

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR
AT CAMP COURT SWAT

BEFORE: RASHIDA BANO ... MEMBER (J)
MUHAMMAD AKBAR KHAN ... MEMBER (E)

Service Appeal No. 1341/2022

Date of presentation of Appeal.....06.09.2022
Date of Hearing.....05.06.2024
Date of Decision.....05.06.2024

Sultan Rehman son of Yousaf Khan Ex-PST GPS Miana Doag No. 1 R/o Shat
Kass District Dir Upper.....(Appellant)

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa, Elementary and Secondary Education Department, Civil Secretariat Peshawar.
2. Director, Directorate of Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Coordination Officer, Dir Upper.
4. Executive District Officer, E&SE, Dir Upper.
5. District Education Officer (Male) Dir Upper.....(Respondents)

MUHAMMAD SHABBIR KHAN,
Advocate

For appellant.

UMAIR AZAM,
Additional Advocate General

For respondents

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"On acceptance of this service appeal, it is humbly requested that the impugned order dated 23.01.2010 whereby appellant was removed from service and order 16.08.2022 whereby appellant was compulsory retired from service may kindly be

set aside with further direction to the respondents to forthwith reinstate the appellant with all consequential/service back benefits.”

02. Brief facts of the case are that the appellant while serving as PST Teacher (BPS-07) on 10.05.1987 was charged in case FIR No. 16 dated 01.04.2009 U/Ss 302/324/353/427/404/148/149 PPC of Police Station Sheringal, District Dir Upper for involvement in anti state activities and was arrested. While in judicial custody, the appellant was proceeded departmentally and was awarded major penalty of removal from service vide order dated 23.01.2010. The appellant was acquitted of the charges leveled against him vide judgment dated 16.03.2022 thereafter, the appellant filed departmental appeal on 22.06.2022 which was partially accepted and the major penalty of “removal from service” was converted into “compulsory retirement from government service” vide impugned Notification dated 16.08.2022. Feeling aggrieved from the impugned Notification dated 16.08.2022, the appellant filed the instant service appeal on 06.09.2022.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned Additional Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order dated 16.08.2022 is against the law, fact, norms of natural justice and void ab-inito hence liable to be set aside; that the appellant has not been treated in accordance with law, rules and as such the respondents violated Article 4 of

the Constitution of Islamic Republic of Pakistan; that the impugned order is also violative of Section 24-A of General Clauses Act as the competent authority and appellate authority failed to pass a speaking order with reason viz-a-viz the allegations; that no opportunity of personal hearing was afforded to the appellant and the entire proceedings were carried out at the back of the appellant and he has been condemned unheard; that the appellant has been honorably acquitted from all the charges leveled against him; that the appellant was kept in the custody of Pakistan Army and interrogated also but no evidence came against him.

05. On the other hand, learned Additional Advocate General contended that the impugned Notification dated 16.08.2022 was issued as per law, rules and policies and the appellant has been treated as per Article 4 of the Constitution of Islamic Republic of Pakistan; that act of the respondents is in accordance with the provision of Article 24-A of the Constitution of Islamic Republic of Pakistan; that formal inquiry has been conducted against the appellant on the charges leveled against him by the District Coordinator Officer (DCO) which was proved and on the basis of which he was arrested; that the appellant has not been acquitted with honor, he has been given benefits of doubt.

06. Perusal of record reveals that the appellant was proceeded against under the then North West Frontier Province Removal from Service (Special Powers) Ordinance, 2000 on the charges of involvement in anti state activities with the militance. An inquiry committee was conducted to scrutinize the conduct of the appellant and based on the findings of the inquiry committee the appellant was imposed upon major penalty of removal from service vide order dated 23.01.2010. However, the appellate authority i.e. Director Elementary &

Secondary Education Khyber Pakhtunkhwa, Peshawar upon departmental appeal of the appellant converted the major penalty of "Removal from Service" into "Compulsory Retirement from Government Service" vide order dated 16.08.2022. We hold that the appellate authority has already delivered relief to the appellant showing leniency by entertaining the badly time barred departmental appeal and we find no room for further relief to the appellant. As such the appellate order dated 16.08.2022 stands intact and the instant appeal is dismissed. Costs shall follow the event. Consign.

07. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 05th day of June, 2024.*



(RASHIDA BANO)
Member (J)
Camp Court Swat



(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat

ORDER

- 05th June, 2024
1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present. Arguments heard and record perused.
 2. Vide our detailed judgment of today, separately placed on file, the appellate order dated 16.08.2022 stands intact and the instant appeal is dismissed. Costs shall follow the event. Consign.
 3. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 05th day of June, 2024.*



(RASHIDA BANO)
Member (J)
Camp Court Swat



(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat