

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No. 1376/2018

Date of presentation of appeal07.11.2018
Dates of Hearing.....06.06.2024
Date of Decision.....06.06.2024

**Sarfaraz Khan (PST) (BPS-12) S/O Umar Fad, R/O Kas Qalandar,
Allai, Battagram.(Appellant)**

Versus

1. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (Male), Battagram.
3. District Account Officer, Battagram.(Respondents)

Present:

Syed Waqas Naqvi,
Advocate.....For appellant.

Mr. Asif Masood Ali Shah,
Deputy District Attorney.....For respondents.

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT 1974 AGAINST
THE UNLAWFUL STOPPAGE OF MONTHLY SALARIES OF
THE APPELLANT SINCE MARCH 2015 WITHOUT ANY
COGENT JUSTIFICATION KEEPING IN VIEW THE FACT
THAT THE APPELLANT HAS ALWAYS PERFORMED HIS
DUTY WITH DEDICATION AND DILIGENCE SINCE
INCEPTION OF HIS SERVICE (17/06/2008) AND FOR
ISSUANCE OF DIRECTIONS TO ADJUST THE APPELLANT
ON HIS DUTY PLACE AND SEAT AS THE APPELLANT HAS
NEITHER BEEN TERMINATED NOR DISMISSED FROM
SERVICE HITHERTO.**

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Service Appeal No. 1377/2018

Date of presentation of appeal07.11.2018
Dates of Hearing.....06.06.2024
Date of Decision.....06.06.2024

**Khial Muhammad (PST) (BPS-12) S/O Nooran Shah, R/O Village
Rashang, Tehsil Allai, District Battagram.(Appellant)**

Versus

1. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

2. District Education Officer (Male), Battagram.
3. District Account Officer, Battagram.....(**Respondents**)

Present:

Syed Waqas Naqvi,
Advocate.....For appellant.

Mr. Asif Masood Ali Shah,
Deputy District Attorney.....For respondents.

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT 1974 AGAINST THE UNLAWFUL STOPPAGE OF MONTHLY SALARIES OF THE APPELLANT SINCE MARCH 2015 WITHOUT ANY COGENT JUSTIFICATION KEEPING IN VIEW THE FACT THAT THE APPELLANT HAS ALWAYS PERFORMED HIS DUTY WITH DEDICATION AND DILIGENCE SINCE INCEPTION OF HIS SERVICE (06/07/2008) AND FOR ISSUANCE OF DIRECTIONS TO ADJUST THE APPELLANT ON HIS DUTY PLACE AND SEAT AS THE APPELLANT HAS NEITHER BEEN TERMINATED NOR DISMISSED FROM SERVICE HITHERTO.
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CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Through this single judgment, this appeal and the connected Service Appeal No. 1377/2018 titled "*Khial Muhammad Versus Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others*" are decided as both are regarding the same subject matter and can conveniently be decided together.

2. According to the facts gathered from the available record, the appellant namely Sarfaraz Khan was appointed as PST (BPS-07) on 17.06.2008, while appellant namely Khial Muhammad was appointed as PST (BPS-07) on 06.07.2008, however, their salaries were stopped in the month of March 2015 without specifying any reason. The appellants filed several applications to the quarter concerned for release

of their salaries but no heed was paid, therefore, they filed separate departmental appeals on 05.04.2018 but the same were not responded. The appellant namely Khial Muhammad had filed reminder on 26.06.2018, while appellant namely Sarfaraz Khan had filed reminder on 27.06.2018, however it came to the knowledge of the appellants that their departmental appeals have already been rejected vide impugned order dated 02.05.2018 and they have been informed regarding rejection of their departmental appeal on 08.10.2018. The appellants have now approached this Tribunal through filing of the instant service appeals on 07.11.2018 for redressal of their grievances.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents No. 1 & 2 put appearance through their representatives and contested the appeals by filing their para-wise comments, raising therein numerous legal and factual objections.

4. Learned counsel for the appellants has argued that the salaries of the appellants were stopped in the month of March 2015 without specifying any reason, which is against the mandate of law, rules and natural justice. He next argued that neither any disciplinary action had been initiated against the appellants nor any adverse order in the shape of dismissal, removal, termination etc has been passed against the appellants but despite that the salaries of the appellants were illegally stopped by the respondents. He further argued that universal adage *audi alterem partem* provides that no one can be condemned unheard, which means that if any action is to be taken against any person, at least a fair opportunity is required to be provided to such person but in the instant

cases, no opportunities have been provided to appellants and their salaries were illegally stopped by the respondents without assigning any reason. In the last he requested, that the salaries of the appellants might be released and they may be adjusted on their post of PST in District Battagram.

5. Conversely, learned Deputy District Attorney for the respondents has contended that the appellants were not appointed by the competent Authority as Primary School Teachers and the appointment orders so annexed by the appellants with their appeals are fake, bogus and fabricated. He next argued that the appellants had never performed any duty nor their services books were prepared by the department. He further argued that the appellants had fraudulently received the earlier salaries, which are required to be refund the Government Treasury. In the last, he argued that the appellants are not civil servants, therefore, their appeals are not maintainable before this Tribunal, which are liable to be dismissed with costs.

6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. Perusal of the record would show that the appellants Sarfaraz Khan and Khial Muhammad were appointed as Primary School Teachers vide appointment orders dated 17.06.2008 and 08.07.2008 respectively. After their appointment, service books were also prepared and they had received their salaries till February 2015, however, from the month of March 2015, their salaries were stopped by the department without assigning any reason in the shape of any written order. The appellants have annexed with their appeals their pay slips, which show that the

appellants have received their salary since their appointment but from the month of March, 2015 their salaries were stopped by the department without any reason in the shape of any order. This Tribunal vide judgment dated 12.04.2018 passed in Appeal No. 572/2017 titled "*Fazal Wahab Versus The District Education Officer, Elementary & Secondary Education Department, Peshawar and two others*" has already dealt with almost similar matter in the following manner:

"CONCLUSION

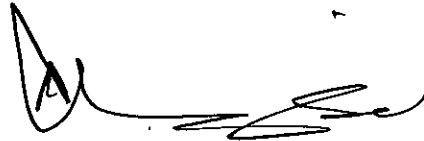
5. Whatever has been argued by the learned Deputy District Attorney is based on the findings of the enquiry report and similarly the authority has based his findings on the basis of enquiry report which is itself a proof of the fact that the issue involved appreciation of factual controversy which could not be decided without holding of formal enquiry. But the Authority neither opted for holding regular enquiry nor dispensed with the formal enquiry. The authority further initiated the proceedings under the disciplinary rules by issuing show-cause and then culminated the proceedings by not awarding the penalty under the disciplinary rules but declared the appointment letter as bogus. Such proceedings in the eyes of law cannot be sustained. The Authority should have been clear, regarding the proceedings to be conducted under the disciplinary rules or should have withdrawn the appointment order in exercise of the powers on the basis of locus-poenitentiae. In case the authority was to exercise his powers under the latter option then this Tribunal could decide the issue on the basis of the stage at which the same power was exercised. However in any event it was incumbent upon the authority to have given full opportunity to the appellant to participate in the enquiry proceedings by giving all rights of due process which has not been done.

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6. *As a sequel to the above discussion, the present appeal is accepted. The appellant is reinstated in service. However, the department is directed to hold denovo proceeding within a period of ninety days from the date of receipt of this judgment. The issue of back benefits etc. shall be subject to the final outcome of de-novo proceedings and rules on the subject. Parties are left to bear their own costs. File be consigned to the record room."*

8. As the factual controversy involved in these two appeals is similar with the above referred appeal, therefore, these two appeals are also decided in the same manner. Consign.

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



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

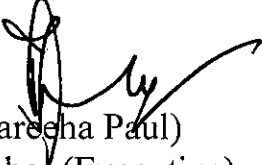
Naeem Amin


Service Appeal No. 1376/2018 titled "Sarfaraz Khan Versus Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others".

ORDER

06th June, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Lutf Ullah, Assistant for the respondents present. Arguments heard and record perused.
2. Vide our consolidated judgment of today placed on file, the present appeal is accepted. The appellant is reinstated in service. However, the department is directed to hold denovo proceeding within a period of ninety days from the date of receipt of this judgment. The issue of back benefits etc. shall be subject to the final outcome of de-novo proceedings and rules on the subject. Costs shall follow the events. 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