

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.5681/Neem/2020

Date of presentation of Appeal.....26.09.2023

Date of Hearing.....04.07.2024

Date of Decision.....04.07.2024

Sahib Nawaz, Warder, Central Jail, Peshawar.....(*Appellant*)

Versus

1. **Inspector General of Prisons**, Khyber Pakhtunkhwa, Peshawar.
2. **Assistant Inspector General of Prisons**, Khyber Pakhtunkhwa, Peshawar.
3. **Superintendent Headquarters**, Prisons, Peshawar..(*Respondents*)

Present:

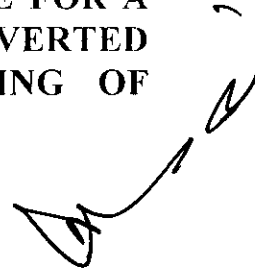
Syed Noman Ali Bukhari, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney..For respondents

.....

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 01.11.2019 WHEREBY THE INTERVENING PERIOD W.E.F 14.07.2016 TO 13.09.2019 WHICH HAS BEEN TREATED AS LEAVE WITHOUT PAY AND ALSO AGAINST THE FINAL IMPUGNED ORDER DATED 12.03.2020 WHEREBY REDUCTION TO LOWEST STAGE FOR A PERIOD OF THREE YEARS HAS BEEN CONVERTED INTO MINOR PENALTY OF WITHHOLDING OF INCREMENTS FOR TWO YEARS.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case are that appellant, serving in the respondent department, was removed from service vide order dated 14.07.2016; that the said order was assailed by the appellant in the Service Appeal

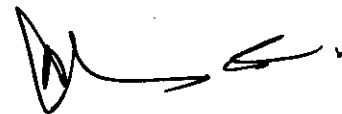


No.228/2017 and this Tribunal vide judgment dated 06.08.2019, set aside the impugned order and directed the respondents to conduct inquiry; that inquiry was conducted and the appellant was reinstated without back benefits and deducted to lower stage for a period of three years; that said order was again challenged before the Tribunal in Service Appeal No.5681/2020 which was accepted as prayed for; that the respondent department, against the judgment of this Tribunal, approached the Supreme Court of Pakistan by filing Civil Petition No.318-P of 2021 and the Supreme Court, vide order dated 12.05.2023, by setting aside the judgment of the Tribunal, converted the said petition into appeal and remanded to this Tribunal for decision afresh after hearing the parties, in accordance with law, hence, this appeal.

02. On receipt of the appeal from the Supreme Court of Pakistan. Respondents had already filed reply in the earlier stage of the appeal. They put appearance and contested the appeal. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).



05. The case has been remitted to this Tribunal by the order of the Supreme Court of Pakistan with the following observations:

"The learned Additional Advocate General, K.P has pointed out that in the impugned judgment the Tribunal has misread the record in assuming that the absence of the respondent from duty for a period of 33 days is justified because of his admission to the Police Hospital. He has adverted to the statement of the respondent dated 26.09.2019 recorded by the Inquiry Officer which indicates that the respondent had been advised best-rest for only two days and not 33 days. The remaining period of his absence was not substantiated properly by the respondent before the Inquiry officer. The second ground in the impugned order is that no punishment was awarded to the 14 Warders who were identically placed regarding their absence from duty. The documents on record, however, reflect that the said Warders had been subjected to withholding of their annual increment for one year. Consequently, the impugned judgment which sets aside the penalty imposed on the respondent is contrary to the record.

2. The submissions made by the learned Addl. A.G. have some merit. However, we consider it appropriate that the factual pleas taken before us ought to be examined by the K.P. Service Tribunal for the reason that we only consider a substantial question of law of public importance while hearing petitions under Article 212(3) of the Constitution. Resultantly, the impugned judgment is set aside. This petition is converted into appeal, allowed and remanded to the K.P Service Tribunal for decision afresh after hearing the parties, in accordance with law."

06. Today, when the case was opened for arguments, learned counsel for the appellant as well as learned Deputy District Attorney were unanimous that the appellant should also be ordered to be treated similarly as others who had been subjected to withholding of their annual increment for one year, in similar situation.



07. In view of the above scenario, instant service appeal is accepted and the respondents are directed to treat the appellant similar to those 14 Warders whose cases were similar to the case of the appellant, by withholding annual increment for one year. Costs shall follow the event. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 4th day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)