

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT SWAT

Service Appeal No: 177/2022

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

Jahanzeb khan S/O Mir Akbar, Sweeper, Government Middle School Ghari
Mumtaz, Village Badaber District Peshawar.

.... (Appellant)

VERSUS

1. District Education Officer (Male), Peshawar.
2. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar

.... (Respondents)

Ashraf Ali Khattak
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution..... 26.01.2022
Date of Hearing..... 27.06.2024
Date of Decision..... 27.06.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“That on acceptance of appeal, this Hon'ble Tribunal may graciously be pleased to declared the impugned order dated 01.03.2019 of respondent No. 1 to the extent of the denial of back benefits is illegal, ab-initio void and without lawful authority and set aside the same. Reinstate the appellant with all back benefits. Any other relief deems fit and appropriate not specifically been prayed for may also be granted in favor of the appellant.”



2 Precise facts as gleaned from the record are that the appellant was appointed as Sweeper in respondent department vide order dated 05.12.2012. During service he was removed from service on the allegation of willful absence vide impugned order dated 15.05.2015, which was challenged by the appellant in service appeal No. 961/2015. The impugned order was set aside and the appellant was reinstated into service. The respondents were placed at liberty to conduct denovo inquiry within a period of 90. In compliance of judgment, the appellant was reinstated into service but he was not associated with the inquiry proceedings. Then appellant filed execution petition, which was withdrew by the appellant in light of denovo inquiry ordered by the authority vide notification dated 21.03.2019 as fresh cause of action, hence the instant service appeal.

3. Respondents were put on notice who submitted their para-wise comments on the appeal. 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.

4 Learned counsel for the appellant has argued that the appellant has not been treated in accordance with law and respondents violated Article 4 & 10-A of the Constitution of Islamic Republic of Pakistan: that no charge sheet and statement of allegation was served upon the appellant before imposition of major penalty, that no opportunity of personal hearing was afforded to the appellant and he was condemned unheard; that the charges of willful absence has not been proved against the appellant, therefore, in the absence of evidence to the contrary, he is entitled for reinstatement with all



back benefits. Lastly, he requested that instant appeal might be accepted as prayed for.

5. Conversely, learned Deputy District Attorney for the respondents has contended that the appellant has been treated in accordance with law and rules; that the appellant has willfully absented himself from duty without prior permission, hence he was rightly proceeded against and removed from service vide order dated 09.06.2014. He requested that instant appeal might be dismissed.

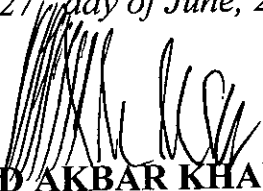
6. Perusal of record reveals that appellant serving in the respondent department as Sweeper when he was dismissed from service vide order dated 15.05.2015, which order was challenged by the appellant in service appeal No. 961/2015. This Tribunal vide judgment dated 02.08.2017, reinstated the appellant with direction to conduct denovo inquiry within a period of 90 days with further direction to associate the appellant with the inquiry proceedings in accordance with rules. The issue of back benefits was made subject to the outcome of denovo inquiry. Respondent although reinstate the contacting appellant without contacting him for the purpose of denovo inquiry. Therefore, appellant file execution petition before this Tribunal wherein respondent submitted reply by annexing copy of inquiry report without passing any formal order on it. Appellant filed application for providing copy of formal order passed, as a result of denovo inquiry and also requested this Tribunal which was given to the appellant on 12.01.2022 which is evident from order sheet of the same date. When order of reinstatement of appellant dated 21.03.2019 was given to appellant, he filed departmental appeal for back benefits vide order dated 21.03.2019 period

from date of his absence/intervening period from 13.12.2013 to 02.08.2017 was treated as extra ordinary leave under FR 85.

7. Perusal of inquiry report reveals that appellant was not absent rather he was compelled by the land owner not to perform duty due to which he requested SDEO and DEO for his posting to a station where he can perform his duty normally. But without redressing his grievances, DEO removed him from service which means that appellant was not absent and want to perform his duties but was compelled by the DEO to remain out of duty. So absence of the appellant after dismissal was not on his part rather it was due to the act of the authority. Therefore, absence intervening/period from 13.12.2013 to 02.08.2017 was treated as leave of the kind due with direction to the respondents to count all leave of the kind due available in the account of the appellant which is on his credit till the time of preparation of source because anticipatory leave of the kind due is admissible under the rules.

8. For what has been discussed above, we partially accept the appeal in hand on the above mentioned terms by treating absence/intervening period from 13.12.2013 to 02.08.2017 as leave of the kind due with direction to give anticipatory i.e to count it till preparation of source for it. Cost shall follow the event. Consign.

9. *Pronounced in camp court at Swat and given our hands and seal of the Tribunal on this 27th day of June, 2024.*

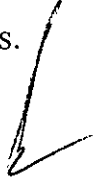

(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

14th Mar, 2024

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

2. Learned counsel for the appellant requested for adjournment on the ground that he has not prepared the case. Adjourned but as a last chance. To come up for arguments on 27.06.2024 before D.B. P.P given to the parties.



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman

Adnan Shah

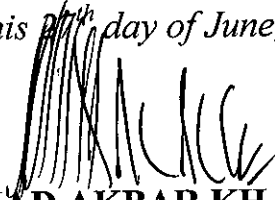
ORDER

27.06.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District for the respondents present.

2. Vide our detailed judgment of today placed on file, we partially accept the appeal in hand by treating absence/intervening period from 13.12.2013 to 02.08.2017 as leave of the kind due with direction to give anticipatory i.e to count it till preparation of source for it. Cost shall follow the event. Consign.

3. *Pronounced in camp court at Swat and given our hands and seal of the Tribunal on this 27th day of June, 2024.*



(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

*M.Khan