

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No.1172/2023

Date of presentation of Appeal.....25.02.2023
Date of Hearing.....26.09.2024
Date of Decision.....26.09.2024

Ajab Khan son of Boland Khan, resident of Shah Maqsood, Tehsil and District Haripur, Ex-Class IV GMS Shah Maqsood, District Haripur.....(*Appellant*)

Versus

1. **The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.**
 2. **The Director Elementary & Secondary Education, Peshawar.**
 3. **The District Education Officer (Male) District Haripur.**
-(*Respondents*)


Present:

Malik Ashfaq Ahmad Jilani, AdvocateFor the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

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**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDERS NO.1873-80 DATED
12.03.2019/RECEIVED ON 16.02.2022 AND 1348
DATED 28.04.2023, PASSED BY
RESPONDENTS NO.2 AND 3 RESPECTIVELY
WHEREBY MAJOR PENALTY OF REMOVAL
FROM SERVICE WAS IMPOSED UPON THE
APPELLANT.**

JUDGMENT



KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case in brief, as per memo and grounds of appeal, is that he was appointed as Class-IV in the Education Department vide order dated

31.05.2010; that he was transferred from GMS Shah Maqsood, Haripur to GHSS Kokotri Haripur on 29.10.2018 which was challenged by the appellant through departmental appeal dated 02.11.2018 followed by Service Appeal No.169/2019 before this Tribunal; that comments were called from the respondents in the said case, whereby in the comments, the respondents had attached the removal order dated 12.03.2019; that this cause of action compelled the appellant to withdraw the Service Appeal No.169/2019 by filing departmental appeal against his removal from service; that his departmental appeal was rejected on 28.04.2023, 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.

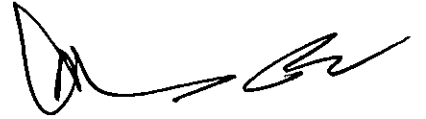
4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

5. It appears appellant was transferred from one school to another on the basis of his alleged conduct, which had no legal footings, however, before decision of transfer case, by the

Tribunal, the order was followed by a removal from service order.

The ground mentioned in the impugned removal order was his absence from duty. As the appellant had transferred from school to another i.e. from Government Middle School Shah Maqsood to Government Higher Secondary School Kakotri, against which the appellant filed Service Appeal No.169/2019 which was sub-judice before this Tribunal. In the meanwhile, vide impugned order dated 12.03.2019 had removed the appellant from service.

6. In the impugned order, the authority has based his powers on the basis of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. While Rule-9 of the same rules i.e. the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 provides procedure which is hereby reproduced for ready reference:



“ 9. Procedure in case of willful absence.

Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing

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him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant."

7. In the instant case no proper notice was issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within 15 days of issuance of the notice. Neither charge sheet nor show cause notice was issued in accordance with law. From perusal of the entire record, it becomes crystal clear that proper procedure as laid down in rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was not followed by the competent authority strictly in accordance with law, rather the impugned order was handed over to the appellant after passage of more than three years.

8. In view of the above circumstance, facts and discussion made herein above the instant service appeal is partially accepted. Appellant is reinstated into service and case is remitted back to the Department for de-novo inquiry within 60 days of the receipt of this judgment with the direction to pass a speaking order. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. The issue

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of back benefits shall be subject to the outcome of the inquiry.

Costs shall follow the event. Consign.

9. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 26th day of September, 2024.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

Mutazem Shah