

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

BEFORE: **AURANGZEB KHATTAK ... MEMBER (Judicial)**  
**MUHAMMAD AKBAR KHAN ... MEMBER (Executive)**

*Service Appeal No. 1932/2023*

Date of presentation of Appeal.....19.09.2023

Date of Hearing.....11.07.2024

Date of Decision.....11.07.2024

**Sher Aman (Naib Qasid) S/o Sardar Khan, R/o Mian Kalay Swabi**  
.....**Appellant**

Versus

1. Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar at Civil Secretariat Peshawar.
2. The District Education Officer (Male) Swabi.
3. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar. ....(**Respondents**)

Present:

Mr. Yasir Khalid, Advocate .....For appellant.

Mr. Riaz Ahmad Paindakhel, Additional Advocate General ...For respondents

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** The appellant Sher Aman, has impugned through the instant appeal, the order dated 21.12.2016, whereby major penalty of removal from service was imposed upon him on the allegations of absence from duty with effect from 25.05.2016. Feeling aggrieved from the order dated 21.12.2016, the appellant filed departmental appeal on 06.07.2023, which was rejected vide order dated 21.08.2023. The appellant has now approached this Tribunal through filing of instant service appeal on 19.09.2023 for redressal of his grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective replies/comments.

3. Arguments heard and case file perused.

4. The learned counsel for the appellant contended that the appellant was performing his duties as Naib Qasid in GMS Mian Killi Swabi and on 25.05.2016, he was arrested by the government agencies and detained him for about seven years, however, he was found innocent and released on 17.06.2023 and during the said period in his absence, the respondents illegally removed him from service on 21.12.2016. He next contended that the absence of the appellant from duty was not willful but was due to his arrest by the government agencies on the baseless allegations. He further contended that no show-cause notice, inquiry, or personal hearing was afforded to the appellant, violating principles of natural justice and making the removal order illegal. He also contended that the discriminatory treatment is evident in the successful reinstatement of Muhammad Ali, who was also removed from service on the same allegations, while rejecting the appellant's appeal. He next argued that the lack of due process, such as issuing a show-cause notice and conducting an inquiry, signifies malafide intentions by the respondents. In the last he contended that the removal order violates the appellant's fundamental rights, therefore, the appeal in hand may be accepted by reinstating the appellant in service with all back benefits.

5. Conversely, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the

appellant and contended that the removal was based on the appellant's prolonged absence, which disrupted the functioning of the institution. He next contended that the appellant kept the department unaware about his arrest by the government agencies, therefore, he was rightly proceeded under Rule-9 of Khyber Pakhtunkhwa Governments Servants (Efficiency & Discipline) Rules, 2011. He further contended that the due process was followed by issuing charge sheet as well as statement of allegations and making publication in two leading newspaper. He next argued that the decision regarding Muhammad Ali's reinstatement was based on specific mitigating factors that are not applicable in the appellant's case. He further argued that the appellant was removed from service vide order dated 21.12.2016 and he filed departmental appeal on 06.07.2023, which is badly barred by time, therefore, the appeal in hand is liable to be dismissed in this score alone. In the last he requested, that the impugned orders may be kept intact and the appeal in hand may be dismissed with cost.

6. The perusal of the record would reveals that the appellant, while serving as Naib Qasid in Government Middle School Mian Killi, was arrested by the government agencies on 25.05.2016 and to this effect Head Master of the GMS Mian Killi also sent written report about the occurrence to the DEO Swabi on the same day. The appellant was then removed from service in his absence by the competent Authority i.e District Education Officer (Male) Swabi vide impugned order dated 21.12.2016 on the allegations of willful absence from duty. There is nothing on the case file to show that the appellant was


convicted in any case or any FIR was registered against him during the period of his absence from duty. The record further reveals that the absence of the appellant was involuntary, resulting from his arrest by the government agencies, therefore, punishing the appellant for circumstances beyond his control is unreasonable and unjust. Furthermore, the removal of the appellant without a show-cause notice, inquiry, or the opportunity to defend him constitutes a gross violation of due process and principles of natural justice. Moreover, the removal order, based on alleged willful absence, while the appellant was in involuntary custody, lacks merit and factual basis, rendering it unsustainable in the eyes of the law. Muhammad Ali Sweeper of the same school was also arrested by the government agencies in 2016 and was remained absent from duties till the year 2023 but he was reinstated. As regard the reinstatement of Muhammad Ali, who faced similar circumstances, while rejecting the appellant's appeal, demonstrates clear discriminatory treatment, violating principles of equality and fairness, therefore, the removal order infringes upon the fundamental rights of the appellant as guaranteed under the constitution of Islamic Republic of Pakistan. Reliance is placed on the judgments of august Supreme Court of Pakistan cited in 2002 SCMR 71 and 2021 SCMR 1313.

7. As a sequel to the above, the impugned orders dated 21.12.2016 and 21.08.2023 are set-aside and the appellant is reinstated into service. However, the intervening period during which the appellant remained out of service till the announcement of this judgment shall

*Service Appeal No. 1952/2023 titled "Sher Aslam versus Secretary Elementary & Secondary Education, Mhyber Pakhtunkhwa Peshawar in Civil Secretariat Peshawar and others", decided on 11.07.2024 by Division Bench comprising of Mr. Aurangzeb Khatkhat, Member Judicial and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

be treated as extra ordinary leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11 day of July, 2024.*

  
**AURANGZEB KHATTAK**  
Member (Judicial)

  
**MUHAMMAD AKBAR KHAN**  
Member (Executive)


*\*Naem Amin\**




**ORDER**

11<sup>th</sup> July, 2024

1. Appellant alongwith his counsel present. Mr. Riaz Ahmad Paindakhel, Additional Advocate General for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the impugned orders dated 21.12.2016 and 21.08.2023 are set-aside and the appellant is reinstated into service. However, the intervening period during which the appellant remained out of service till the announcement of this judgment shall be treated as extra ordinary leave without pay. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11 day of July, 2024.*

  
(Muhammad Akbar Khan)  
Member (Executive)

  
(Aurangzeb Khattak)  
Member (Judicial)