

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.8644/2020

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

**Mst. Shaista Masroor Ex: Deputy Director Out Reach (BPS-18), O/O
Director General, Agriculture Research, Khyber Pakhtunkhwa,
Peshawar.**

... (Appellant)

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Agriculture, Live Stock & Co Operative Department, Khyber Pakhtunkhwa, Peshawar.
3. The Director General, Agriculture Research, Near Agriculture University, Peshawar.

... (Respondents)

Mr. Noor Muhammad Khattak
Advocate

...

For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

...

For respondents

Date of Institution.....27.07.2020

Date of Hearing.....13.09.2024

Date of Decision.....13.09.2024

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 03.01.2020 communicated to the appellant on



27.03.2020 may kindly be set aside and the appellant may graciously be reinstated in to service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant served as a Deputy Director in the respondent department while her husband was in Canada for business. She applied for ex-Pakistan leave, which was initially granted on 18.07.2016, and later extended for two months on 07.04.2017. After her leave expired, she did not return to work, leading the department to issue an absence notice on 23.11.2018, which was received at her home. In her reply dated 29.11.2018, she explained that she was facing visa issues for her newborn in Canada, preventing her from returning within the 15-day notice period. She requested additional time until the visa was resolved. Once the visa issue was settled, she submitted her arrival report, she was astonished to know that she had been removed from service on 03.01.2020. Aggrieved by this decision, she filed a departmental appeal, resulting in the current 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 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 the record reveals that the appellant was serving in the respondent department as Deputy Director Outreach, while her husband was residing in Canada in connection with his business. She applied for ex-Pakistan leave, which was granted via order dated 18.07.2016, and was extended for a further two months via order dated 07.04.2017. After the expiry of her ex-Pakistan leave, the appellant did not resume her duties; therefore, the respondent department issued an absence notice dated 23.11.2018, to the appellant at her home address, which was received at her residence. She submitted a reply on 29.11.2018, wherein she mentioned that she was facing a visa issuance problem for her newborn baby in Canada, and in this connection, she was stuck there, making her unable to attend her office within the 15 days' time given in the notice for resuming her duties in Pakistan. She requested an extension for her arrival after the issuance of the visa for her newborn baby in Canada. The reply was received by the office, and they annexed it to their response/reply.

7. Respondents/department proceeded appellant under rule 9 of E&D Rules, 1989, which read as;

“(i) A civil servant can be proceeded against on the grounds of willful absence.

(ii) If a civil servant remains absent from duty without obtaining proper leave from the competent authority, a notice to resume duties



must be sent to their home address, with acknowledgment (AD card).


(iii) The civil servant is directed to resume duties within 15 days.

(iv) If the notice is returned unserved or if there is no response from the civil servant, an absence notice will be published in two leading newspapers.

(v) If the civil servant fails to resume duties after this notice, they may be removed from service.”

In accordance with Rule 9, a civil servant will have to be proceeded against on the grounds of willful absence. The procedure states that a civil servant who remains absent from duty without obtaining proper leave from the competent authority shall have a notice to resume his duties sent to his home address with acknowledgment (AD card), and he/she shall be directed to resume within 15 days. If the notice is returned unserved or received but no response is given by the civil servant, then after the lapse of 15 days, an absence notice for the said civil servant shall be published in two leading newspapers. In case of failure to resume duties by the civil servant, he will be removed from service.

8. However, in the instant case, the appellant had responded to the notice, contending that due to the visa issuance problem for her newborn baby in Canada, she was unable to leave Canada and would join her duties as soon as possible. She requested additional time for her joining. Since the appellant had given a response, the respondent department was required to conduct a proper inquiry, and proceeding further by issuing publication in two.



newspapers was not necessary. Thus, the respondent adopted the wrong procedure, which is not in accordance with the rules; therefore, it is held that the impugned order is not in accordance with the rules and laws.

9. For what has been discussed above, we are in unison to set aside the impugned order with a direction to the respondent to conduct an inquiry into the matter in accordance with the rules by providing the opportunity for the appellant to defend herself within 90 days after receipt of this order. The appellant is reinstated for the purpose of the inquiry. 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 13th day of September, 2024.*



KALIM ARSHAD KHAN
CHAIRMAN



(RASHIDA BANO)
MEMBER (J)

ORDER

13.09.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Tauheed Iqbal, Assistant Director, for the respondents present.

2. Vide our detailed judgment of today placed on file, we are in unison to set aside the impugned order with a direction to the respondent to conduct an inquiry into the matter in accordance with the rules by providing the opportunity for the appellant to defend herself within 90 days after receipt of this order. The appellant is reinstated for the purpose of the inquiry. 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 13th day of September, 2024.*


KALIM ARSHAD KHAN
CHAIRMAN


(RASHIDA BANO)
MEMBER (J)

*M.Khan