

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

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

Service Appeal No.7134/2021

Date of presentation of Appeal.....02.08.2021
Date of Hearing.....26.09.2024
Date of Decision.....26.09.2024

Mr. Tayyab Khan Ex-Junior Technician Dialysis BPS-12 Central
Prison Haripur.....(*Appellant*)

Versus

1. **The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.**
2. **The Deputy Director, Inspectorate General of Prisons, Khyber Pakhtunkhwa, Peshawar.**
3. **The Superintendent, Central Prison Haripur.....(*Respondents*)**

Present:

Syed Noman Ali Bukhari, 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 ORDER DATED 25.06.2020 WHEREBY
THE APPELLANT WAS REMOVED FROM THE
SERVICE AND AGAINST NOT TAKING ACTION ON
THE DEPARTMENTAL APPEAL OF 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 Junior Technician Dialysis (BPS-12) in the year 2018 and was posted at Central Prison, Haripur; that he fell ill and remained unable to attend the duties; that on the basis of his absence from service, the department through publication in the newspaper, put the appellant on

notice to attend the duties, within 15 days; that accordingly, he approached the department and joined the duty on 15.06.2020; that after passage of some four days i.e. 22.06.2020, he again felt being indisposed and reported positive of COVID-19; that upon the advice of the doctor, he remained at bed rest for fourteen days; that prior to his leave, he allegedly requested for medical leave, however, vide order dated 25.06.2020 he was removed from service; that feeling aggrieved, he filed departmental appeal on 15.07.2020, but the same remained un-responded, hence, the instant service 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. After careful consideration of the appellant's case, it is evident that he was appointed as a Junior Technician Dialysis (BPS-12) in 2018 and allegedly faced a series of unfortunate health-related challenges that affected his ability to fulfill his duties. The appellant's absence from service initially led to a notice from the department, to

which he complied by rejoining on 15.06.2020. However, just days later, he was diagnosed with COVID-19, which necessitated further medical leave as advised by his doctor. The record indicates that he sought medical leave prior to the expiration of his initial absence; nevertheless, the department issued a removal order dated 25.06.2020, despite his health circumstances. The appellant's departmental appeal, filed on 15.07.2020, went unaddressed, leading to the current service appeal. In light of these facts, it appears that the dismissal may not have fully accounted for the appellant's health-related issues and his attempts to comply with departmental procedures, warranting further review and consideration.

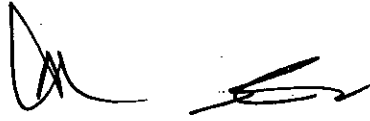
6. At the very outset, learned Deputy District Attorney raised the objection that appellant has filed the instant service appeal beyond the provided period of limitation, as the impugned order had been passed on 25.06.2020, against which, the filed departmental appeal within 30 days, however, the appellant had approached this Tribunal on 02.08.2021. It is worth to mention that in view of Section 30 of the Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the limitation provided under any law shall remain frozen. The appeal having filed after promulgation of the said Act, is not affected by the bar of limitation.

7. Coming to the merits of the case, the appellant, after his absence from service, had rejoined the duty on 15.06.2020. At that time, the department ought to have conducted proper inquiry, which was not done, and all the proceedings were initiated in a hasty manner,

which are not in accordance with law and rules, specially the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

8. In view of the above circumstance, the instant service appeal is accepted. Appellant is reinstated into service and case is remitted back to the Department for proper inquiry within 60 days of the receipt of this judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. The issue 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)