

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR

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

Service Appeal No.7440/2021

Date of presentation of Appeal.....22.09.2021
Date of Hearing.....04.10.2024
Date of Decision.....04.10.2024

Muhammad Imran Ex-Sweeper (BPS-01) Governor's House,
Peshawar.....(*Appellant*)

Versus

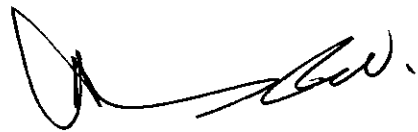
1. **Government of Khyber Pakhtunkhwa**, Military Secretary to Governor, Governor House, Peshawar.
2. **Comptroller**, Governor's House, Peshawar.
3. **Caretaker**, Governor's House, Peshawar.....(*Respondents*)

Present:

Mr. Umar Farooq Mohmand, Advocate.....For the appellant
Mr. Muhammad Jan District Attorney.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 14.11.2019 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE HAS BEEN IMPOSED UPON THE APPELLANT AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

JUDGMENT



KALIM ARSHAD KHAN CHAIRMAN: Facts of the case of the appellant, gathered from memorandum and grounds of appeal are that the appellant was appointed as Sweeper (BPS-01) vide order dated 27.03.2012; that he was serving in the Governor's House at Nathia Gali; that due to some domestic issues and illness of his wife, he remained

unable to attend the duties; that resultantly, when he approached for duty, he was informed regarding the order dated 14.11.2019, whereby, he was removed from service; that feeling aggrieved, he filed departmental appeal but the same was not responded, hence, the instant appeal.

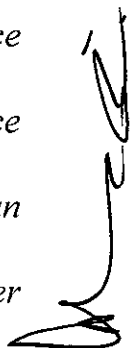
2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant, learned Deputy District Attorney 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 Deputy District Attorney controverted the same by supporting the impugned order(s).

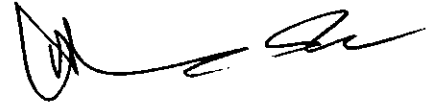
5. The appellant allegedly faced some issues during his duty due to which he remained unable to perform duty. In response, the respondents issued the impugned order dated 14.11.2019, relevant para of the same is worth perusal:

"NOW THEREFORE, having gone through facts of the case, evidence on record, proved charges of willful absence from duty and keeping in view reply of Show Cause notice submitted by the official concerned, I Col Shahid Rehan Chaudhry, Military Secretary to Governor Khyber



*Pakhtunkhwa in the capacity of the Competent Authority and in exercise of the powers conferred on me under rule-4 read with rule 7(F) of the **Government servants (E&D) Rules 1973**, do hereby impose the Major Penalty of removal from service on the said Muhammad Imran-II, Sweeper Governor House, Nathiagali"*

6. The appellant has been treated in accordance with Efficiency & Discipline Rules, 1973 which rules were not applicable in the case of the appellant as Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 were very much in field, wherein, Rule-9 of the Rules *ibid* deals such cases in the following way:



"11. Procedure to be followed by inquiry officer or inquiry committee.—(1) *On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.*

(2) *If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry ex-parte.*

(3) *The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.*

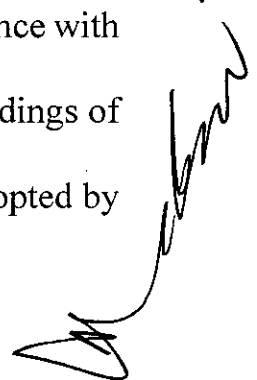
[(4) Statements of witnesses shall be recorded in the presence of accused and departmental representative.]

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him, is sanctioned on the recommendations of a Medical Board; provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.

[(7) The inquiry officer or the inquiry committee, as the case may be, shall complete the inquiry within sixty days or within such an extended period, which the competent authority may allow on the request of the inquiry officer or inquiry committee, as the case may be, for reasons to be recorded and shall submit his or its report to the competent authority within seven days of the date of completion of inquiry. The inquiry report must contain clear findings as to whether the charge or charges have been proved or not proved and specific recommendations regarding exoneration or imposition of minor or major penalty or penalties upon the accused.]

7. The appellant has not been treated in accordance with the relevant rules, what to talk about further proceedings of inquiry etc. as the above procedure has not been adopted by the department.



8. Keeping in view the above circumstances, impugned order dated 14.11.2019 is set aside and appeal is accepted. Appellant is reinstated into service for the purpose of inquiry, to be conducted in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, within 60 days of the receipt of this judgment. The issue of back benefits shall be subject to the outcome of inquiry. Costs shall follow the event. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 4th day of October, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutazem Shah