

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR
AT CAMP COURT SWAT

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

Service Appeal No. 8892/2020

Date of presentation of Appeal.....28.07.2020
Date of Hearing.....06.06.2024
Date of Decision.....06.06.2024

Dr. Hamid Ullah S/o Ayoub Khan Resident of Mohallah Peer Khail P.O Rahim
Abad The Babuzai District Swat.....(Appellant)

VERSUS

1. Director of Education Khyber Pakhtunkhwa Peshawar.
2. District Education Officer (M) Swat.....(Respondents)

HAMZA ABBAS,
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;

"That on acceptance of this appeal the impugned order dated 16.01.2016, an any order if passed by the respondent No. 1 after laps of time of statutory period (90 days) may kindly be directed respondents to set aside the impugned order and the appellant may kindly reinstate with all back/ancillary benefits. Any other relief not specifically prayed for, but this August Court deems proper may also be granted."

02. Brief facts of the case are that the appellant was initially appointed as PST Teacher vide order dated 8.05.2011 in GMPS Kuladeer; that without permission/leave from the competent authority the appellant remained absent from duty; that departmental proceedings were initiated against the appellant on the allegations of absence from duty and he was awarded major penalty of dismissal from service vide impugned Notification dated 16.01.2016. Feeling aggrieved from the impugned Notification dated 16.01.2016 the appellant filed departmental appeal on 15.04.2020 which was not decided within the statutory period of 90 days, hence preferred the instant service appeal on 28.07.2020.

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 appellant served the department for considerable period of 04 years and 04 months and without any cogent reason the respondent department issued the impugned Notification of dismissal from service; that the appellant applied for leave which was not granted to the appellant and he was directed to continue his service at circle Education Office Mingora vide order dated 01.06.2015; that the appellant was issued show cause notices which were replied by the appellant but his reply was not considered; that no proper/regular inquiry has been conducted in the matter which is mandatory obligation on the part of

competent authority and no chance of personal hearing was provided to the appellant.

05. On the other hand, learned Additional Advocate General contended that the appellant went abroad for higher studies without proper kind of leave/NOC from the competent authority; that the appellant remained willfully absent for a long time and after observing all the codal formalities, the competent authority imposed the major penalty of "Dismissal from Service" upon the appellant under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 vide impugned Notification dated 16.01.2016.

06. It transpires from scrutiny of record available in the case file that the appellant after serving the respondents department for four years proceeded abroad for pursuing his Ph.d studies. He applied for two years leave (without pay) w.e.f. 10.03.2015 to 10.03.2017 vide his application received in the office of District Education Officer (Male) Swat on 23.02.2015. He proceeded on leave without sanction of the leave for which he had applied for. It is worth mentioning here that the appellant had submitted application for leave for the purpose of construction of his house. The respondent department upon willful absence of the appellant initiated disciplinary proceedings against him on account of willful absence under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Several Show Cause Notices were served upon the appellant and through publication in the two daily newspapers he was asked to resume duty and explain the reasons of his absence by appearing in person before the competent authority. Although reply to the show cause notices by the appellant dated 01.07.2015 &

14.10.2015 are available on record but it transpires that he was abroad and was replying to the show cause notices through proxy. After publication in the newspapers the competent authority imposed a major penalty of dismissal from service upon the appellant vide order dated 16.01.2016. A copy of transcript of University of Ulsan, Republic of Korea submitted by the appellant with his memo of appeal shows that he remained out of country for more than five years to pursue his Ph.d study. We observe that willful absence of the appellant stands proved and proceedings against him have rightly been undertaken under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. However, the major penalty of dismissal from service imposed upon the appellant is not a lawful penalty as imposition of major penalty is not the discretion of the competent authority rather Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provides the penalty of removal from service in such case. We therefore, dismiss the appeal in hand and modify the impugned order dated 16.01.2016 to the extent of conversion of major penalty of dismissal from service into the major penalty of removal from service. 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 06th day of June, 2024.



(RASHIDA BANO)
Member (E)
Camp Court Swat



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

06.06.2024 1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present. Arguments heard and record perused.

2. We therefore, dismiss the appeal in hand and modify the impugned order dated 16.01.2016 to the extent of conversion of major penalty of dismissal from service into the major penalty of removal from service. 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 06th day of June, 2024.*



(RASHIDA BANO)
Member (E)
Camp Court Swat



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