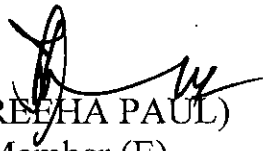
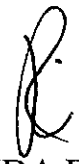


Kohistan from 01.01.2016 to 17.07.2017 and recommended that his absence from the service ranging upto one year, six months and seventeen days might be converted into Extraordinary leave, without pay. It has been noted that no formal inquiry was conducted under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Neither a charge sheet/statement of allegations was issued nor was the appellant associated with the inquiry. Moreover, the competent authority could not impose any punishment on the basis of a fact finding inquiry, neither the Inquiry Officer could recommend any punishment in that inquiry.

8. In view of the above discussion, the impugned order is set aside, with the directions to the respondent department to conduct regular inquiry under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, by fully associating the appellant in that inquiry. The whole procedure shall be completed within sixty days of the receipt of this judgment. Cost shall follow the event. Consign.

9. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal this 24th day of July, 2024.*

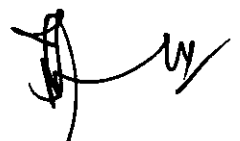

(FAREEHA PAUL)
Member (E)
(Camp Court, Abbottabad)


(RASHIDA BANO)
Member (J)
(Camp Court, Abbottabad)

extraordinary leave without pay. He requested that the appeal might be dismissed.

6. This is a second round of litigation. Through the instant service appeal, the appellant has impugned an order dated 02.02.2018 vide which his service period from 01.01.2016 to 17.07.2017 had been treated as extraordinary leave, without pay, on account of his absence from duty. Arguments and record presented before us showed that the appellant, upon promotion from Accounts Clerk (BS- 9) to Head Clerk/Assistant (BS- 16) on 14.12.2015, was posted from PHE Division Haripur to PHE Division Kohistan. Another order, available on record, showed that on 29.12.2015, he was posted to PHE Division Mansehra, but through an order dated 01.01.2016, the order dated 29.12.2015 was cancelled/withdrawn. Through a service appeal No. 625/2016, order dated 01.01.2016 was impugned before the Tribunal and vide its judgment dated 17.07.2017, the Tribunal set aside the impugned order by leaving the issue of non-compliance of the said order to the concerned departmental authority in accordance with law and rules. An inquiry was ordered and it was found that the appellant did not join his duty at Kohistan and the impugned order dated 02.02.2018 was passed.

7. Perusal of the inquiry report dated 25.01.2018 annexed with the reply at page 11 shows that it was a fact finding inquiry ordered by the Chief Engineer (North), Public Health Engineering Department, Peshawar vide a letter dated 09.08.2017. The Superintending Engineer, PHE Circle, Abbottabad conducted the inquiry and submitted his report on 25.01.2018, wherein he stated that the appellant did not join the duty at PHE Division



4. Learned counsel for the appellant, after presenting the case in detail, argued that the enquiry report was against the facts, arbitrary and one sided. The appellant was not provided opportunity to defend his case. He argued that the appellant reported to PHE Division Kohistan for resumption of charge of the post but there was no post of Head Clerk and that the appellant was deprived of monthly salaries for no fault of his own. 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 the appellant was promoted as Head Clerk/Assistant BPS- 16 on 14.12.2015 and was transferred and posted to PHE Division Kohistan. Later on vide order dated 29.12.2015, the appellant was transferred from Kohistan to Mansehra but after two days, vide order dated 01.01.2016, the competent authority withdrew his posting order to Mansehra in the best interest of public service but he did not assume charge at Kohistan. He further argued that as per recommendations in enquiry report dated 25.01.2018, respondent No. 2 issued order dated 02.02.2018. In Service Appeal No. 625/2016, the Service Tribunal set aside the order dated 01.01.2016 but left the issue of non-compliance of order dated 01.01.2016 to the departmental authority. In that regard, an enquiry was carried out whether the appellant served the department w.e.f 01.01.2016 to 17.07.2017. The enquiry committee reported that the appellant did not attend the office of the Executive Engineer PHE Division Kohistan and recommended that his absence from 01.01.2016 to 17.07.2017 might be converted into



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was promoted as Head Clerk vide order dated 14.12.2015 and was posted at Public Health Engineering Division Mansehra vide office order dated 29.12.2015. He took over charge of the post on 31.12.2015. After one day of assumption of charge, vide order dated 01.01.2016, he was posted from Mansehra to Public Health Engineering Division Kohistan. Feeling aggrieved, he filed service appeal No. 625/2016 before the Tribunal which was decided on 17.07.2017, the impugned order dated 01.01.2016 was set aside and the appellant was posted at Public Health Engineering Division Mansehra but salary of the appellant w.e.f: 01.01.2016 to 17.07.2016 was not paid to him. An enquiry was ordered to look into the fact whether he served the department w.e.f. 01.01.2016 to 17.07.2017. The Inquiry Committee decided that the appellant did not join duty at PHE Division Kohistan from 01.01.2016 to 17.07.2017. During the inquiry and pendency of service appeal, respondent No. 2 issued impugned order dated 02.02.2018 whereby the period from 01.01.2016 to 17.07.2017 was considered as Extra-Ordinary leave without pay. Vide order dated 17.05.2022, the Tribunal observed that the appellant might assail the order dated 02.02.2018 subject to limitations and restrictions etc. He filed departmental appeal which was not decided by the department; 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.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, ABBOTTABAD

Service Appeal No. 927/2022

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

Muhammad Shafique, Head Clerk, Public Health Engineering Department,
Mansehra.....(*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering Department, Peshawar.
 2. Chief Engineer (North), Public Health Engineering Department Khyber Pakhtunkhwa, Peshawar.
 3. Chief Engineer (South), Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
 4. Executive Engineer, Public Health Engineering Division, Mansehra.
 5. District Accounts Officer, Mansehra.
-(*Respondents*)

Mr. Muhammad Arshad Khan Tanoli,
Advocate ... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

Date of Institution.....	20.06.2022
Date of Hearing.....	24.07.2024
Date of Decision.....	24.07.2024

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 02.02.2018. It has been prayed that on acceptance of the appeal, the respondent department might be directed to release salary of the appellant w.e.f. 01.01.2016 to 17.07.2017 after setting aside the impugned order dated 02.02.2018, alongwith any other remedy which the Tribunal deemed appropriate.





SA 927/2022

24th July, 2024 01. Mr. Muhammad Arshad Khan Tanoli, 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 impugned order is set aside, with the directions to the respondent department to conduct regular inquiry under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, by fully associating the appellant in that inquiry. The whole procedure shall be completed within sixty days of the receipt of this judgment. Cost shall follow the event. Consign.

03. *Pronounced in open court at camp court, Abbottabad and given under our hands and seal of the Tribunal this 24th day of July, 2024.*


(FAREEHA PAUL)
Member (E)
(Camp Court, Abbottabad)


(RASHIDA BANO)
Member (J)
(Camp Court, Abbottabad)

Fazle Subhan PS