

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

BEFORE: RASHIDA BANO ... MEMBER (J)
MUHAMMAD AKBAR KHAN ... MEMBER (E)

Service Appeal No. 689/2019

Date of presentation of Appeal.....07.05.2019
Date of Hearing.....24.06.2024
Date of Decision.....24.06.2024

Atta ur Rehman, Ex-Junior Clerk at GHS Summri Payan Kohat R/o Village
Sherpao Mohallah Nazimabad, Tehsil Tangi District
Charsadda.....(Appellant)

VERSUS

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
Near GHSS No. 1 Peshawar City.
2. Assistant Director Admin Elementary & Secondary Education Khyber
Pakhtunkhwa Peshawar Near GHSS No. 1 Peshawar City.
3. District Education Officer (Male) Kohat.
4. Government of Khyber Pakhtunkhwa through Secretary Education, Civil
Secretariat Peshawar.
5. Accountant General, Khyber Pakhtunkhwa Peshawar.....(Respondents)

MUNFAT KHAN,
Advocate

For appellant.

MUHAMAMD JAN,
District Attorney

For respondents

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):-The instant service appeal has
been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act
1974 with the prayer copied as under;

*"That on acceptance of appeal, both the impugned orders
dated 16.08.2018 and 01.04.2019 may be set aside and the
appellant may be reinstated in service with all back benefits."*

02. Brief facts of the case are that the appellant while working as Junior Clerk in the respondent department was transferred from GHSS Lachi to GHS Summari Payan Kohat vide order dated 13.02.2014. Disciplinary proceedings were initiated against the appellant on the allegation of absence from duty and he was dismissed from service vide order dated 16.08.2018. Feeling aggrieved from the impugned order dated 16.08.2018, the appellant filed departmental appeal on 08.02.2019 which was rejected vide order dated 01.04.2019, hence preferred the instant service appeal on 07.05.2019.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned orders dated 16.08.2018 and 01.04.2019 are illegal, unlawful, void ab-initio and the same has not been passed in accordance with law, rules and is liable to be set aside; that the appellant was constrained/unable to perform his duties as the appellant was abducted by some miscreant against whom the appellant has registered an FIR at PS Muhammad Riaz Shaheed Kohat. Learned counsel for the appellant further contended that proper charge sheet/statement of allegations was not issued to the appellant. No Show Cause Notice was issued to the appellant and no chance of personal hearing was provided to the appellant. He has, therefore, been condemned unheard.

05. Learned District Attorney on the other hand contended that the appellant was transferred from GHSS Lachi Kohat to GHS Summary Payan Kohat on 13.02.2014 but he failed to report at his new station; that show cause

notice as well as charge sheet/statement of allegations was served on the appellant and opportunity of personal hearing was provided to the appellant but he failed to prove his innocence, therefore, the impugned orders are not liable to be set aside.

06. Scrutiny of record reveals that disciplinary proceedings against the appellant have not been taken in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The Rules *ibid* provide the following procedure for initiating disciplinary proceedings against civil servants for willful absence and habitual absenteeism.

Procedure in case of willful absence.—Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgment on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.

07. Similarly Rule-3 of the rules *ibid* provides that “A Government servant shall be liable to be proceeded against under these rules, if he is guilty of habitually absenting himself from duty without prior approval of leave”.

Rule-5 (I) (a) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provide as under:

“If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either

(a) proceed itself against the accused by issuing a show cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry.

07. Although the case of the appellant fell under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 to be proceeded against but the record annexed with the parawise comments reveal that the appellant was proceeded against under Rule-5 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. However, the proceedings against the appellant are not in conformity with the provisions of the aforementioned rules as no regular inquiry has been conducted nor the competent authority has recorded reasons for dispensing with conducting regular inquiry in the matter. During course of argument, the respondent produced a copy of office order dated 06.02.2018 where-under a 03 members committee was constituted by the District Education Officer (M) Kohat (respondent No. 3) for personal hearing of the appellant. The said committee vide its report dated 16.11.2017 recommended disciplinary action for absenteeism of the appellant under the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011. The report of this committee cannot be termed as a regular inquiry under the law providing ample opportunity of self-defense to the appellant who had served the respondent department for 19 years. Since the impugned orders dated 16.08.2018 & 01.04.2019 badly lack backing of law, therefore, we are constrained to set aside both the orders and remit the case to the respondents to conduct regular inquiry in accordance with the provision of law by observing the procedure prescribed under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The inquiry shall be conducted within a period of 90 days positively after receipt of copy of this judgment.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 24th day of June, 2024.*



(RASHIDA BANO)
MEMBER (J)



(MUHAMMAD AKBAR KHAN)
MEMBER (E)

Kamranullah

ORDER

24.06.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our detailed judgment of today, separately placed on file, we are constrained to set aside both the orders and remit the case to the respondents to conduct regular inquiry in accordance with the provision of law by observing the procedure prescribed under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The inquiry shall be conducted within a period of 90 days positively after receipt of copy of this judgment.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 24th day of June, 2024.*



(RASHIDA BANO)
MEMBER (J)



(MUHAMMAD AKBAR KHAN)
MEMBER (E)