

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT ABBOTTABAD.**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**  
**AURANGZEB KHATTAK ...MEMBER (Judicial)**

*Service Appeal No.490/2022*

Date of presentation of appeal.....25.01.2022  
Dates of Hearing.....24.06.2024  
Date of Decision.....24.06.2024

**Saddar Khan, Son of Afreen Khan, resident of Seo, Tehsil Dassu,  
District Kohistan Upper.....Appellant**

Versus

1. **Government** of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer (Male)** upper Kohistan at Dassu.  
.....(**Respondents**)

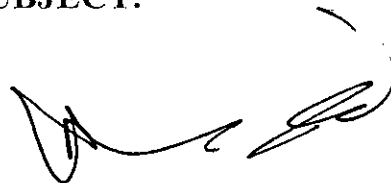
Present:

Mr. Abdul Saboor, Advocate.....For the appellant.

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

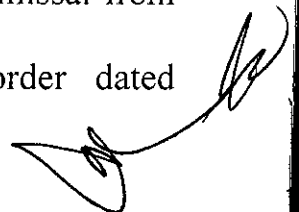
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**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974  
AGAINST THE IMPUGNED ORDER BEARING NO.  
7547-55 DATED 03.11.2021 ISSUED BY RESPONDENT  
NO.3 WHEREBY MAJOR PENALTY OF DISMISSAL  
FROM SERVICE HAS BEEN IMPOSED UPON THE  
APPELLANT IN COMPLETE DISREGARD OF LAW  
AND RULES ON THE SUBJECT.**



## **JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** We have an appeal before us brought by Saddar Khan son of Afreen Khan, who alleges that he was appointed as Driver (BPS-06) at the office of SDEO (Male) Kohistan at Dassu on deceased son quota under Rule 10 sub rule (4) of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989 vide appointment order No. 4117-24 dated 08.08.2019; that after serving for more than 4 months in the office of SDEO (Male) upper Kohistan at Dassu, the appellant was transferred and posted in the office of respondent No.3 vide order dated 24.12.2019; that the appellant after assuming charge of the post of Driver, was orally directed by respondent No.3 to serve as Chowkidar at GPS Seo, which direction was denied by the appellant; that due to non-assumption of the charge, appellant was served with a show cause notice dated 15.01.2021, which was replied by the appellant on 20.01.2021; that respondent No.3 adjusted the appellant as Chowkidar at GHSS Seo, through impugned order dated 14.04.2021 by reappointing him to the post of Chowkidar from the post of Driver (BPS-6) without even withdrawing the initial appointment of the appellant dated 08.08.2019; that the appellant filed an appeal dated 22.04.2021 to respondent No.2 and 3 against the impugned order which was not responded; that thereafter, the appellant filed writ petition No. 656-A/2021 before the Peshawar High Court, Abbottabad bench, which was treated as departmental representation vide order dated 24.11.2021 and sent to respondent No.2 for adjudication in accordance with law within a period of one month; that in the meanwhile, major penalty of dismissal from service was imposed upon the appellant vide impugned order dated



03.11.2021; that the appellant filed departmental appeal against the impugned order of dismissal from service, which was not responded within a period of ninety days, then he filed this appeal.

2. On receipt of the of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

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

4. 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.

5. Perusal of record reveals that the appellant has been proceeded against on the charges of willful absence. In the case of willful absence, proceedings are conducted under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 according to which the Government Servant shall properly be noticed through registered acknowledgment on his home address and after that, publication shall be made in the two leading newspapers by giving him fifteen days time to resume duty and in case of failure, he shall be proceeded against. In the instant case, the respondents have issued show cause notice to the appellant, which has been replied by him, but despite his response, the appellant has been proceeded against without conducting proper inquiry and without associating him to defend himself. In the circumstances the impugned action cannot sustain. We deem it



appropriate that in the above situation a proper enquiry ought to have been conducted by the department duly associating the appellant with the proceedings as per procedure under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, especially when the appellant had responded to the show cause notice.

6. In the circumstances, we allow this appeal, reinstate the appellant for the purpose of enquiry and remit the matter back to the department for enquiry in accordance with law and rules within sixty (60) days of receipt of this judgment. Date of the receipt of judgment shall be communicated to the Registrar of the Tribunal. The result of the enquiry shall also be transmitted to the Tribunal. The issue of back benefits will be subject to the final outcome of the enquiry. Costs shall follow the event. Consign.

7. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 24<sup>th</sup> day of June, 2024.*



**KALIM ARSHAD KHAN**  
Chairman  
Camp Court Abbottabad



**AURANGZEB KHATTAK**  
Member (Judicial)  
Camp Court Abbottabad

*\*Adnan Shah\**