

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

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

Service Appeal No.1406/2020

Date of presentation of appeal.....25.02.2020
Dates of Hearing.....17.04.2024
Date of Decision.....17.04.2024

**Hilmand Khan, PST GPS Tarkho Khass, Bara District
Khyber.....(Appellant)**

Versus

1. **Director, Elementary and Secondary Education, Khyber Pakhtunkhwa,
Peshawar.**
2. **District Education Officer, District Khyber.....(Respondents)**

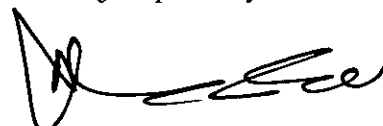
Present:

Miss. Roada Khan, Advocate.....For appellant.
Mr. Muhammad Jan, District Attorney.....For respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 THE
ORDER/NOTIFICATION ENDORSEMENT NO.1180-82/F No.
E-6/KC/KHYBER PESHAWAR DATED 30.01.2020 PASSED BY
RESPONDENTS NO.1, WHEREBY THE ORDER/
NOTIFICATION ENDORSEMENT NO. 833-96 DATED
06.09.2019 PASSED BY RESPONDENT NO.2 WAS UPHELD
THROUGH WHICH THE APPELLANT WAS REMOVED
FROM SERVICE.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts gathered from the memo and grounds of appeal are that the appellant was appointed/adjusted against vacant post of PST vide order dated 01.10.2012 at the Government Primary School, Babar Khel; that on 01.10.2014 the appellant was redeployed at Government Primary School, Ghariza Jamrud; that respondent No.2 vide notification dated 06.09.2019, imposed major penalty of removal from service





on the ground of absence from duty; that against the impugned dated 06.09.2019, the appellant filed departmental appeal, which was regretted vide notification dated 30.01.2020, hence, the instant service appeal on 26.10.2022.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

4. Learned counsel for the appellant contended that the impugned order dated 06.09.2019 was against law, facts; Constitution and principles of natural justice, hence, *void ab-initio*; that the Government Primary School Tarkho Khass was closed due to military operation since 2009 and the appellant was never absent from duty, thus the respondents have wrongly and illegally issued the impugned order/notification; that no charge sheet alongwith statement of allegations had been issued which were mandatory under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, hence the whole proceedings were liable to be set aside. He requested that the appeal might be accepted.

5. As against that, learned District Attorney argued that the impugned order had been issued in accordance with law and no violation had been made; that the appellant was absent from lawful duty without permission of the competent authority; that two notices were served upon the appellant but he failed to resume

his duty, thereafter, major penalty of removal from service was imposed upon the appellant. He concluded that the appeal might be dismissed.

6. Perusal of record reveals that the appellant was removed from service vide impugned order dated 06.09.2019 on the ground of his absence. The appellant filed departmental appeal, which was regretted vide order dated 30.01.2020. The appellant was removed from service without fulfilling the codal formalities. The respondents should have to follow the procedure laid down in Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for imposing the penalty but the same has not been followed and penalty of removal was awarded to the appellant without issuing show cause notice and conducting regular inquiry. As such, the impugned order is not sustainable in the eyes of law. The rule *ibid* is reproduced as under:

“9. Procedure in case of willful absence.—Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an *ex-parte* decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.

7. Therefore, while accepting this appeal, we set aside both the impugned orders and remit the matter back to the authorities to conduct proper *de-novo* enquiry under the rules within a period of ninety (90) days on receipt of copy of this judgment/order. The issue of back benefits shall be subject to the outcome of *de-novo* inquiry. Date of receipt of copy of the judgment shall be



acknowledged in writing to the Registrar of this Tribunal. Costs shall follow the events. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 17th day of April, 2024.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

Adnan Shah, PA


ORDER


17th April, 2024

1. Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney alongwith Mr. Munwar Khan, ADEO for the respondents present.

2. Vide our detailed judgement of today placed on file, while accepting this appeal, we set aside both the impugned orders and remit the matter back to the authorities to conduct proper de-novo enquiry under the rules within a period of ninety (90) days on receipt of copy of this judgment/order. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Date of receipt of copy of the judgment shall be acknowledged in writing to the Registrar of this Tribunal. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 17th day of April, 2024.*


(Muhammad Akbar Khan)
Member(Executive)


(Kalim Arshad Khan)
Chairman

Adnan Shah, P.A