

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 164/2023

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Shah Faisal, Ex-Farash (BPS- 01), Administration Department Civil Secretariat Peshawar.(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Administration Department, Civil Secretariat Peshawar.
3. Deputy Secretary (Admn), Administration Department, Civil Secretariat Peshawar.
4. Comptroller, Pakhtunkhwa (Frontier) House, Islamabad.
.....(Respondents)

Mian Muhammad Imran
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney.

... For respondents

Date of Institution..... 02.01.2023
Date of Hearing..... 05.06.2024
Date of Decision..... 05.06.2024

JUDGEMENT

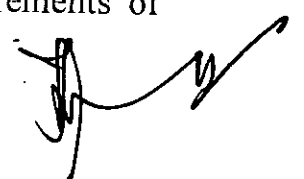
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 11.08.2022, whereby the appellant was removed from service, followed by rejection of his departmental appeal vide letter dated 02.12.2022. It has been prayed that on acceptance of the appeal, the impugned order of removal from service dated 11.08.2022 and rejection of departmental appeal dated 02.12.2022 be set aside and

the appellant be reinstated into service with all back benefits, alongwith any other relief which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Farash (BPS- 01) in the Administration Department, Civil Secretariat Peshawar vide order dated 30.05.2014, against an existing vacancy in Pakhtunkhwa House, Islamabad. He submitted his arrival report on 06.06.2014. He was removed from service on 11.08.2022 on the allegation of willful absence w.e.f 08.03.2022. Feeling aggrieved, he filed departmental appeal on 13.09.2022 which was rejected on 02.12.2022; hence the instant service appeal.

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

4. Learned counsel for the appellant, after presenting the case in detail, argued that the act of the respondents to impose major penalty of removal from service upon the appellant was illegal, unlawful and against the established law and rules. He argued that the appellant informed his high ups regarding the health issues of his mother and wife and duly submitted application for grant of leave and telephonically informed them as well. He argued that no inquiry whatsoever was carried out about the stance of the appellant but with one stroke of pen, he was removed from service without observing the requirements of



Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 and that the punishment awarded to him was too harsh and not commensurate with the charges leveled against him. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the Comptroller, K.P House Islamabad vide letter dated 11.04.2022 communicated that the appellant was absent from official duty w.e.f. 08.03.2022 without any prior approval/permission. An explanation dated 27.04.2022 was served at his residential address, directing him to explain his position, failing which stern disciplinary action was to be initiated against, him but he did not respond. The competent authority vide letter dated 17.05.2022, appointed Inquiry Officer to probe into the matter by serving the charge sheet & statement of allegations upon the delinquent official. The Inquiry Officer addressed a letter dated 23.05.2022 to the appellant to appear on 26.05.2022 at 1100 hours, alongwith relevant record, but he did not even attend the inquiry proceedings. The Inquiry Officer vide letter dated 27.05.2022 reported the matter to the Administration Department, recommending therein that disciplinary proceedings might be initiated against the appellant under Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. Willful absence of the appellant was published in two leading newspapers through the Director, Information in Daily "Aaj" dated 12.06.2022 and Daily "Mashriq" dated 15.06.2022 but he did not respond and after the expiry of stipulated period of 15 days, major penalty of removal from service



was imposed upon him vide order dated 11.08.2022. The learned Deputy District Attorney argued that the contention of the appellant that he proceeded on leave with prior permission of the competent authority was baseless as there was no such record in the department. He requested that the appeal might be dismissed.

6. The appellant was removed from service on the charge of willful absence from duty w.e.f. 08.03.2022. He, while working as Farash (BS-3) at the Pakhtunkhwa House, Islamabad, absented himself from lawful duty without any permission or sanction of the competent authority for which he was issued an explanation/notice on 27.04.2022, which was not responded by him. Charge sheet and statement of allegations was issued on 17.05.2022 and inquiry proceedings were initiated. When he did not appear before the Inquiry Officer, he recommended to proceed against the appellant under rule 9 of the Government Servants (Efficiency & Discipline) Rules 2011 vide a letter dated 27.05.2022, in pursuance of which notices were issued in two newspapers and he was awarded penalty of removal from service.

7. Record presented before us is silent whether the charge sheet and statement of allegations was served at the home address of the appellant or not. A letter of Inquiry Officer dated 23.05.2022 available with the reply of the respondents, addressed to the appellant, shows both the addresses, the Pakhtunkhwa House, Islamabad as well as permanent address of Peshawar. It is not clear on which address it was issued and whether it was received by the appellant or not. Coming to Rule 9 of the



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Rules 2011, it states as follows:-

“Rule- 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.”

8. Rule 9 clearly mentions about a notice to be issued at home address through registered acknowledgement. Record presented before us shows that no such notice was issued to the appellant. The notice to which the learned Deputy District Attorney and the departmental representative referred was an Explanation dated 27.04.2022, much before the initiation of proceedings under Rule 9. From whatever is presented before us, be it the reply of the respondents or the arguments by the learned Deputy District Attorney, it appears that the Administration Department neither conducted a proper inquiry nor




fulfilled the procedure given in Rule 9 of the Efficiency and Discipline Rules, 2011.

9. In view of the above discussion, the case is remitted back to the Administration Department for conducting a proper inquiry under the rules. The appellant is reinstated into service for the purpose of inquiry and respondent department is directed to conduct proper inquiry under the rules by fully associating the appellant in the process. The issue of back benefits is subject to the outcome of the inquiry. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 05rd day of June, 2024.*


(FARLEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman


FazleSubhan, P.S


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05th June, 2024 01. Mian Muhammad Imran Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the case is remitted back to the Administration Department for conducting a proper inquiry under the rules. The appellant is reinstated into service for the purpose of inquiry and respondent department is directed to conduct proper inquiry under the rules by fully associating the appellant in the process. The issue of back benefits is subject to the outcome of the inquiry. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 05th day of June, 2024.*


(FAREEHA PAUL)
Member (F)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS