

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1908/2022

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

Aftab Ahmad S/O Kachkol Khan R/o Mohallah Sher Khan Khel, Jamrud,
District Khyber. (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Health Department, Civil Secretariat, Peshawar.
2. Director General Health Services, Health Department, Peshawar.
3. District Health Officer, Peshawar.
4. SHO Police Station Jamrud, District Khyber.
5. Political Tehsildar, Jamrud.

...
(Respondents)

Mr. Shan Asghar
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney For respondents

Date of Institution.....12.12.2022
Date of Hearing.....24.04.2024
Date of Decision.....24.04.2024

JUDGEMENT

RASHIDA BANO, MEMBER (J):The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:

“That on acceptance of this appeal, the impugned original order dated 26.07.2018 and impugned final order dated 29.08.2022 may kindly be set aside and the appellant be reinstated in service with all back consequential back benefits with promotion, if due, or handed over pension or salaries to the appellant. Any other relief



to whom the appellant is found entitled during hearing may also be granted.”

2. Brief facts of the case are that the appellant was appointed as Malaria Supervisor in respondent department vide order dated 01.12.1995. In September, 2017 he was abducted for ransom. On 10.10.2019 he was escaped from the clutches of abductor due to which he suffered from psycho problems and since then appellant remained under treatment and after recovery when he approached department for resumption of duty, he received impugned order dated 26.07.2018 whereby he was removed from service. Feeling aggrieved, he filed departmental appeal, which was rejected on 29.08.2022, hence the instant service appeal.

3. Respondents were put on notice who submitted their comments on the appeal. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4, 10-A and 25 of the Constitution of Islamic Republic of Pakistan. He further argued that impugned orders passed by the respondents are against the law, facts and material on material on record, hence not tenable and is liable to be set aside; that absence of the appellant of the appellant was not intentional rather he was absent due to compelling reasons; that respondent had passed the impugned order with retrospective effect which is void ab-initio, hence no limitation runs against the void order; that neither regular inquiry has been conducted nor opportunity of personal hearing was afforded to him which is against norms of justice. He requested for acceptance of the instant service appeal.

5. Conversely, learned District Attorney contended that there is no proper FIR on record regarding abduction of the appellant rather an application submitted before



the Political Tehsildar which he attached with the appeal having no diary number and date which also seems not authentic. He further contended that he was willfully absent from his official duty and respondents after fulfillment of all codal formalities removed him from service. He further contended that departmental appeal as well as service appeal of the appellant is barred by time. He requested that instant might be dismissed.

6. Perusal of record reveals that appellant was appointed as Malria Supervisor in the year 01.12.1995 in Health Department. The appellant was abducted in the year 2017 September for ransom and was carried to Afghanistan by the culprits for which son of appellant filed application on 25.09.2017 to respondent No.5. After more than 02 years' of detention appellant escaped from the detention of abductors and reached home on 10.10.2019. In the shape of abduction, detention for more than 2 years' and on return home, appellant remained under treatment till 10.02.2022 which was beyond his control and power. The appellant had some mental/psyche issues in past; due to this incident appellant used to visit doctors for treatment. After recovery a week ago when appellant approached respondents for resuming official duties, astonishingly appellant received impugned order dated 26.07.2018, whereby appellant had been dismissed from service on the ground of willful absence. Appellant had served 22 years and during service he had performed his duties with utmost efficiency and punctuality. He was removed from service on the ground of absence vide impugned order dated 26.07.2018. In the impugned order it is mentioned that:

"You were charge sheeted vide this office letter No. 18406-12/DHO/P.F dated 30.11.2017 and an inquiry committee consisting of the following officers were constituted under Rule 10(1) (a) of the (Ibid) rules and gave you the opportunity to attend the office for personal hearing and show the cause of your willful

absence within 15 days in normal circumstances but your failed to comply.”

But situation and reason of absence of the appellant was not normal and willful as he was kidnapped and in this respect his son had lodge a report to the authority for his recovery. Moreover, his son in application mentioned that he inquired from office colleagues of his father about his missing which means that office colleagues of the appellant also knew the factum of his missing and matter must be in the knowledge of the high ups too.


7. Proceedings against the appellant were initiated under Rule 9 of the (E & D) Rules, 2011 but requirement of the same was not complied with. As no notice was sent upon his home address and only in one newspaper Mashriq was issued instead of two leading newspaper as is required under the law.

8. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of *audi alteram partem* was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

9. Appellant was awarded major penalty without following the law and rules,

therefore, we are of the opinion that let an opportunity be provided to the appellant to appear before the authority and defend himself by providing opportunity of cross examination upon the witnesses in de-novo inquiry, which will be concluded within 60 days positively. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 24th day of April, 2024.*



(FAREEHA PAUL)
Member (E)



(RASHIDA BANO)
Member (J)

*Kaleemullah

ORDER
24.04.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we are of the opinion that let an opportunity be provided to the appellant to appear before the authority and defend himself by providing opportunity of cross examination upon the witnesses in de-novo inquiry, which will be concluded within 60 days positively. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 24th day of April, 2024.*


(FAREEHIA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)