

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 103/2023

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

Waqar Ali S/O Taj Muhammad, Ex-Naib Qasid GGHSS Mahmood Abad Parkho Dheri Tehsil and District Mardan.(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) District Mardan.
4. Principal/Head Mistress GGHSS Mahmood Abad Parkho Dheri Mardan.(Respondents)

Mr. Muhammad Irshad Mohmand,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Date of Institution.....	06.01.2023
Date of Hearing.....	14.06.2024
Date of Decision.....	14.06.2024

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 15.06.2022 passed by respondent No. 3, whereby major penalty of removal from service was imposed upon the appellant, against which his departmental appeal was not responded within the stipulated period. It has been prayed that on acceptance of the appeal, impugned order dated 15.06.2022 might be set aside and the appellant be



reinstated into service with all back benefits including seniority, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Naib Qasid in the respondent department on the recommendation of the Departmental Selection Committee and posted in GGHSS Mahmood Abad Parkho Dheri Mardan vide order dated 28.09.2017. Respondent No. 3 issued show cause notice to the appellant for deduction of his one day salary vide order dated 11.08.2021, despite the fact that he was present. He submitted reply to the show cause notice and one day salary was also deposited by him. On the report of the Principal of the said school, respondent No. 3 stopped salary of the appellant from 20.08.2021 without any reason. The appellant submitted application to respondent No. 3 for release of his salary but with no result. Thereafter, respondent No. 3, without issuance of charge sheet and statement of allegations and without conducting any inquiry, issued the impugned order dated 15.06.2022, whereby major penalty of removal from service was imposed upon the appellant. Feeling aggrieved, he filed departmental appeal to the respondent No. 3 on 29.06.2022 but later on he was directed to file another departmental appeal before the competent authority (respondent No. 2) despite the fact the under the law, DEO (Female) Mardan was legally bound to transmit the appeal to the competent authority but the same was not transmitted, therefore, the appellant was constrained to file another departmental appeal to respondent No.




2/Director of Education on 27.09.2022 but the same was not decided within the statutory period; 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 Deputy 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 appellant had performed his duty to the entire satisfaction of his high ups. He argued that august Supreme Court of Pakistan, as well as the Service Tribunal, in various judgments, had held that major penalty could not be imposed without conducting detailed inquiry but in the instant case without issuing of charge sheet and statement of allegations to the appellant and without conducting any departmental inquiry, he was removed from service with a single stroke of pen without any solid or authentic evidence regarding the allegations. He further argued that according to the respondents some inquiry was conducted but no statements were recorded in the presence of the appellant and all the proceedings were conducted at his back. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that as per EMA monitoring report, the appellant was found absent from duty on 01.07.2021 due to which the respondent No. 3 issued show cause notice dated 01.08.2021 to him for deduction of his salary. He further stated that an Inquiry Officer



was nominated to conduct inquiry in the light of report submitted by the Principal concerned. The inquiry officer conducted the inquiry and submitted the inquiry report on 10.02.2022 on the basis of which the appellant was removed from service vide order dated 15.06.2022. He requested that the appeal might be dismissed.

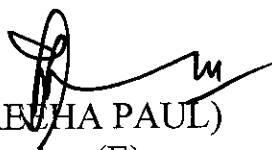
6. Through the instant service appeal, the appellant has impugned the order dated 15.06.2022 through which he was removed from service. Arguments and record presented before us show that while serving the respondent department as Naib Qasid, the appellant was issued a show cause notice dated 01.08.2021 on the ground of absence from duty on 01.07.2021 and salary for one day was deducted from him. On 20.08.2021, another showcause notice was issued on the ground of absence from duty without any permission. That showcause notice referred to an inquiry in which it was proved that the appellant was absent from duty. An inquiry report dated 10.02.2021 had been attached with the reply of the respondents as annex-D. Perusal of that report showed that it was regarding allegations of misbehavior by the appellant with the staff of the school. The inquiry was conducted by Principal GHSS Hathian, Mardan. It was noted that the Inquiry Officer did not prove the charge of misbehavior, rather he deviated from the terms of reference of the inquiry and gave his findings on the absence of the appellant and that too for just two days i.e 08.10.2020 and 30.01.2021. It was further noted that the appellant was not involved in the inquiry proceedings. The District Education Officer (Female) Mardan, in the order of removal from service dated 15.06.2022 referred to



misbehavior of the appellant with school staff and his absence from duty and based it on the findings of the inquiry committee/officer but the inquiry was conducted to look into the allegation of misbehavior only and absence was not even mentioned in the TORs. Even if it was absence for which the appellant was proceeded against, the charge had to be specific by mentioning the dates. Above all, the appellant was not involved either by the Inquiry Officer in the inquiry proceedings or the DEO (F) Mardan before awarding major penalty, which is against the spirit of a fair trial. He would have been given a chance to present his stance and defend himself, and cross-examine witnesses, if any. In this case, the respondent department miserably failed to adhere to the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

7. In view of the above discussion, the appeal is allowed as prayed for. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 14th day of June, 2024.*


(FAREEHA PAUL)
Member (E).

Fazle Subhan PS



(RASHIDA BANO)
Member(J)

SA 103/2023

14th June, 2024 01. Mr. Muhammad Irshad Mohmand, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal is allowed as prayed for. 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 14th day of June, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS