

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 63/2020

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

Khan Gir S/O Malik Muhammad Hassan Ex-CT GMS, Chari Shabi Khel,
Kohistan Lower.(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary Education, Civil Secretariat Peshawar.
3. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer (Male) Kohistan Lower.(Respondents)

Mr. Shahid Mehmood Khan,
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney

... For respondents

Date of Institution.....	18.12.2019
Date of Hearing.....	11.06.2024
Date of Decision.....	11.06.2024

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 order dated 04.09.2019 of respondent No. 4, whereby the appellant was awarded major penalty of compulsory retirement w.e.f 30.06.2019 and his absence period w.e.f. 01.07.2017 to 29.06.2019 was converted into leave without pay, and against the order dated 18.11.2019 of respondent No. 3 whereby his departmental appeal was rejected. It has

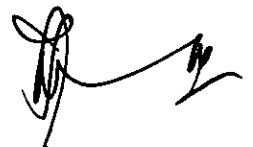


been prayed that the order dated 04.09.2019 might be set aside and the appellant might be reinstated into service with all back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as CT on 28.08.1995 in the respondent department. An inquiry was initiated against him by respondent No. 4 for his willful absence from duty. Show cause notice dated 31.07.2019 was issued to him which was duly replied by him. Vide order dated 04.09.2019, respondent No. 4, awarded major penalty of compulsory retirement from service w.e.f. 30.06.2019 and his absence period with effect from 01.07.2017 to 29.06.2019 (640 days) was converted into leave without pay. Feeling aggrieved, the appellant filed departmental appeal before respondent No. 3 which was rejected on 18.11.2019; hence the instant service appeal.

3. Respondents were put on notice who submitted written reply. 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 dated 04.09.2019 was illegal, unlawful, without lawful authority and based on malafide intentions. He argued that the appellant had performed his duty which was evident from the inquiry report dated 11.01.2019. There was not a single charge or complaint against him but respondent No. 4 passed the order illegally and without



reasons, which was against the law and natural justice. He 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 Head Master, GMS Chari Shabi Khail, Ranolia Pattan, Kohistan Lower reported willful absence of the appellant from his duties for 14, 15, 27 to 29 March 2019, 10, 11, 12 and 25 & 26 April, 2019 and 6th May to 11th May, 2019. As per IMU reports he willfully absented himself from duties since 01st March 2017 without lawful authority. He argued that the appellant had not submitted satisfactory reply and did not bother to appear for personal hearing on the date fixed, which proved that he had nothing in his defence. In the light of show cause notice a regular inquiry was conducted through the Inquiry Committee. Charges leveled against him were proved and the competent authority vide order dated 04.09.2019 imposed upon him major penalty of compulsory retirement from service w.e.f. 30.06.2019 and his absence period w.e.f. 01.07.2017 to 29.06.2019 (640 days) was converted into leave without pay. He stated that already a lenient view had been taken against him and requested that the appeal might be dismissed.

6. Through the instant service appeal, the appellant has impugned an order of the District Education Officer (Male) Kohistan Lower dated 04.09.2019 vide which major penalty of compulsory retirement from service had been imposed upon the appellant w.e.f. 30.06.2019 and the period of absence from 01.07.2017 to 29.06.2019 (640 days) had been converted into leave without pay. From the arguments and record presented



before us, it transpires that the appellant was absent from his lawful duty and his salary was stopped w.e.f. 31.03.2017. An inquiry was ordered by the DEO (M) Kohistan vide an order dated 20.12.2018. The Inquiry Committee submitted its report on 11.01.2019, according to which, the appellant was found irregular in attending his duty. Based on that report, salary of the appellant was released vide an order dated 22.04.2019 and arrears of intervening period were recommended based on future performance of duty. Through the same order, the appellant was kept under observation with the directions to the DEO (M) Kohistan Lower that if he was found absent, then proceedings against him might be initiated under the P&D Rules 2011, without lapse of time. By the time, that order was issued, the appellant was again absent on various days in the month of March, April and May for which he was issued showcause notice on 15.05.2019. Another showcause notice was issued on 31.07.2019 to which he responded but the response was found unsatisfactory and order of compulsory retirement from service was issued on 04.09.2019.


7. Perusal of record shows that the appellant was in the habit of absenting himself from his lawfully duty for which he was awarded penalty of stoppage of salary but the same was released and he was kept under observation. Instead of mending his ways by keeping himself dutiful, he again absented and was hence proceeded against. The appellant was a civil servant and a Certified Teacher in the Elementary and Secondary Education Department. He was under obligation to perform his duty with honesty and dedication as any lapse on his part would have adverse impact



on the students, whom he was teaching. Record showed that he miserably failed to do so and was rightly proceeded against departmentally.

8. In view of the above discussion, we do not see any merits in the appeal in hand and hence dismiss it. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11th day of June, 2024.*


(FAREHIA PAUL)
Member (I)
Fazle Subhan PS



(RASHIDA BANO)
Member(J)

SA 63/2020

11th June, 2024 01. Mr. Shahid Mahmood 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 05 pages, we do not see any merits in the appeal in hand and hence dismiss it. 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 11th day of June, 2024.*


(FARZINA PAUL)
Member (I)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS