

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
RASHIDA BANO ...MEMBER (Judicial)

Service Appeal No.5370/2020

Date of presentation of appeal.....05.06.2020
Dates of Hearing.....13.09.2024
Date of Decision.....13.09.2024

Muhammad Jan Qari BPS-12 GHS Ghazi Baba S/O Bakhti Jan
R/O Ghazi Baba Tehsil Utmankhel.....(Appellant)

Versus

1. **The Secretary** to Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department, Peshawar.
2. **The Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **The Deputy Commissioner/the then Political Agent Tribal** District Bajour at Khar.
4. **The District Education Officer** Bajour at Khar....(Respondents)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellant
Mr. Naseer Ud Din Shah, Assistant Advocate General...For respondents

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER DATED 21.04.2016
PASSED BY THE POLITICAL AGENT
BAJAUR, WHEREBY THE APPELLANT WAS
AWARDED MAJOR PENALTY OF
REMOVAL/TERMINATION FROM SERVICE.**

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case
in brief as per the memo and grounds of appeal is that he
was appointed as Qari (BPS-12) in the Education

Department at District Bajaur; that on 09.05.2015, he was taken into custody by the Law Enforcement Agencies and was there till 10.02.2020; that after release, he approached the respondents for joining his duties, but he was informed that he has been terminated from service vide impugned order dated 21.04.2016; that as Dispenser (BPS-06) vide order dated 29.01.2004; that feeling aggrieved, he filed departmental appeal but the same was not responded, hence, the instant service appeal.

2. 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.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General for respondents.


4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General, for respondents, controverted the same by supporting the impugned order.

5. Record shows that the appellant was initially appointed as Theology Teacher on contract basis on 15.11.2003. Later on, was appointed against the post of

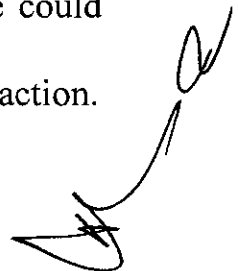
Qari (BPS-12) vide appointment order dated 10.08.2009. In the meanwhile, he was noticed by the authorities as absent from duty. Upon issuance of show cause notices, received by the nephew of the appellant, he (appellant's nephew). Therefore, the Political Agent through correspondence, inquired from the Commandant Bajaur Scouts at Khar about the whereabouts of the appellant. In reply, the Commandant Bajaur Scouts stated that the appellant was wanted to this Headquarter, and his brother namely Ahmad Jan was already in their custody, vide letter dated 31.03.2019. The same is reproduced as under:

*"Suspect Ahmad Jan son of Bakhti Jan was apprehended by this HQ on 06th Feb 2015 due to his involvement in terrorist activities. He is held with this HQ and has been declared "Black" by JIT. Moreover, **Muhammad Jan Qari son of Bakhti Jan is also wanted to this HQ due to his suspicious activities/contact with terrorists.**"*

6. Learned counsel for the appellant relied on the judgment of this Court in the case of brother of the appellant named Ahmad Jan, who was also penalized by the same order and to his extent, the impugned order dated 21.04.2016, was set aside vide judgment dated 05.07.2021, but case of the brother of appellant is quite distinguishable



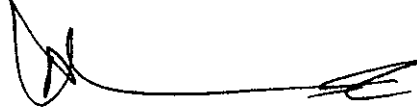
from his brother's case, because in that case, there is sufficient documentary evidence placed on record of the Appeal No.949/2019, that the appellant of that case was kept by the Law Enforcement Agencies in illegal confinement and released on the direction of the Hon'ble Peshawar High Court, where-after, he filed departmental appeal. Whereas, in the instant case, although, the appellant has alleged that he was also taken into custody by the LEAs but there is no record placed on file. Learned counsel for the appellant, however, relies on letter dated 31.03.2016 regarding an application/verification of Muhammad Jan and Ahmad Jan, wherein, specific reference was made regarding the apprehension of Mr. Ahmad Jan, brother of the present appellant and that he was held with the Headquarter of Bajaur Scout and had also been declared "black" by the JIT. Regarding the appellant Muhammad Jan, although, there is reference that he was also wanted to the Headquarter due to suspicious activities and contacts with terrorists, but there is nothing contained in the said letter which could show that he was also in the custody of the LEAs. The contention of the appellant is that he was in the custody of LEAs is not substantiated by any document, therefore, that is not tenable and thus he could not justify his absence which resulted into impugned action.



Service Appeal No.5370/2020 titled "Muhammad Jan Vs. The Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department, Peshawar and others", decided on 13.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

7. In view of the above, we see no merits in this case, which is dismissed with costs. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13th day of September, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutazem Shah

25th July, 2024

1. Learned counsel for the appellant present. Mr.

Muhammad Jan, District for the respondents present.

2. Learned counsel for the appellant requested for adjournment on the ground that he has not prepared the case. Adjourned by way of last chance. To come up for arguments on 13.09.2024 before D.B. P.P given to the parties.

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(Aurangzeb Khattak)
Member (J)

(Kalim Arshad Khan)
Chairman

Ajam Shah, P.A.

S.A #.5370/2020

ORDER

13th Sep. 2024

1. Learned counsel for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for the respondents present. Heard.

2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed with costs. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13th day of September, 2024.*

(Rashida Bano)
Member (J)

(Kalim Arshad Khan)
Chairman

Mutazem Shah