

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No.8489/2020

Date of presentation of Appeal.....24.07.2020

Date of Hearing.....12.06.2024

Date of Decision.....12.06.2024

Sher Alam, Ex-Patwari, District Peshawar.....(Appellant)

Versus

1. **Senior Member Board of Revenue** through its Chairman, Peshawar.
2. **Commissioner**, Peshawar Division, Peshawar.
3. **Deputy Commissioner**, Peshawar District Peshawar....(**Respondents**)

Present:

Mr. Sagheer Iqbal Gulbela, Advocate.....For the appellant

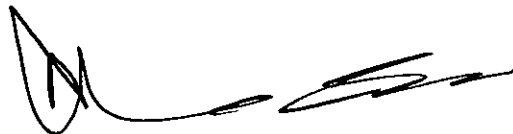
Mr. Muhammad Jan, District AttorneyFor respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO.1686/DK DATED 31.07.2019 OF THE OFFICE OF THE DEPUTY COMMISSIONER PESHAWAR, WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE IN AN ILLEGAL, WHIMSICAL AND CURSORY MANNER.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case as per memo and grounds of appeal, are that appellant was serving as Patwari in the Revenue Department; that vide impugned order dated 31.07.2019 he was removed from service; that feeling aggrieved, he filed departmental appeal on 20.08.2020, which was not responded, hence, the instant service appeal.



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. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

05. At the very outset, learned District Attorney raised the objection of maintainability of appeal that the appellant's departmental appeal was time barred, to which, learned counsel for the appellant referred to the period of public health emergency relating to COVID, 19 imposed by the Provincial Government, which was extended from time to time and was still in force at the time of filing of departmental appeal. In view of Section-30 of the Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the limitation period, provided under any law, including the Limitation Act, 1908 was to remain frozen, therefore, the instant appeal is not liable to be hit by the bar of limitation.

06. Perusal of the record would show that the appellant at the relevant time was serving as Patwari in District Peshawar. On the charges of willful absence, he was removed from service vide order dated

31.07.2019. The impugned order shows that the appellant has been removed by the order of the Deputy Commissioner, Peshawar, who has considered the case of the appellant as one of willful absence, therefore, appellant was treated under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The same is reproduced as below:

"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".

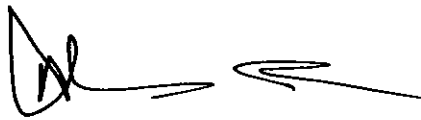
07. Although, the procedure has been adopted, but the case of the appellant does not fall within the ambit of Rule-9 because the said Rule is applicable where there is no response of the Government servant, while in the instant case, the competent authority, in the impugned order dated 31.07.2019, has admitted the presence of the appellant at the time of personal hearing as well as at the time of submission of his reply. Therefore, the appellant has wrongly been proceeded against as no inquiry has been conducted in the matter.

08. In this scenario, the absence of the appellant from duty was a factual controversy, which required to have been probed through a regular

inquiry for reaching a just and right conclusion but the same has not been done.

09. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned order dated 31.07.2019 and the matter is remitted to the competent Authority for de-novo inquiry to be completed within a period of 60 days of receipt of copy of this judgment. The appellant is reinstated for the purpose of de-novo enquiry. The issue of back benefits shall be subject to outcome of the de-novo inquiry. Costs shall follow the event. Consign.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12th day of June 2024.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

Mutazem Shah.

S.A No.8489/2020

ORDER

12th June. 2024

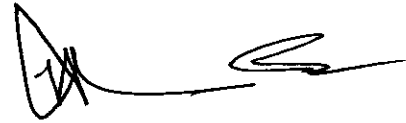
1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, the appeal in hand is allowed by setting-aside the impugned order dated 31.07.2019 and the matter is remitted to the competent Authority for de-novo inquiry to be completed within a period of 60 days of receipt of copy of the judgment. The appellant is reinstated for the purpose of de-novo enquiry. The issue of back benefits shall be subject to outcome of the de-novo inquiry. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12th day of June, 2024.*



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman


SA 8489/20


30.04.2024

Junior to counsel for the appellant present. Mr. Arshad Azam, Assistant Advocate General alongwith Ghulam Shabir Ahmad, Assistant Secretary for the respondents present.

Former requested for adjournment on the ground that learned senior counsel for the appellant is busy in the Hon'ble Peshawar High Court. Representative of the respondents also requested for time to produce the record as per order sheet dated 06.11.2024. Absolute last chance is given. In case of failure no other chance will be given and the case will be decided without the arguments. To come up for arguments on 30.05.2024 before the D.B. PP given to the parties.


SCANNED
K.P.S.T
Peshawar



(Fareeha Paul)
Member(I)


(Rashida Bano)
Member (J)

Fazle Subhan, P.S

- 30.05.2024
01. Mr. Kabirullah Khattak, Advocate for the appellant present and submitted Wakalatnama which is placed on file. Mr. Arshad Azam, Assistant A.G for the respondents present.
02. The newly engaged counsel requested for adjournment in order to prepare the brief. Granted. To come up for arguments on 12.06.2024 before the D.B. PP given to the parties.


(Fareeha Paul)
Member(E)


(Rashida Bano)
Member(E)

Fazle Subhan, P.S