

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 790/2018

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

Dr. Amjad Ali Shah, MBBS FCPS, Forensic Medicine Department, BPS- 17,
Khyber Girls Medical College, Peshawar.(Appellant)

Versus

1. Director General Health Services Peshawar.
 2. The Principal of Khyber Girls Medical College, Peshawar.
 3. Secretary Health Khyber Pakhtunkhwa Peshawar.
 4. Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar.
-(Respondents)

Mst. Roceda Khan,
Advocate

... For appellant

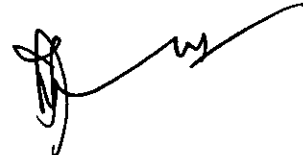
Mr. Muhammad Jan,
District Attorney

... For respondents

Date of Institution.....	11.06.2018
Date of Hearing.....	31.05.2024
Date of Decision.....	31.05.2024

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 impugned order dated 25.08.2016 whereby the appellant was relieved from the post of Demonstrator, BPS- 17, Khyber Girls Medical College Peshawar to Health Department, against which his departmental appeal dated 20.09.2016 was not responded within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned order dated 25.08.2016 might be set aside and the respondent department be directed to adjust the appellant to the post with all back benefits, alongwith any other remedy which the Tribunal deemed appropriate.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was selected as Medical Officer (BPS- 17) in the Health Department in the year 2012. He was initially posted as Medical Officer in Civil Dispensary Gulbahar, Peshawar, where he remained posted till 2015 and then he was transferred to Khyber Girls Medical College Peshawar as Demonstrator for 03 years. He submitted an application for 04 months earned leave due to some domestic issues, which was sent by KGMC to the Health Department on the ground that the leave was not permissible to him under the MTI Rules and vide the same letter dated 25.08.2016, he was relieved to pursue his earned leave from Health Department, being a civil servant. The appellant visited the Health Department for his adjustment many times but in vain. He submitted departmental appeal on 20.09.2016 followed by applications dated 25.03.2017, 20.08.2017 and 09.03.2018 to the respondent department but no response was given, hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise 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, after presenting the case in detail, argued that the impugned order was illegal, void and in utter violation of law and rules on the subject. She argued that being a civil servant, it was the responsibility of the department to adjust him against his post. She further argued that no charge sheet or statement of allegations nor show cause notice was served upon him. The appellant was neither removed nor dismissed from



service, so his non-adjustment was tainted with malafide on the part of the respondent department. She requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant neither applied for 04 months leave on proper form nor got it verified from the Audit Office. Moreover, as per MTI Rules & Regulations, the appellant was not entitled to leave applied for and was rightly relieved by the Dean, Khyber Girls Medical College, Peshawar. The learned District Attorney added that after getting relieved, he did not report to the Health Department or Directorate Health Services for his further adjustment and absented himself from duty since August 2016. He further argued that absence notice was served upon him at his home address vide registered letter dated 03.09.2018 but he did not respond to the notice. He requested that the appeal might be dismissed.


6. From the arguments and record presented before us, it transpires that the appellant was appointed as Medical Officer in the Health Department in 2012. Vide a notification dated 23.04.2015 he, alongwith other Medical Officers, was posted as Demonstrator in the Khyber Girls Medical College on deputation basis for a period of three years. He applied for four months earned leave, which was not permissible in the MTI Rules and hence he was relieved by the Dean, Khyber Girls Medical College vide a letter dated 25.08.2016. The officer did not submit his arrival report in the Health De[artment and instead he preferred a departmental appeal on 20.09.2016 against the letter of Dean KGMC. The plea taken by the learned counsel for the appellant during



arguments before us was that the department did not adjust him whereas the learned District Attorney as well as the departmental representative present before us contended that he did not submit any arrival report and absented himself from duty since August 2016. According to them absence notice dated 03.09.2018 was sent at his home address through registered post but the appellant did not respond to it. They could not provide any evidence whether the notice was actually served at his home address and received by him or anyone at his home. Record is silent about any action taken by the department after serving the absence notice.

7. In view of the above discussion it would be in the fitness of the matter that the appellant should immediately report to his parent department, which is the Health Department/Health Directorate. The Health Department/Directorate is directed to initiate proper inquiry against the appellant under the Khyuber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 in order to ascertain any misconduct or absence on his part. The entire process should be completed within ninety days of the receipt of copy of this judgment. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 31st day of May, 2024.*


(FARVEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

SA 790/2018

31st May, 2024 01. Mst. Roeeda Khan, Advocate for the appellant present.
Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, it would be in the fitness of the matter that the appellant should immediately report to his parent department, which is the Health Department/Health Directorate. The Health Department /Directorate is directed to initiate proper inquiry against the appellant under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 in order to ascertain any misconduct or absence on his part. The entire process should be completed within ninety days of the receipt of copy of this judgment. 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 31st day of May, 2024.*


(FARZEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS