


ORDER


26.06.2024

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

2. For what has been discussed above, we are unison to dismiss the
appeal in hand. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our
hands and seal of the Tribunal on this 26th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)

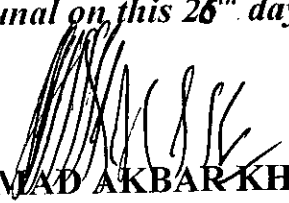

(RASHIDA BANO)
Member (J)

*M.Khan

While her address is House No.221, Phase-1 Armour Colony No.1, Manki Road, Nowshera, when respondents were asked to produced personal file of the appellant which was produced perusal of which reveals that her address mentioned in her service record is of Peshawar Cantt, upon which notice to resume duties was issued & sent to her, if she changed her address then it was her duty to informed the department about her changed address by submitting application but she had not done so. She was dealt with in accordance with law.

11. For what has been discussed above, we are unison to dismiss the appeal in hand. Costs shall follow the event. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

*M.Khan

9. Now come towards sending of notice of absence to the appellant. Perusal of impugned order of removal from service dated 21.04.2022 reveals that notice to her home address was sent on 05.07.2021 to resume her duty within 15 days, but she failed to resume her duties that is why notice of absence with direction to resume duties against the appellant was published in their leading Newspapers daily Quaid Peshawar on 04.11.2021 and Daily Mashriq, Peshawar on 05.11.2021 and appellant was removed from service under Section-9 of E&D Rules, 2011 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.”

10. Respondent observed all the codal formalities given in Rule-9. Appellant contended that notice annexed with comments show her address as;

**“House No.34-F Army Officers Colony-02, Qayyum Stadium
Road, Peshawar Cantt:”**



6. Perusal of record reveals that appellant joined the respondents department (population department) as Woman Medical Officer (WMO) in the year 2009 & posted in RHSC-A Nowshera. The appellant applied for her maternity leave from 01.12.2020 till 01.03.2021 which was allowed. After availing the maternity leave the appellant was not feeling well and Covid-19 was also at its peak, therefore, the appellant informed respondent No.4 for further leave of 15 days from 1st March 2021 to 15th March 2021, which was verbally allowed & the appellant was directed to avail the said leave as medical leave.

7. Appellant main contention is that she was condemned unheard as no inquiry was conducted and no notice of refusal of her earned leave was sent to her home address beside she was keeps in dark by the respondent No.4, who telephonically informed her about the fact that her earned leave for one year is under sanctioned soon.

8. So far, question of keeping in dark by respondent No.4 is concern in our humble view appellant being civil servant is under obligation to get sanctioned first her leave and proceed to avail it, but to start availing it upon telephonic call or message is not in accordance with law, otherwise too appellant failed to produced on record any call record data of proof of that specific conversation about sanction of one year earned leave. Respondent No.4 is not the leave sanctioning authority of the appellant upon whose conversation or saying, appellant proceed to avail earned leave. Therefore, same assertion is not logical and cannot be relieved upon, otherwise too, she was duty bound to know about sanction of her leave.



departmental appeal of the appellant (which is not yet decided or communicated to the appellant) may kindly be set aside being illegal, unlawful against the law and facts coram non iudice, without observing legal and codal formalities and the respondents may very kindly be directed to restore the appellant in the service with all back benefits.”

2. Brief facts of the case are that appellant joined the respondent department as a Woman Medical Officer in the year 2009 and posted in RHSC-A Nowshera. Since her appointment, she performed her duties with zeal and zest. She applied for maternity leave from 01.12.2020 to 01.03.2021. which was allowed. After availing maternity leave, she informed respondent No. 4 for further 15 days leave. Feeling unwell, she applied through application for earned leave from 15.03.2021 to 14.03.2022. When appellant went to department to join her duties back, she was informed on 26.05.2022 that she has already been removed from service vide impugned order dated 21.04.2022. Feeling aggrieved, she filed departmental appeal, which was not responded, 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 appellant and learned 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 District Attorney controverted the same by supporting the impugned order(s).

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1369/2022

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

Dr. Sabiha Moeen, Ex-incharge Regional Health Service Centre-A,
District Nowshehra at present House No.221, phase 1 Armour colony No.1
Manki road Nowshehra.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, Through Secretary, PWD, Peshawar.
2. The Chief Secretary, Government Of Khyber Pakhtunkhwa Peshawar.
3. The Director General Government Of Khyber Pakhtunkhwa Population Welfare Director, Peshawar.
4. Section Officier (Establishment) Population Welfare Department Khyber Pakhtunkhwa, Peshawar

.... (Respondents)

Saif Ullah Khalil
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....20.09.2022
Date of Hearing.....26.06.2024
Date of Decision.....26.06.2024

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 the instant appeal, the impugned order No. SOE (PWD) 1-9/2009/PF/7920-26 dated 21.04.2022 and any order passed by the departmental authority on the

