

27th May, 2024

1. Mr. Arshad Khan Tanoli, Advocate present and submitted Wakalatnama on behalf of the appellant, which is placed on file. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Muhammad Yasir, Assistant for the respondents present.

2. Being freshly engaged, learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 30.05.2024 before D.B at Camp Court Abbottabd. P.P given to the parties.



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman
Camp Court A/Abad

SCANNED
MPST
Peshawar

Kamranullah

30th May. 2024

1. Learned counsel for the appellant and Mr. Umair Azam, Additional Advocate General for respondents present.

2. Former made a request for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 25.07.2024 before the D.B at Camp Court, Abbottabad. P.P given to the parties.



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman

*Mutazem Shah *


ORDER


25.07.20241

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Mr. Muhammad Yasir, Assistant, for respondents present.

2. For what has been discussed above, we are unison to set aside impugned orders, reinstate the appellant into service for the purpose of inquiry about illness i.e. road accident of the appellant, factum of giving information to line officer and Moharrar about illness of appellant and for following the procedure with further direction to associate appellant with inquiry proceedings which shall be concluded within 60 days after receipt of this judgment. Costs shall follow the event.


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



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


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

further direction to associate appellant with inquiry proceedings which shall be concluded within 60 days after receipt of this judgment. Costs shall follow the event.

11. Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 25th day of July, 2024.


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


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

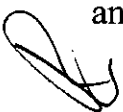
*Kaleemullah

authority i.e. Superintendent Circle Head Quarter Prison, Haripur, which is not in accordance with Rule 9.

8. Moreover, appellant alleged that no notice of absence upon his home address was sent and he was allowed leave to take rest due to his accident by his line officer. When respondent was asked to produced proof of factum of sending absence notice upon home address of the appellant and its receiving by the appellant, they failed to produced it.

9. So, on record, it is not established that in fact notice of absence in accordance with Rule, 9 of E&D Rules, 2011 was sent to appellant at home address which is one of essential requirements for proceeding under Rule 9 of E&D Rules 2011. Furthermore, appellant had taken the plea that due to road accident he was unable to perform duties and informed his line incharge and Moharrir about road accident and fracture of his leg and his incharge advised him rest at home due to Covid-19 lockdown. Appellant also annexed medical prescription of his road accident. When appellant in his departmental appeal had taken a specific plea of illness and giving its information to his line in-charge and Moharrir, it was incumbent upon appellate authority to probe into the fact and provide chance of hearing and defence to the appellant but appellate authority straight away rejected appeal which is not a good approach,, because if information was given to line officer or Moharrar then in a such a situation medical leave cannot be denied and under the rules.

10. For what has been discussed above, we are unison to set aside impugned orders, reinstate the appellant into service for the purpose of inquiry about illness i.e. road accident of the appellant, factum of giving information to line officer and Moharrar about illness of appellant and for following the procedure with



on 12.04.2020, which resulted into fracture of his leg. He informed his incharge i.e. line officer and Moharrir telephonically, upon which line officer asked appellant to have rest at home till his recovery. After recovery appellant went to his incharge, he advised him to take rest at home due to Covid-19 lockdown. Appellant all of sudden on 28.07.2020 received order of his removal from service dated 22.07.2020 at his home address. Appellant filed departmental appeal on 28.08.2020 which was rejected vide order dated 10.09.2020.

7. Record reveals that appellant was proceeded under rule-9 of E&D Rules, 2011. Respondents alleged that they sent three notice to appellant at his home address. As per rule 9 which read as;

“Procedure in case of willful absence.----Notwithstanding anything to the contrary in these rules, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgment on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspaper directing him to resume duty within taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.”

As per Rule 9 competent authority is required to send absence notice upon home address of the civil servant, while in the instant case notice of absence was issued by the Superintendent, District Jail Abbottabad and not by competent

and law, kindly be set aside and appellant be reinstated with all back benefits.”

2. Brief facts of the case are that appellant was appointed as Warder in respondent department vide order dated 07.10.2019 and since his appointment he performed his duties with zeal and zest; that on 06.04.2020 the appellant was granted leave for ten days but on 12.04.2020 the appellant was severely injured in Motorbike accident. The appellant informed the incharge (line officer) and Moharrar about his condition telephonically and it was advised that he would be on leave until his recovery. After recovery, appellant approached to his line officer and Moharrar where he was advised to go back to his home due to Covid-19 lockdown. On 28.07.2020 respondents issued impugned order vide which appellant was awarded major penalty of removal from service. Feeling aggrieved, he filed departmental appeal which was not responded to, hence, the instant service appeal.

3. 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.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

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

6. Perusal of record reveals that appellant was appointed as warder in respondent/department vide order dated 07.10.2019. Appellant met road accident



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT ABBOTTABAD

Service Appeal No.12453/2020

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

**Muhammad Shoukat S/o Jan Nisar Ex-Warder District Jail Abbottabad,
R/O Mohallah Beerkund, Dondan P/O Beerkund Tarlan Tehsil & District
Mansehra.**

.... (Appellant)

VERSUS

1. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. Superintendent Circle Headquarter, Prison Haripur.
3. Superintendent District Jail Abbottabad.

.... (Respondents)

Muhammad Arshad Tanoli
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....12.10.2020
Date of Hearing.....25.07.2024
Date of Decision.....25.07.2024

JUDGMENT

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

“On acceptance of this appeal, the impugned order dated

28.07.2020 and 10.09.2020 being void, illegal against the facts

