

02. Brief facts of the case are that appellant was appointed as Naib Qasid in the office of Veterinary Research and Disease Investigation Centre at Balogram vide order dated 15.12.2015. The appellant while posted at Balogram Research Centre Swat was issued Show Cause Notice dated 29.10.2021 for his willful absence from duty w.e.f 01.09.2021 to 20.10.2021. The appellant filed application alongwith medical certificates/receipts regarding his illness which was not considered and he was removed from service vide order dated 15.11.2021. Feeling aggrieved from the impugned order dated 15.11.2021, the appellant filed departmental appeal which was rejected vide order dated 04.01.2022, hence preferred the instant service appeal on 14.02.2022.

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

04. Learned counsel for the appellant contended that the impugned order was illegal, unlawful, and based on malafide. He submitted that no inquiry had been conducted. No opportunity of cross examination was provided to the appellant. He has therefore, been condemned unheard. He further submitted that the respondents have violated the Government Servants (Efficiency & Discipline) Rules, 2011 by not giving chance of defense in the inquiry proceedings and the same conduct was also against the fundamental rights enshrined in the Constitution of Islamic Republic of Pakistan. He, therefore, requested for acceptance of the instant service appeal.

05. As against that, learned District Attorney contended that the respondents acted in accordance with law/rules and order of removal from service was passed after observing all the codal formalities as per law/rules; that proper inquiry was initiated against the appellant and the codal formalities fulfilled including issuance of Show Cause Notice alongwith statement of allegations and affording opportunity of defense. He further argued that the appellant was a habitual absentee and was not interested in performing his duty. Lastly, he submitted that proper opportunity of cross examination was also given to the appellant but he failed to avail the same, therefore, was rightly dismissed from service.

06. Scrutiny of record reveal that the appellant was appointed Naib Qasid in the office of Veterinary Research and Disease Investigation Centre at Balogram vide order dated 15.12.2012. The appellant while posted at Balogram Research Centre at Swat fell ill on 07.09.2021 and consulted doctor at Saidu Group of Teaching Hospital Swat. The doctor examined him and prescribed medicine for his treatment as outdoor patient. The time period which the appellant remained indisposed was the peak period of COVID-19 which had created a scare around the world including Pakistan. On 29.10.2021 the appellant was served with a Show Cause Notice which the appellant replied and submitted his medical certificates but the same was not considered. By not taking into account medical certificate and prescriptions the respondents acted in an arbitrary manner. Rule 13 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981 provide as under:


Leave on Medical Certificate.---Leave applied for on medical certificate shall not be refused. The authority competent to sanction leave may, however, at its discretion, secure a


second medical opinion by requesting the Civil Surgeon or the Medical Board to have the applicant medically examined. The existing provisions contained in Supplementary Rules 212, 213 and Rule 220 to 231 for the grant of leave on medical grounds will continue to apply

07. Moreover, scrutiny of the contents of the Show Cause Notice issued to the appellant and the impugned order passed by the competent authority dated 15.11.2021 it transpired that one of the ground of the disciplinary proceedings against the appellant was deduction of salary for 13 days from his monthly pay vide order dated 01.04.2021. The same has again been made as a ground of punishment vide impugned order dated 15.11.2021 which comes under the ambit of double jeopardy rendering the entire proceedings doubtful.

08. In view of foregoing findings the impugned orders dated 15.11.2021 & 04.01.2022 are set aside and the case is remitted to the respondents for denovo inquiry in accordance with the law and rules. The appellant shall be reinstated into service for the purpose of denovo inquiry which shall be concluded within a period of 60 days after receipt of copy of this judgment. Costs shall follow the event. Consign.

09. *Pronounced in open court at Camp Court Swat and given under our hands and seal of the Tribunal on this 04th day of July, 2024.*



(Aurangzeb Khattak)
Member (J)
Camp Court Swat



(Muhammad Akbar Khan)
Member (E)
Camp Court Swat

ORDER

04.07.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan,
District Attorney for the respondents present
2. Vide our detailed judgment of today separately placed on file, the impugned orders dated 15.11.2021 & 04.01.2022 are set aside and the case is remitted to the respondents for denovo inquiry in accordance with the law and rules. The appellant shall be reinstated into service for the purpose of denovo inquiry which shall be concluded within a period of 60 days after receipt of copy of this judgment. Costs shall follow the event.
Consign.
3. *Pronounced in open court at Camp Court Swat and given under our hands and seal of the Tribunal on this 04th day of July, 2024.*


(Aurangzeb Khattak)
Member (J)
Camp Court Swat


(Muhammad Akbar Khan)
Member (E)
Camp Court Swat

Kamranullah