

S.A #.2212/2023

ORDER

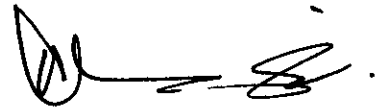
19<sup>th</sup> Apr. 2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, instant service appeal is accepted. The impugned order dated 23.12.2022 is set aside. The matter is remitted to the Department for conduct of proper inquiry, which is to be completed within 60 days of the receipt of this judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. Appellant is reinstated in service for the purpose of proper inquiry. The issue of back benefits shall be subject to the outcome of inquiry. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19<sup>th</sup> day of April, 2024.*



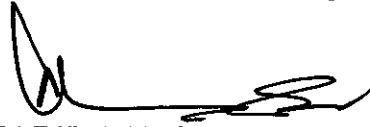
(Muhammad Akbar Khan)  
Member (E)



(Kalim Arshad Khan)  
Chairman

05. Therefore, instant service appeal is accepted. The impugned order dated 23.12.2022 is set aside. The matter is remitted to the Department for conduct of proper inquiry, which is to be completed within 60 days of the receipt of this judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. Appellant is reinstated in service for the purpose of proper inquiry. The issue of back benefits shall be subject to the outcome of inquiry. Consign.

06. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19<sup>th</sup> day of April, 2024.*



**KALIM ARSHAD KHAN**

Chairman



**MUHAMMAD AKBAR KHAN**

Member (Executive)

*\*Mutazem Shah\**

02. 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 defense setup was a total denial of the claim of the appellant.

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

04. After hearing the learned counsel for the parties and going through the record of the case with their assistance and perusing the precedent cases cited before us, we are of the opinion that the appellant was removed from service on the ground of his alleged absence reported by Education Monitoring Authority, Bannu. Perusal of impugned order dated 27.12.2022 shows that the same has been passed on the basis of a report of EMA, whereas, requirements of law in the shape of issuance of show cause notice, conducting of proper inquiry and providing of fair opportunity of defense and cross examination have not been fulfilled. The proceedings appear to be for absence of the appellant but relevant rules have not been followed and the appellant has been removed from service in a hasty manner. It is otherwise a well settled legal proposition that regular inquiry is must before imposition of major penalty, which includes provision of fair opportunity of defense etc. to be provided to the civil servant alongwith opportunity of cross examination etc. which, however, was not done in the case of appellant. Reliance is placed on 2009 PLC (CS) 650.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

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

***Service Appeal No.2212/2023***

Date of presentation of appeal.....25.10.2023

Date of Hearing.....19.04.2024

Date of Decision.....19.04.2024

**Syed Adil Shah, PST (BPS-12) GPS Muhammad Khan Gamber,  
Bannu.....(Appellant)**

Versus

1. **The Secretary** Elementary & Secondary Education, Civil Secretariat Khyber Pakhtunkhwa, Peshawar.
2. **The Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **The District Education Officer, (Male) Bannu.....(Respondents)**

Present:

Mr. Muhammad Waleed Adnan, Advocate.....For appellant

Mr. Muhammad Jan, District Attorney .....For respondents

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**SERVICE APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT,  
1974 AGAINST THE Impugned Order Dated 27.12.2022  
WHEREBY THE APPELLANT HAS BEEN REMOVED  
FROM SERVICE AND AGAINST THE APPELLATE  
ORDER DATED 08.09.2023 WHEREBY THE  
DEPARTMENTAL APPEAL OF THE APPELLANT HAS  
BEEN REJECTED ON NO GOOD GROUNDS.**

**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case are that appellant appointed as Primary School Teacher (BPS-12) vide order dated 17.05.2019; that while performing his duties, the impugned order dated 27.12.2022 was passed, whereby, the appellant was removed from service; that feeling aggrieved, he filed departmental appeal, but the same was rejected on 08.09.2023, hence, the instant service appeal.

