

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... **MEMBER (Judicial)**
 RASHIDA BANO ... **MEMBER (Judicial)**

Service Appeal No. 6175/2020

Date of presentation of Appeal.....12.02.2020
Date of Hearing.....25.09.2024
Date of Decision.....25.09.2024

Mst. Mehnaz Jehan PST Government Girls Primary School Dargai
Charsadda. **Appellant**

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
 2. Director Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
 3. Executive District Officer (Elementary & Secondary Education) District Charsadda.
-(**Respondents**)

Present:

Miss. Roeeda Khan, Advocate.....For appellant
Mr. Muhammad Jan, District Attorney.....For respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as alleged by the appellant in her memorandum of appeal, are that she was appointed as a Primary School Teacher on May 16, 2007, by the District Education Officer in Charsadda and she had assumed the charge of her post on May 23, 2007. Later, she was transferred from GGPS Hassan Zai to GGPS Umerabad Dergai on September 8, 2007. In 2010, due to domestic disputes, including alleged enmity, the appellant relocated with her family to Peshawar, however, the disputes were

resolved in 2019. Following the resolution of her disputes, the appellant approached the respondent department by filing of departmental appeal on November 8, 2019, seeking readjustment to her original post as a Primary School Teacher. However, the departmental appeal was not resolved, prompting her to approach this Tribunal by filing the instant appeal for redressal of her grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. The learned counsel for the appellant contended that the appellant retained her rights as a civil servant and that the respondent department was legally obligated to allow her return to service despite her prolonged absence. She next contended that the respondent department's decision to deny the return of the appellant to her post was fundamentally illegal, lacking adherence to the relevant laws and regulations. She further contended that since she had not faced any formal dismissal or removal, the action of the respondent in refusing her request for adjustment was in clear violation of the principles of natural justice and due process. She next argued that the refusal to allow her to resume her duties amounted to detrimental treatment and vindictive action by the respondent department, as her absence had been due to circumstances beyond her control. Lastly, she argued that the appeal in hand may be accepted as prayed for.

4. On the other hand, the learned District Attorney for the respondents contended that the appellant had a history of habitual negligence towards her official duties, citing instances of her lengthy absence without proper

Ms. Rashida Bano
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sanctioned leave. He next contended that the appellant had abruptly revived her claim for employment after approximately 14 years, without sufficient evidence of her continuous engagement with the duties expected of her as a civil servant. He further contended that there was a contradiction in the statements of the appellant, particularly regarding her relocation in 2010 and the subsequent FIR registered in 2016 in Mardan district, which undermined her credibility. He next argued that the appellant had not submitted a proper departmental appeal as required, noting that there was no documentary evidence, such as a diary dispatch number, confirming her departmental appeal submission. Lastly, he argued that the appeal in hand, being meritless, is liable to be dismissed with costs.

5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

6. The perusal of the case file reveals that the appellant was appointed as a Primary School Teacher by the District Education Officer in Charsadda and subsequently assumed the charge of her post. On September 8, 2007, she was transferred from GGPS Hassan Zai to GGPS Umerabad Dergai. However, due to domestic disputes and related concerns, the appellant relocated to Peshawar. After resolving the disputes in 2019, the appellant filed a departmental appeal on November 8, 2019, seeking her return to her original post, however, the respondent department denied her request. The only contention of the respondents is that the appellant had a history of habitual absenteeism and had

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demonstrated disinterest in her official duties, alleging that she had been absent from work for approximately 14 years. Upon reviewing the case files and the arguments presented by both parties, it was observed that the appellant was, by admission, a civil servant and there was no documentary evidence indicating that any formal order of dismissal or removal had ever been issued against her. The written reply submitted by the respondents did not reference any procedural actions taken against the appellant. The lack of a record of dismissal or removal, or any other adverse order, raised significant concerns regarding the legality of the respondents' actions and their adherence to established rules and regulations. As a civil servant, the appellant was entitled to due process under the law. Any adverse action regarding her employment status was required to be thoroughly documented and must comply with the established procedural requirements. It was the responsibility of the respondents to provide clear evidence supporting their claims of absenteeism and to ensure that any actions taken regarding her position were consistent with the relevant regulations and guidelines. The failure to document any formal dismissal or disciplinary action indicated a troubling lapse in procedural compliance. In light of these findings, we are of the opinion that the matter be remitted to the respondent department for proper procedural adherence. The current record did not support the actions taken against the appellant and it was deemed necessary to rectify the procedural shortcomings as outlined during the proceedings. Therefore, it was ordered that the respondent department


*Amir
25/09/2024.*


Service Appeal No.6175/2020 titled "Mst. Mehmaz Jehan versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa,, Peshawar and others", decided on 25.09.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Ms. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

reconsider the appellant's request and follow all appropriate procedures in accordance with the law.

7. Consequently, the matter is remitted to the respondent department for adopting proper procedure, ensuring that any claims regarding her absenteeism are investigated and substantiated. The department must provide the appellant an opportunity to present her case in full, including evidence concerning her absences and there-after issue a reasoned decision based order on its findings within 60 days, ensuring transparency and adherence to the principles of fairness and justice. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25th day of September, 2024.*


AURANGZEB KHATTAK
Member (Judicial)



RASHIDA BANO
Member (Judicial)


Naeem Amin

ORDER

25th Sept, 2024

1. Appellant alongwith her counsel present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the matter is remitted to the respondent department for adopting proper procedure, ensuring that any claims regarding her absenteeism are investigated and substantiated. The department must provide the appellant an opportunity to present her case in full, including evidence concerning her absences and there-after issue a reasoned decision based order on its findings within 60 days, ensuring transparency and adherence to the principles of fairness and justice. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25th day of September, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak)
Member (Judicial)