

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1896/2023

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Badshah Haleem, Agriculture Inspector (BPS-11), Office of the District
Director Agriculture, Wari District Upper Dir. ... **(Appellant)**

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Agriculture
Department, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Agriculture (Extension), Government of Khyber
Pakhtunkhwa at Peshawar.
3. District Director Agriculture, Dir (Upper). ... **(Respondents)**

Noor Muhammad Khattak
Advocate

For appellant

Asif Masood Ali Shah
Deputy District Attorney

For respondents

Date of Institution.....15.09.2023
Date of Hearing.....04.07.2024
Date of Decision.....04.07.2024

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:

**“On acceptance of this service appeal, the impugned order
dated 08.11.2022 and appellate order dated 17.03.2023
communicated to the appellant on 02.08.2023 may kindly
be set aside and the appellant may kindly be re-instated**



into service with all back benefits. Any other relief not specifically prayed but this august Tribunal deems proper may also be granted.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Field Assistant Sub Division Wari in the year 1986 performed his duty with zeal and zest and to the satisfaction of his high ups. On 14.03.2022 he applied to respondent No.3 for his retirement from service on medical grounds. Respondent No.3 forwarded the application vide letter dated No. 106/DDA(E) Dir (Upper) dated 14.03.2022 to the Medical Superintendent District Head Quarter Hospital Dir (Upper) with the request to constitute a Standing Medical Board for his physical examination. In pursuance of letter a Standing Medical Board was constituted on 27.08.2022 which examined the appellant and reported on 30.09.2022 that the appellant was unfit to perform his duty. On 10.10.2022 appellant applied for withdrawal of his application on medical ground as he regained his health. The competent authority forwarded his application through letter dated 14.10.2022 to the Director General for seeking advice and further necessary action. The appellant was waiting for the fate of his application and was performing his duty that in the meanwhile respondent impugned order dated 08.11.2022 whereby appellant was retired from service on medical ground. Feeling aggrieved, he filed departmental appeal, which was rejected vide order dated 17.03.2023, hence the present 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 serving as Field Assistance in respondent/department when on 14.03.2022 he applied for his retirement from service on medical grounds to respondent No.4 who forwarded his application to Medical Superintendent, District Head Quarters Hospital, Dir (Upper) vide letter dated 14.03.2022 for his medical, physical Examination in presence of which medical board was constituted on 27.08.2022 and submitted report on 30.09.2022. Prior to medical constitution order appellant was promoted to post of Agriculture Inspector (BPS-11) vide order dated 07.07.2022. Appellant on 10.10.2022 submitted application for cancelation/withdrawal of his application for retirement on medical grounds as he had regained his health.

7. Respondent No.4 send/forwarded application to Director General for seeking guidance/advice for further action on 14.10.2022 and appellant was waiting for fate of his application. In the meanwhile, respondent No.4 issued impugned order dated 08.11.2022 retired appellant from service on medical grounds. Record reveals that appellant submitted application before issuance/passing of order of retirement of appellant from service on medical grounds and under the rules any civil servant can withdraw his application for




retirement on medical grounds before issuing of order but the instant case appellant filed application well before issuance of impugned order. Even under the rules if after retirement on medical grounds, a civil servant regained his health, he can apply for his re-examination by the board.

8. Authority has wrongly not decided application for withdraw/cancellation of application for retirement on ground and passed impugned which is against the rules. Moreover, in the instant case medical board was constituted at District who examined the appellant, which as per letter dated 07.07.2022 of Director General was required to be conducted at central level.

اگر ڈپارٹمنٹ کو شک ہے۔ تو دوبارہ میڈیکل بورڈ سنٹرل لیول پر کرے۔

9. For what has been discussed above, we accept the appeal by setting aside impugned orders dated 08.11.2022 and 17.03.2023 and reinstate appellant into service, however department is at liberty to get verify medical condition of the appellant by constituting Medical Board at central level. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of July, 2024.*



KALIM ARSHAD KHAN
CHAIRMAN



(RASHIDA BANO)
MEMBER (J)

ORDER

04.07.2024 1. Learned counsel for the appellant present. Mr. Asif Masood

Ali Shah learned District Attorney alongwith Yousaf Jamal, Focal Person for the respondents present.

2. Vide our detailed judgment of today placed on file, we accept the appeal by setting aside impugned orders dated 08.11.2022 and 17.03.2023 and reinstate appellant into service, however department is at liberty to get verify medical condition of the appellant by constituting Medical Board at central level. 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 4th day of July, 2024.*


KALIM ARSHAD KHAN
CHAIRMAN


(RASHIDA BANO)
MEMBER (J)

*M.Khan