

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.380/2023

BEFORE: MR. AURANGZEB KHATTAK ... MEMBER (J)
MRS. RASHIDA BANO ... MEMBER (J)

Mastan Gul, Girdawar, Deputy Commissioner Office, Karak.

... (Appellant)

VERSUS

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. Commissioner, Kohat Division, Kohat.
3. Deputy Commissioner, Karak.

... (Respondents)

Saadul Maabood Khattak
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....16.02.2023
Date of Hearing.....10.07.2024
Date of Decision.....10.07.2024

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:

“It is therefore, most humbly prayed that on acceptance of the service appeal the impugned order of respondent No.3 dated 17.06.2022 and respondent No.2 dated 15.09.2022 may kindly be declared illegal, unlawful, invalid, ineffective, null and void and respondent No.03 may kindly be directed to release monthly pay/salaries of the appellant for the period w.e.f. 16.03 2020 to 31.03.2022.”



2. Brief facts of the case are that the appellant has been working as a Girdawar in the office of the Deputy Commissioner, Karak, for the past 34 years. The appellant was compulsorily retired from service by an order dated 16.03.2020. The appellant filed a departmental appeal before Respondent No. 2, which was accepted, and the appellant was reinstated in service for the purpose of a de novo inquiry. In compliance with the order of the Commissioner of Kohat Division, Kohat, Respondent No. 3 (Deputy Commissioner, Karak) reinstated the appellant with retrospective effect, subject to the completion of the de novo inquiry. The termination period was treated as leave with full pay and allowances by an order dated 15.10.2021. The de novo inquiry, conducted by the Assistant Commissioner Karak, found the allegations against the appellant baseless and recommended reinstatement with all back benefits. However, the competent authority ignored the inquiry officer's recommendation, and the appellant was reinstated in service while the compulsory retirement period from 16.03.2020 to 16.09.2021 was treated as extraordinary leave by an order dated 17.06.2022. The appellant, being aggrieved, filed an appeal against the order of Respondent No. 3, which was dismissed by Respondent No. 2 by an order dated 15.09.2022; 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 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).

6. Perusal of record reveals that appellant is serving as Girdawar in the office of the respondent No.3 from the last 34 years. The appellant was compulsory retired under section 04 (b) (ii) of Khyber Pakhtunkhwa Efficiency and Disciplinary Rules 2011 vide Deputy Commissioner Karak order dated 16.03.2020. The appellant filed appeal to respondent No.2 which was accepted for the purpose of de-novo inquiry while the appellant was also re-instated in service. The appellant was reinstated with retrospective date subject to completion of de-novo inquiry. The termination period was treated as leave with full pay and allowances vide order dated 15.10.2021. De-novo inquiry was conducted by Assistant Commissioner Karak, who has found the allegation baseless leveled against the appellant and recommended for re-instatement along with giving all back benefits. The competent authority ignored the recommendation of inquiry officer and the appellant was re-instated in service while the compulsory retirement period w.e.f. 16.03.2020 to 16.09.2021 was treated as period spent on extra ordinary leave (Leave without pay) vide order dated 17.06.2022. The appellant filed an appeal against the order of respondent No.2 which was dismissed by respondent No.2 vide order dated 15.09.2022.


7. Perusal of record reveals that appellant through instant appeal requested for back benefit of intervening period from compulsory retirement i.e. 16.03.2020 to his reinstatement i.e. 16.09.2021 which was treated by the respondent as extra ordinary leave i.e. leave without pay. Enquiry officer recommended reinstatement of the appellant, which means that he found appellant not guilty of misconduct. When appellant was not found guilty of any misconduct then there was no justification of issuing impugned order.



8. In such a situation to treat intervening period as leave without pay is not justified at least same must have been considered leave of the kind due and under the rules anticipatory leave of kind due is admissible, which is just and proper in the peculiar circumstance of the appeal in hand.

9. For what has been discussed above, we are unison to convert extraordinary leave without pay of intervening period into anticipatory leave of the kind due which is at the credit of the appellant till date by modifying impugned order dated 17.09.2021. 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 10th day of July, 2024.*


(AURANGZEB KHATTAK)
Member (J)

10⁰⁷
2024.


(RASHIDA BANO)
Member (J)


ORDER
10.07.2024

1. Learned counsel for the appellant present. Mr. Umair Azam, learned Additional Advocate General alongwith Mr. Ghulam Shabir Ahmad, Assistant Secretary, for the respondents present.

2. For what has been discussed above, we are unison to convert extra ordinary leave without pay of intervening period into anticipatory leave of the kind due which is at the credit of the appellant till date by modifying impugned order datted 17.09.2021. 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 10th day of July, 2024.*


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

*M.Khan

10/07
2024