

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1909/2022

BEFORE: MR. AURANGZEB KHATTAK... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mst. Noreen Nazli W/O Shah Faisal R/O Pakha Ghulam, Pahari Pura,
Tehsil and District Peshawar. (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Education Department, Peshawar.
 2. District Education Officer (Female), Peshawar.
 3. Deputy District Education Officer (Female), Peshawar.
-(*Respondents*)

Mr. Mahmood Jan,
Advocate

... For appellants

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....16.12.2022

Date of Hearing.....16.09.2024

Date of Decision..... 16.09.2024

JUDGMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 against the impugned orders dated 15.07.2022 and 04.10.2022 whereby major penalty of compulsory retirement from service was imposed upon the appellant. It has been prayed that on acceptance of the appeal, the impugned orders dated 15.07.2022 and 04.10.2022 might be set aside and the services of the appellant be reinstated alongwith all back benefits.



02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant got recruited in the Elementary and Secondary Education Department in the year 2008 and was posted a Sweeper in GGHSS Nishtarabad Peshawar. She remained absent from her duty from 01.01.2022 till 14.07.2022 due to her serious illness. She visited hospital, where the doctors, after conducting of some tests, came to conclusion that heart surgery of the appellant was necessary. In spite of serious illness, she came to the Education Department but the high ups informed her that she should have to wait for further order, after which she received the impugned order dated 15.07.2022 whereby she was compulsory retired from service. Feeling aggrieved, she submitted a departmental appeal which was turned down vide impugned order dated 04.10.2022; hence the instant service appeal.

03. Respondents were put on notice. They submitted their joint written reply/comments. We heard the learned counsel for the appellant and learned Deputy District Attorney, for the respondents and perused the case file with connected documents in detail.

04. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders were against the norms of justice, illegal, unconstitutional and without lawful authority, therefore, not tenable. He requested that the appeal might be accepted as prayed for

05. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that appellant's absenteeism was repeatedly reported by the Principal of GGHSS Nishtarabad, Peshawar and she was served with various warnings and explanation letters at different



times but she did not change her routine. He argued that it was admitted by herself in para No. 4 of the service appeal that she remained willfully absent from duty from 01.01.2022 to 14.07.2022. The respondent department decided to conduct an inquiry and during the inquiry she was proved guilty. According to the learned Deputy District Attorney, the Inquiry Officer recommended the penalty of removal or compulsory retirement from service. The competent authority, through Principal, served a charge sheet alongwith statement of allegations for her misconduct and negligence of duty and tentatively decided to impose upon her major penalty of removal from service, which was not replied by the appellant. The competent authority in exercise of powers under E&D Rules imposed major penalty of compulsory retirement from service upon the appellant vide order dated 15.07.2022. He requested that the appeal might be dismissed.

06. Through the instant service appeal, the appellant had impugned order dated 15.07.2022 vide which major penalty of removal from service had been imposed upon her and another order dated 04.10.2022 vide which her departmental appeal was rejected. Arguments and record presented before us transpired that she was appointed as a Sweepress in the Elementary & Secondary Education Department in the year 2008 and was removed from service in 2022 on account of absence from duty from 01.01.2022 till 14.07.2022. As stated by her learned counsel the absence was due to a serious illness and when confronted whether any leave was sought from the competent authority, he could not produce any documentary evidence. In her service appeal, the appellant mentioned that her illness was of such a nature that the doctor had finally recommended heart surgery but no document was



attached with the service appeal in order to strengthen her claim and ascertain whether any surgery took place or not. Her departmental appeal attached with the service appeal at page 29 presented a different position, according to which she admitted her absence because of certain family issue. The respondents, on the other hand, enclosed an inquiry report with their reply alongwith a charge sheet and statement of allegations with the charges as follows:-

1. *You are disobedient/misbehaved and irregular in duties.*
2. *You used abusive language with the teachers and Principal.*
3. *You do not obey orders of your school Principal."*

7. A simple perusal of the above mentioned charges showed that there was no mention of absence from duty as admitted by the appellant rather it was simply mentioned that she was irregular in her duty. The unsigned inquiry report stated that all the charges had been proved against her but no document had been attached with it based on which the Inquiry Officer had proved the charges. It was further noted that no show cause notice was issued to the appellant before imposing major penalty of compulsory retirement from service.

8. In the light of the above discussion, we arrive at a conclusion that the charge of absence based on which the appellant was compulsory retired from service was not specified in the charge sheet. The show cause notice, which was a requirement under the rules, was not issued, which made the entire process faulty in the eyes of law. The impugned order is, therefore, set aside and the appellant is reinstated into service for the purpose of denovo inquiry. The respondent department is directed to conduct the said



inquiry by fully associating the appellant and the entire process shall be completed within two months of the receipt of copy of this judgment. Cost shall follow the event. Consign.

09. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16th day of September, 2024.


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J)

Fazle Subhan P.S

SA 1909/2022

16.09.2024

01. Mr. Mahmood Jan, Advocate for the appellant present and submitted fresh Wakalatnama which is placed on file. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, we arrive at a conclusion that the charge of absence based on which the appellant was compulsory retired from service was not specified in the charge sheet. The show cause notice, which was a requirement under the rules, was not issued, which made the entire process faulty in the eyes of law. The impugned order is, therefore, set aside and the appellant is reinstated into service for the purpose of denovo inquiry. The respondent department is directed to conduct the said inquiry by fully associating the appellant and the entire process shall be completed within two months of the receipt of copy of this judgment. Cost shall follow the event. Consign.

03. *Pronounced in open court in Abbottabad and given under our hands and seal of the Tribunal on this 16th day of September, 2024.*


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J)