGAINST THE PARTIAL ORDER DATED 03.07.2023 OF  
THE RESPONDENT NO. 2 WHEREBY THE  
DEPARTMENTAL APPEAL WAS PARTIALLY  
ALLOWED AND THE APPELLANT WAS REINSTATED  
TO HIS SERVICE, HOWEVER THROUGH IMPUGNED  
ORDER DATED 03.07.2023 THE APPELLANT WAS  
PUNISHED IN THE SHAPE OF REDUCTION TO  
LOWER STAGES FOR A PERIOD OF 2 YEARS.**

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**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Appellant was serving as  
Warder with the respondent-department and his services were placed  
at the disposal of Superintendent Jail Saidu vide order dated  
22.12.2022 when he had allegedly serious body pain and visited Saidu



Hospital, Swat, for medical treatment, where the doctor had recommended him three days' complete bed rest; that he approached his high-ups and produced medical prescriptions, who, on receipt of the medical documents from the appellant, had directed him verbally to have bed rest; that on 26.12.2022 paternal aunt of the appellant had died and he had also been feeling severe body pain and cardiac problems, so he again visited DHQ hospital Mardan for treatment, where he was provided medical treatment and was advised for four days' bed rest; that on 02.01.2023, the appellant submitted arrival at the Central Prison Saidu, Swat, where the then Superintendent Jail did not allow the appellant to resume his duty asking him to wait till arrival of the regular Superintendent Central Prison Saidu, Swat; that on 10.01.2023, the regular Superintendent assumed the charge; that the appellant appeared before the Superintendent Jail Saidu alongwith relevant medical documents on 11.01.2023, but on 11.01.2023 the appellant was posted at the disposal of Superintendent Central Prison Mardan, however, the official of interment Central Malakand/high-ups relieved the appellant from duty on 11.01.2023 and directed him to join duty at the Central Prison Mardan; that on 14.01.2023, the appellant submitted arrival at the Central Prison Mardan, where-after show-cause notice was issued to him for the period of absence i.e from 24.12.2022 to 10.01.2023; that the appellant made verbal submission as well as submitted written reply alongwith relevant documents to the Superintendent Central Prison Mardan but vide order dated



18.03.2023, he was removed from service; that feeling aggrieved from the order dated 18.03.2023, the appellant filed departmental appeal on 21.03.2023; that the Inspector General of Prisons got verified the medical documents, submitted by the appellant, which were found authentic; that respondent No. 2 i.e Inspector General of Prisons partially accepted the departmental appeal on 03.07.2023 and reinstated the appellant on duty, however, he was awarded the penalty of reduction into two lower stages for two years and absence period from 24.12.2022 as well as intervening period from the date of removal to the date of reinstatement was treated as leave without pay, hence, this appeal mainly on the grounds that the appellant was not treated in accordance with law and rules.

2. On admission of the appeal for regular hearing, notices were issued to the respondents. In the reply, the respondents referred to a number of punishments awarded to the appellant at different points of time justifying the impugned punishment. It is noted that a number of replies were evasive especially para-5, which pertains to factum of ailment of the appellant, para-10 regarding arrival of the appellant to Central Prison Mardan on 14.01.2023 and para-14 regarding verification of the medical documents.

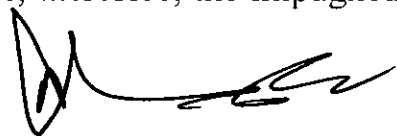
3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the



learned Additional Advocate General controverted the same by supporting the impugned order (s).

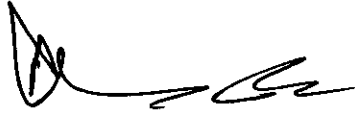
5. The impugned order dated 18.03.2023 passed by the Superintendent Circle Headquarter Prison Mardan shows that the appellant was proceeded under Rules-3 & 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 but there is nothing on the file to show that either of these rules were followed by the competent Authority. The appellate authority while accepting the appeal had also mentioned in the appellate order that the competent authority had not fulfilled the legal procedure/formalities as laid down in Rules 5 & 7 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, while the only allegation against the appellant was that he could not produce the medical certificate to the competent Authority within time. But as against the same, the medical illness of the appellant was not only admitted but the receipt of medical documents from the appellant were also admitted, which were duly verified and found correct. In such eventuality the appellant also has been reinstated treating his absence period as on medical leave but for no good reason the appellant was awarded another punishment of reduction to two lower stages for a period of two years and absence as well as intervening period as leave without pay. When the appellate authority itself found and we also find that the competent authority has not followed the procedure provided in the rules, therefore, the impugned



*Service Appeal No.1621/2023 titled "Shah Hussain versus Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar and others", decided on 16.04.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

punishment was not justified nor could be that sustained, therefore, on allowing this appeal we set-aside the impugned orders and order that period of absence of the appellant from 24.12.2022 to 10.01.2023 shall be treated as on medical leave, while the period out of service shall be dealt with as leave of the kind due. Costs shall follow the event. Consign.

**6. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 16<sup>th</sup> day of April, 2024.***



**KALIM ARSHAD KHAN**  
Chairman



**MUHAMMAD AKBAR KHAN**  
Member (Executive)

*\*Nasim Amin\**

15<sup>th</sup> Dec. 2023

1. Junior to counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Mustafa Law Officer for the respondents present.

2. Reply on behalf of the respondents has been submitted through office. To come up for arguments on 16.04.2024 before D.B. P.P given to the parties.

  
(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah\*

SCANNED  
KPBT  
Peshawar


**ORDER**

16<sup>th</sup> April, 2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present. Arguments heard and record perused.

2. Vide our judgment of today placed on file, on allowing this appeal we set-aside the impugned orders and order that period of absence of the appellant from 24.12.2022 to 10.01.2023 shall be treated as on medical leave, while the period out of service shall be dealt with as leave of the kind due. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 16<sup>th</sup> day of April, 2024.*

  
(Muhammad Akbar Khan)  
Member (Executive)

  
(Kalim Arshad Khan)  
Chairman

\*Naeem Amin\*