

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Before **KALIM ARSHAD KHAN** ... **CHAIRMAN**
Larger **AURANGZEB KHATTAK** ... **MEMBER (Judicial)**
Bench: **RASHIDA BANO** ... **MEMBER (Judicial)**
MUHAMMAD AKBAR KHAN ... **MEMBER (Executive)**
FAREEHA PAUL ... **MEMBER (Executive)**

Service Appeal No.7494/2021

Date of presentation of Appeal.....29.09.2024

Date of Hearing.....18.07.2024

Date of Decision.....18.07.2024

**Muslim Khan S/o Hashim Khan (Ex-Chowkidar) R/o Village Dara,
Lund Khwar, Tehsil Takht Bhai, District Mardan
.....(Appellant)**

Versus

1. **The District Education Officer (Male) Mardan.**
2. **The Director Education, elementary & Schools, Khyber Pakhtunkhwa, Peshawar.**
3. **The Secretary Education, Elementary & Schools, Khyber Pakhtunkhwa, Peshawar.**
4. **The Government of Khyber Pakhtunkhwa through the Advocate General, Khyber Pakhtunkhwa.....(Respondents)**

Present:

Syed Murad Ali Shah, Advocate.....For the appellant

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

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 25.05.2005 FOLLOWED BY THE SUBSEQUENT IMPUGNED ORDER DATED 01.07.2021, WHEREIN, THE APPELLANT WAS REMOVED FROM SERVICE, AGAINST WHICH DEPARTMENTAL APPEAL DATED 06.01.2021 WAS FILED BEFORE THE RESPONDENT NO.1, WHICH WAS DISMISSED ON DATED 01.07.2021 BY THE RESPONDENT NO.2, BUT COPY OF THE SAID REJECTION ORDER DATED 01.07.2021 WAS NOT COMMUNICATED TO THE APPELLANT TILL FILING OF THE INSTANT APPEAL BEFORE THIS HON'BLE TRIBUNAL.

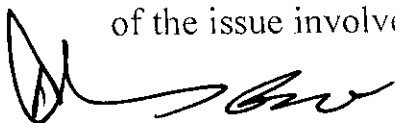
JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as per memo and grounds of appeal are that he was appointed as Chowkidar on 24.10.1987; that FIR No. 28 dated 23.10.2004 U/S 302 PPC was lodged against him; that due to the said FIR, the department removed the appellant from service vide order dated 25.05.2005; that on 07.12.2018 he was arrested and after trial, was acquitted by the learned Additional Sessions Judge, Takht Bhai, Mardan vide order dated 28.11.2020; that feeling aggrieved of his removal order dated 25.05.2005, he filed departmental appeal on 06.01.2021 but the same was rejected on 01.07.2021, therefore, he filed the instant service appeal.

02. 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 defense setup was a total denial of the claim of the appellant.

03. The appellant absconded after his involvement in the criminal case. Proceedings U/S-512 Cr.PC, 1998 were also initiated and on completion of the same, the appellant was declared proclaimed offender and remained as such for more than fourteen years.

04. There were two different views of the Tribunal in respect of the issue involved in this matter, therefore, the same was fixed



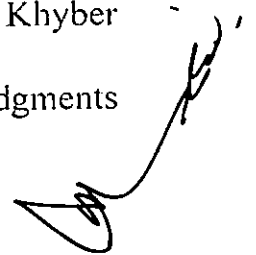
for hearing before a larger Bench of three Members, for 09.07.2024, however, the said larger Bench was of the view to fix it before a five Members Bench, therefore, five Members Bench was constituted which heard the case today i.e. 18.07.2024.

05. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

06. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

07. The point for determination in this appeal was that a civil servant, who after his involvement in a criminal case, became fugitive from law, could make his absconsion a reasonable ground to explain absence.

08. Learned counsel for the appellant relied on 2003 SCMR 338 titled "Government of NWFP through Secretary, Finance, Excise and Taxation Department Peshawar and 2 others Versus Aurangzeb", 2006 SCMR 434 titled "Lahore Development Authority and others Versus Muhammad Nadeem Kachloo and another", 2012 SCMR 165 titled "Director General, Intelligence Bureau, Islamabad Versus Muhammad Javed and others" and 2024 SCMR 541 titled "Rahimullah Khan Versus Deputy Postmaster General, Southern Postal Region, Khyber Pakhtunkhwa and others". But none of the above judgments discussed the question of abscondance.



09. On the contrary, learned District Attorney relied on 2017 SCMR 965 titled "Federation of Pakistan through Secretary Ministry of Defence and another Versus Bashir Ahmed, SBA in MES, Ministry of Defence, GE (Army), Nowshera". Para-04 of the said judgment is relevant, which is reproduced as under:

"4. It has come on the record that during the period of absence, no attempt was made on behalf of the respondent to apply for leave. The respondent's counsel himself stated before the Tribunal that the reason for his absence was that he went underground being involved in a murder case and it was only on the basis of a compromise with the victim's relatives that he was acquitted in September, 2012. Though the criminal case came to an end in September, 2012 and he was acquitted on account of compromise reached with the complainant party, nevertheless before reaching the compromise, he was not in custody but remained an absconder and only surrendered before the law after the compromise was reached with the victim's family members. To seek condonation of absence during his absconsion would amount to putting premium on such act. If this is made a ground for condonation of absence, then in every case where the civil servant is involved in a criminal case and absconds, his absence from duty would have to be condoned. The act of absconsion or being a fugitive from law cannot be regarded as a reasonable ground to explain absence. Even where a person is innocent, absconsion amounts to showing mistrust in the judicial system. Learned counsel for the respondent was asked to show as to whether in any case, this Court has condoned the absconsion and the departmental action was set aside, he was unable to satisfy this Court on this point. In the circumstances, the case relied upon by the respondent's counsel is of no help to the case of the respondent as it has no relevant in the facts and circumstances of this case."

10. We may also refer to the judgment of the Federal Service Tribunal, reported as 1996 PLC (CS) 988 titled "Zarghunshah Versus Surgeon General, General Headquarter, A. G. Branch, MED DTE DMS 3(B), Rawalpindi and another" wherein, while



dealing with the issue of absence of civil servant after his involvement in criminal case, found as under:

"5. We have heard the learned counsel for the parties and have also perused the record. It appears from the record that the appellant had remained absent from duty with effect from 5 5 1990 but, in spite of notices, he did not bother to submit any application for leave nor he tendered any explanation therefor. If the appellant's submission that he had submitted an application for one month's leave on 5 5 1990 is admitted even then he has no case because he was arrested on 17 4 1993 and was released on bail on 6 6 1993. He has failed to show any request for extensions of his leave after 5 6 1990. The appellant's contentions that no inquiry was conducted in his case and he was penalized without affording any opportunity are also of no avail to him as it is an admitted fact that, after committing murder, he had remained absent from 5 5 1990. This Tribunal has observed in several cases that a 'detailed enquiry is not necessary where the charge stands proved/established and a Government servant cannot insist that disciplinary proceedings should be initiated in a particular manner. The appellant's acquittal was effected through a compromise and he had never been confronted with any trial. Therefore, if he desired, he could have informed the department about his tragedy. In our view, the appellant had remained under custody for a short period, whereas he mainly remained absent from duty un-authorizedly and, therefore, the respondents were justified in taking action against him. The respondents have also alleged that earlier too the appellant was habitual of remaining absent without any permission for leave. The appellant was, therefore, rightly held guilty of the charge and was justifiably punished. The cases relied upon by, the learned counsel for the appellant are distinguishable, and therefore, no credence is placed on them"

11. Relying on the above judgment, we find that the appellant has not reasonably explained his absence of more than 14 years, after his involvement in the criminal case and before surrendering. There is an application for condonation of delay, moved before the Tribunal, but that cannot be taken into consideration to condone the delay caused in filing of

Service Appeal No.7494-2021 titled "Muslim Khan versus The District Education Officer (Male: Mardan and others", decided on 18.07.2024 by the Larger Bench comprising of Mr. Kalim Arshad Khan, Chairman, Mr. Aurangzeb Khattak, Member (Judicial), Mrs. Rashida Bano, Member (Judicial), Mr. Muhammad Akbar Khan, Member (Executive) and Ms. Farveha Paul, Member (Executive), Khyber Pakhtunkhwa Service Tribunal, Peshawar.

departmental representation. There is also no effort of the appellant stated in his memo and grounds of appeal to explain the absence of more than 14 years, after his involvement in the criminal case and after his arrest in the said case.

12. The departmental appeal of the appellant was barred by time as he did not file the same during the period of absconsion, nor moved any application for leave or for that matter, to inform his superiors therefore, the appeal in hand is not maintainable in view of the cases titled "Anwarul Haq v. Federation of Pakistan" reported in 1995 SCMR 1505, "Chairman, PIAC v. Nasim Malik" reported in PLD 1990 SC 951 and "State Bank of Pakistan v. Khyber Zaman & others" reported in 2004 SCMR 1426.

13. In view of the above, instant service appeal is dismissed with costs. Consign.


14. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 18th day of July, 2024.*



KALIM ARSHAD KHAN
Chairman




RASHIDA BANO
Member (Judicial)



AURANGZEB KHATTAK
Member (Judicial)



FARVEHA PAUL
Member (Executive)



MUHAMMAD AKBAR KHAN
Member (Executive)