

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
FAREEHA PAUL ... **MEMBER (Executive)**

Service Appeal No. 1229/2014

Date of presentation of Appeal.....14.10.2014
Date of Hearing.....06.06.2024
Date of Decision.....06.06.2024

Haji Muhammad S/O Allah Baz, R/O Sipah, Haji Abad, Tehsil Bara, Khyber Agency, Ex-PTC, BCS Shakirullah, Bara Khyber Agency.
.....*Appellant*

Versus

1. The Agency Education Officer, Khyber Agency.
2. The Director of Education (FATA) Khyber Pakhtunkhwa, Peshawar.
3. The Political Agent, Khyber Agency, Peshawar Cantt.

.....(*Respondents*)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

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**SERVICE APPEAL UNDER SECTION-4 OF THE
KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL
ACT, 1974, AGAINST THE IMPUGNED ORDER NO.
5320-28 DATED 05.06.2014, WHEREBY THE
APPELLANT HAS BEEN TERMINATED FROM
SERVICE WITH EFFECT FROM 01.03.2014.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the facts gathered from the record, the appellant was appointed as PTC Teacher vide appointment order dated 31.03.2005. Disciplinary action was taken against the appellant on the allegation that he had proceeded abroad and remained absent from duty and vide impugned order dated 05.06.2014, the appellant was terminated from service. Feeling aggrieved, the appellant filed departmental appeal on 29.06.2014, which was not

responded within the statutory period of 90 days, therefore, the appellant has now approached this Tribunal through filing of this appeal on 14.10.2014 for redressal of his grievances.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance through their representative and contested the appeal by way of filing para-wise comments, raising therein numerous legal as well as factual objections.

3. The learned counsel for the appellant argued that the appellant was terminated from service vide impugned order dated 05.06.2014 without issuing any charge sheet/statement of allegations and regular inquiry, which was against the law and rules on the subject. He next argued that there were numerous judgments of apex court, wherein it had been held that in case of awarding major penalty to a civil servant, regular inquiry was a must but in the instant case regular inquiry was not conducted. He further argued that neither any show-cause notice was issued to the appellant nor was he provided any opportunity of personal hearing as well as self defence. He also argued that the appellant was awarded punishment with retrospective effect, therefore, the impugned order of termination of the appellant was void ab-initio. In the last, he argued that the impugned order might be set-aside and the appellant might be reinstated in service with all back benefits.

4. Conversely, learned Deputy District Attorney for the respondents argued that the appellant had remained absent from duty for a long time. He next argued that as per travel history of the appellant received from the Additional Director FIA Khyber Pakhtunkhwa, the appellant

went abroad without obtaining any NOC and leave from the competent Authority, which amounted to gross misconduct. In the last, he argued that the impugned order was rightly passed, therefore, the same might be kept intact and the appeal in hand might be dismissed.

5. We have heard the arguments of learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and have perused the record.

6. A perusal of the record would show that the appellant was appointed as PTC Teacher vide appointment order dated 31.03.2005, however his services were terminated vide impugned order dated 05.06.2014 on the allegation that he proceeded abroad and remained absent from duty for a long time. Available on the record is travel history of the appellant, which shows that the appellant had deliberately went abroad for doing job from 08.10.2009 to 28.10.2017. The record further reveals that appellant went abroad without getting any NOC as well as any leave/permission from the competent authority, which is against the norms of discipline and rules. The appellant has badly failed to justify his long absence from duty as well as his long stay abroad from 08.10.2009 to 28.10.2017. Furthermore, the contention of learned counsel for the appellant that as the appellant was awarded punishment with retrospective effect, therefore, the impugned order dated 05.06.2014 was void, is misconceived. Although punishment could not be awarded with retrospective effect, however, where a civil servant is proceeded against departmentally on the ground of his absence from duty, then punishment could be awarded to him retrospectively from the date of his absence and the same is an exception to the general rule that

punishment could not be imposed with retrospective effect. The impugned order dated 05.06.2014 thus could not be considered as void merely on the ground that the same was passed with retrospective effect. Worthy, apex court in its judgment reported as 2022 PLC (C.S.) 1177 has observed as below:-

"8. We find that the impugned judgment has totally ignored the record and facts of this case. The department has also been totally negligent in pursuing this matter and has allowed the Respondent to remain absent from duty for so long. On the issue of retrospective effect, we find that admittedly, the respondent has been absent from duty w.e.f. 01.09.2003, hence no illegality is made out by considering his dismissal from there as he has not worked with the department since the given date. (Emphasis provided)."

7. As a sequel to the above, the appeal in hand being devoid of any merit stands dismissed. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 06 day of June, 2024.*




KALIM ARSHAD KHAN
Chairman



FAREHA PAUL
Member (Executive)

20th May, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.
2. Learned counsel for the appellant seeks further time for preparation of brief. Being an old case of the year 2014, absolute last chance is given for arguments. To come up for arguments on 06.06.2024 before the D.B. Parcha Peshi given to the parties.


(Muhammad Akbar Khan)
Member (Executive)

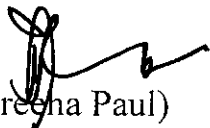

(Kalim Arshad Khan)
Chairman

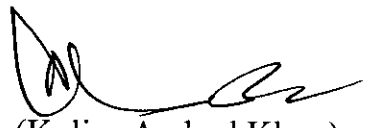
Naeem Amin

ORDER

06th June, 2024

1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Munawar Khan, ADEO for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today, placed on file, the appeal in hand being devoid of any merit stands dismissed. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 06th day of June, 2024.*


(Fareeha Paul)
Member (Executive)


(Kalim Arshad Khan)
Chairman

Naeem Amin