


06.01.2020 while remaining period from 07.01.2020 to 08.11.2020 would be treated as leave without pay. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15th day of May, 2024.*


(Fareeha Paul)
Member (E)


(RashidaBano)
Member (J)

*Kaleemullah

revalidated the reinstatement order and the intervening period w.e.f reinstatement to issuance of revalidation order was treated as leave without pay.

7. Perusal of inquiry report reveals that appellant remained in the custody of Pak Army after his release on 17.04.2017, he approached department for performance of his duty, upon which he was told about his removal from service. Then appellant filed departmental appeal which was finally decided after completion of all the codal formalities on 07.01.2020 wherein appellant was reinstated into service by DEO (M) Mardan. It means that period from 18.04.2017 till 07.01.2020 was consumed in deciding of and conclusion of departmental inquiry to that whether appellant was infact in the custody of the Pak Army or not. Therefore, in our humble view during this period he was out of service due to laxity or inaction of the department for which he is not responsible and he was forced to remain out of service.

8. It is important to note that after reinstatement order dated 07.01.2020 appellant was involved in a criminal case and he failed to assumed the charge till 08.12.2020 the date upon which his reinstatement order was revalidated by the DEO and it is specifically mentioned in it that

“Furthermore the intervening period w.e.f date of reinstatement to issue of this order may be treated as leave without pay, therefore, we also agree with it and same be treated as leave without pay”


9. For what has been discussed above, we are unison to partially accept the appeal to the extent of grant of back benefits of period from 18.04.2017 to



4. Learned counsel for appellant argued that appellant has not been treated in accordance with law and rules. He further argued that non granting of back benefits is against the equity and norms of justice. He further argued that appellant had filed appeal against his removal in 2017 but his appeal was decided in the year 2020, therefore, the impugned order is liable to be modified as the delay could not be attributed to the appellant.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that respondent has issued the order, in accordance with law, and period w.e.f 17.04.2017 to 08.12.2020 treated leave without pay while period w.e.f 01.02.2014 to 17.04.2017 has already been considered as on duty under FR-54. He further contended that the appellant has not taken charge due to FIR lodged on 20.01.2002 against him. The respondent conducted inquiry and the inquiry officer recommended the order of official concerned may be revalidated and the respondent No.4 has revalidated the order of the appellant dated 18.12.2020.

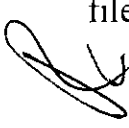
6. Perusal of record reveals that appellant was inducted in Education Department in the year 1997 and had 23 years of service on his credit. On 09.01.2015, he was removed from service on the allegation of willful absence from duty. Against which appellant preferred appeal which was accepted and reinstate him into service by treating intervening period 120 days on full pay and 240 days on half and the remaining period was treated as leave without pay vide order dated 07.01.2020. Appellant had not taken charge after his reinstatement as he was behind the bars. Respondent No.4 on 08.12.2020



“On acceptance of this service appeal, the impugned order dated 07.05.2021 of respondent No.3 may kindly be modified and the appellant may be held entitled for all back benefits for the period 18.04.2017 to 08.12.2020.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was inducted in Education Department in the year 1997 and had 23 years of service on his credit. On 09.01.2015, he was removed from service on the allegation of willful absence from duty against which appellant preferred appeal which was accepted. Appellant was reinstated into service as by treating intervening period of 120 days on full pay and 240 days on half and the remaining period was treated as leave without pay vide order dated 07.01.2020. Appellant did not take charge after his reinstatement as he was behind the bars. Respondent No.4 on 08.12.2020 re-validates the reinstatement order and the intervening period w.e.f reinstatement to issuance of revalidation order was treated as leave without pay. He filed departmental representation on 17.03.2021 for payment of all back benefits, which partially allowed by treating intervening period w.e.f 01.02.2014 to 17.04.2017 as on duty. Feeling aggrieved, he preferred an appeal on 02.09.2021 for grant of back benefit from 2017 to 2020, which was not responded, hence the instant service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.7950/2021

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

Faiz Rasan SPST GPS Ferozpur Takht Bhai, District Mardan

..... (Appellant)

VERSUS

1. Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. Assistant Director (Establishment) Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer (M), Mardan.

... (Respondents)

Mr. Hamza Amir Gulab
Advocate

...

For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

...

For respondents

Date of Institution.....29.12.2021
Date of Hearing.....15.05.2024
Date of Decision.....15.05.2024

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:

