

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No.129/2024

Date of presentation of appeal21.12.2023
Dates of Hearing.....25.07.2024
Date of Decision.....25.07.2024

**Javed Ullah S/O Fazal Jan R/O House No. 401, street No 64, Islamabad
Mohallh I-89/3, Islamabad. Senior Supervisor BPS-16 Agriculture
Engineering District Malakand.....(Appellant)**

Versus

1. **Secretary Agriculture, Khyber Pakhtunkhwa, Peshawar.**
2. **Director General Agriculture Engineering, Khyber Pakhtunkhwa, GT Road Tarnab, Peshawar.**
3. **Agriculture Engineer, District Malakand.....(Respondents)**

Present:

Mr. Bashir Khan Wazir, Advocate.....For appellant.

Mr. Muhammad Jan, District Attorney.....For respondents.

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST
THE IMPUGNED ORDER DATED 12.10.2023 UNOFFICIALLY
COMMUNICATED TO THE APPELLANT ON 29.11.2023 UNDER
THE DEPARTMENTAL APPEAL THE MAJOR PENALTY
IMPOSED TO THE APPELLANT AS REMOVAL FROM
SERVICE WAS CONVERTED INTO PUNISHMENT,
WITHHOLDING OF TWO INCREMENTS WITH IMMEDIATE
EFFECT AND SIMULTANEOUSLY THE INTERVENING
PERIOD OF ABSENCE HAS BEEN TREATED AS LEAVE
WITHOUT PAY BY PARTIALLY ALLOWING THE
DEPARTMENTAL APPEAL OF THE APPELLANT, HENCE THE
INSTANT APPEAL.**
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JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts as narrated in the
memo and grounds of appeal are that the appellant was working as Senior

Supervisor (BPS-16) in the respondent-department; that due to military operations at South Waziristan, the appellant alongwith his family was shifted to Islamabad and remained there till the completion of Operations; that the appellant alongwith his family returned his home after completion of operations but after few months the appellant once again came under threats from militants, therefore, he went into isolation and restricted his movement; that the appellant was unable to attend his office even to inform his high ups due to lack of communication from his remote village; that the respondent department issued order of removal from service of the appellant on 30.05.2023; that the appellant filed departmental appeal to the competent authority which was partially accepted on 12.10.2023, whereby major penalty of removal from service was converted into minor penalty of withholding of two increments with immediate effect and the intervening period of absence from duty was treated as leave without pay, hence, the instant service appeal.

2. On receipt 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, learned District Attorney for respondents.

4. Record reflects that the appellant was removed from service on account of absence on 30.05.2023, against which he filed departmental

appeal which was partially accepted by the competent authority on 12.10.2023 by modifying the major penalty of removal from service into minor penalty of "withholding of two increments" with immediate effect and the intervening period of his absence from duty was treated as leave without pay. What was the reason for reducing the penalty when there was no fault on the part of the appellant and the circumstances were beyond the control of the appellant as stated by the Secretary Agriculture while deciding departmental appeal of the appellant on 12.10.2023 that the appellant was resident of South Waziristan and he and his family had serious enmity with the banned Taliban Organization (TTP) due to which his family got displaced and he was not able to get notices from the department nor could he intimate the same to the office.

5. In such a situation, penalizing the appellant for any punishment would be unjust and unfair, therefore, on allowing this appeal, the appellate order dated 12.10.2023 is also set aside to the extent of conversion of punishment while the appellant stands reinstated with all back benefits treating absence period as leave of the kind due. Costs shall follow the event. Consign.

6. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25th day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



AURANGZEB KHATTAK
Member (Judicial)


ORDER


25th July, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for respondents present.

2. Vide our detailed judgement of today placed on file, on allowing this appeal, the appellate order dated 12.10.2023 is also set aside to the extent of conversion of punishment while the appellant stands reinstated with all back benefits treating absence period as leave of the kind due. Costs shall follow the event. Consign.

3. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 25th day of July, 2024.


(Aurangzeb Khattak)
Member(Judicial


(Kalim Arshad Khan)
Chairman

Adnan Shah, P.A.