

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT ABBOTTABAD

Service Appeal No. 2817/2021

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Muhammad Asif S/o Muhammad Safdar (Ex-Clinical Technician Surgical) Type-D Hospital Sarai Niamat Khan, District Haripur resident of Mohallah Awan Abad, Simlan Negar, Tehsil & District Haripur.....(*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa Peshawar.
2. Director General of Health Services, Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer, Haripur
4. Incharge Type-D Hospital Sarai Niamat Khan, Tehsil and District Haripur.....(*Respondents*)

Present:-

MUHAMMAD JAIANGIR KHAN,
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

Date of Institution.....15.02.2021
Date of Hearing..... 24.01.2024
Date of Decision..... 24.01.2024

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“On acceptance of the instant service appeal, the impugned order # 13261-65 dated 15.10.2020 of respondent No. 3 may graciously be set aside and the appellant may kindly be

reinstated with all back benefits. Any other relief this Honourable Tribunal deems fit and proper may also graciously be granted just to meet the ends of justice.”

02. This single judgment shall dispose of the instant service appeal as well as connected service appeal bearing No. 2816/2021 titled “Mst. Shahida Jabeen” versus Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa Peshawar and others, as common question of law and facts are involved therein.

03. Brief facts, as averred in the memorandum of service appeal, are that the appellant was appointed as Junior Clinical Technician on 26.03.2009. He and his wife were posted at Type-D Hospital Sarai Naimat Khan, District Haripur; that the appellant’s wife was also working in the same hospital on Anesthesia Technician submitted complaint to SP-Haripur regarding negative attitude of respondent No. 4. On the basis of application of respondent No. 4 dated 29.01.2020, respondent No. 3 issued explanation vide letter dated 27.05.2020 that the appellant was absent from duty since three years which was duly replied by the appellants. Thereafter, the appellant was awarded major penalty of removal from service on the allegations of absence from duty vide impugned order dated 15.10.2020. Feeling aggrieved from the impugned order dated 15.10.2020, the appellant filed departmental appeal on 13.11.2020, which was not responded within the statutory period, hence preferred the instant service appeal on 15.02.2021.

04. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in

his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney and have gone through the record with their valuable assistance.

05. Learned counsel for the appellant contended that the impugned order dated 15.10.2020 passed by the respondent No. 3 is against the law, facts norms of natural justice, hence not tenable, therefore liable to be set aside; that the appellant has not been treated in accordance with law and impugned order passed by the respondents is without lawful authority, without jurisdiction. Learned counsel for the appellant further contended that proper charge sheet/statement of allegations was not issued to the appellant. No Show Cause Notice was issued to the appellant and no chance of personal hearing was provided to the appellant. He has, therefore, been condemned unheard. He submitted that no regular inquiry has been conducted in the matter which is mandatory obligation on the part of competent authority; that the respondent No. 3 violated the golden principle of natural justice that "Audi Alteram Partem", even the attendance register was checked and verified by respondent No. 3 negates the version of respondent No. 4, whereas the respondent No. 4 remained absent and did M.Phil degree from Hazara University and on compliant of appellant, the respondent No. 3 & 4 malafidely have taken revenge, hence the impugned removal order passed without hearing the appellant which is liable to be set aside. Learned counsel for the appellant concluded that the impugned order of "removal from service" is unlawful, illegal, void ab-initio and not sustainable in the eye of law.

06. On the other hand, learned Deputy District Attorney contended that the impugned order had been passed after completion of all the codal formalities, hence the same is liable to be upheld; that after completion of all the codal formalities mentioned in rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the major penalty of removal from service has been imposed upon the appellant, as he remained willfully absent from his lawful duty without any application/prior permission of leave; that notice was issued to the appellant in two daily newspaper to resume his duty but he turned deaf ear hence all the proceedings against them were conducted within legal sphere; that proper departmental inquiry was conducted into the allegations against the appellant. Since all the codal formalities were fulfilled before passing the impugned order, the appeal in hand may therefore, be dismissed.

07. Scrutiny of record and arguments of the parties reveal that the appellant alongwith his wife was posted in Type-D Hospital Sarai Naimat Khan, District Haripur. There is nothing available on record to prove that the appellant remained absent for 03 years since his posting in the said hospital rather record collaborate that the appellant performed duty at the evening time as per order of the incharge of the hospital. The appellant has annexed photocopy of the attendance registered with his appeal which the respondents in their reply term it tempered, however, the respondents failed to produce original record to substantiate their counter arguments. From the available record in the case file and arguments of the parties it is clear that the reports in the print media and complaint from certain people of the area regarding attending M.Phil classes in the Mansehra University by the In-

charge of the Type-D Hospital became the basis for initiations of proceedings against the appellant as the in-charge doctor of the hospital attributed it to the appellant. Record reveals that initially an inquiry was conducted against the appellant by Dr. Muhammad Bilal Coordinator DHIS (DDHO Khanpur) and Dr. Munawar Jameel Coordinator MNCH and they submitted report on 04th May, 2020 which is annexed with the reply of the respondents. However, fate of this inquiry report is not known as it has not been taken to its logical conclusion. We find that parallel to this inquiry an action was initiated against the appellant on the report/complaint of In-charge Type-D Hospital Sarai Naimat Khan, District Haripur by issuing explanation and Show Cause Notice regarding absence from duty of the appellant. We also find that during this time an order was also issued by District Health Officer, Haripur transferring the appellant from Type-D Hospital Sarai Naimat Khan to Type-D Hospital Ghazi, Haripur on 13.02.2020. However, this transfer order was not communicated to the appellant, Moreover, nothing is available on record to substantiate that Show Cause Notice was handed over to the appellant. We find that disciplinary action was initiated against the appellant under Rule-5 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 but the proceedings was twisted to Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 by publishing notices in the newspaper. This dichotomy is manifested from the very impugned order of the District Health Officer, Haripur dated 15.10.2020 imposing thereby the major penalty of removal from service upon the appellant. The aforementioned findings lead us to the conclusion that the disciplinary action against the appellant has been taken in a haste



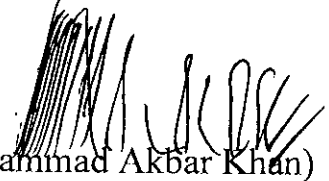
and haphazard manner which render the entire process doubtful with ill intention.

08. In view of the above we are constrained to allow the instant service appeal as well as connected service appeal, set aside the impugned order dated 15.10.2020 and reinstate the appellant into service. The intervening period from 15.10.2020 till the date of announcement of the judgment shall be treated as leave without pay. Costs shall follow the event. Consign.

09. *Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal on this 24th day of January, 2024.*



(Rashida Bano)
Member (J)
Camp Court Abbottabad



(Muhammad Akbar Khan)
Member (E)
Camp Court Abbottabad

ORDER

24.01.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file, we are constrained to allow the instant service appeal as well as connected service appeal, set aside the impugned order dated 15.10.2020 and reinstate the appellant into service. The intervening period from 15.10.2020 till the date of announcement of the judgment shall be treated as leave without pay. Costs shall follow the event. Consign.

3. *Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal on this 24th day of January, 2024.*



(Rashida Bano)
Member (J)
Camp Court Abbottabad



(Muhammad Akbar Khan)
Member (E)
Camp Court Abbottabad