

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

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

*Service Appeal No.7745/2021*

Date of presentation of Appeal.....11.11.2021  
Date of Hearing.....04.10.2024  
Date of Decision.....04.10.2024

**Mr. Noor Haleem, Ex-P.E.T (BPS-15), GHS, Mawaz Killi, District Khyber.....(Appellant)**

Versus

1. **The Secretary (E&SE) Education Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.**
2. **The Director (E&SE) Education Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.**
3. **The District Education Officer, (Male) Jamrud at Khyber.....(Respondents)**

Present:

Mr. Umar Farooq Mohmand, Advocate.....For the appellant  
Mr. Naseer Ud Din Shah, Assistant Advocate General .....For respondents

----

**SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 30.11.2017 WHICH WAS COMMUNICATED TO THE APPELLANT ON 12.07.2021 DURING COURT PROCEEDINGS WHEREBY THE APPELLANT WAS STRUCK OFF FROM THE EDUCATION DEPARTMENT KHYBER AGENCY AND AGAINST THE IMPUGNED INACTION OF THE RESPONDENTS BY NOT DECIDING 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 appellant was appointed as


Physical Education Teacher vide order dated 22.01.2000; that his salary was stopped by the respondents against which he filed Service Appeal No.963/2/2016 before this Tribunal, and the Tribunal vide judgment dated 02.03.2017, allowed the appeal of appellant, however, the respondents were left at liberty to conduct an inquiry; that for implementation of the judgment, he filed Execution Petition No.71/2020 and during the pendency of the said petition, the impugned order dated 30.11.2017 was handed over to the appellant whereby, he was struck off from the Education Roll, Khyber; that feeling aggrieved, he filed departmental appeal, but the same was not 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 Assistant Advocate General 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 Assistant Advocate General controverted the same by supporting the impugned order(s).

5. This is the second round of litigation. Initially, salary of the appellant was stopped, however, the said action was

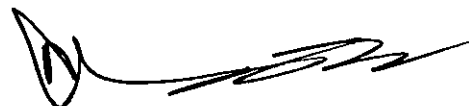


challenged by the appellant before the Tribunal, however, before addressing the issue of salary, he was struck off. The relevant para of the impugned order dated 30.11.2017 is as under:

*“Consequent upon the recommendation of enquiry committee Mr. Noor Haleem S/O Kamil Hussain fake P.E.t (P.No.00411645 cast center Kho128 GHS Mawaz Killi Kotal Khyber Agency is hereby struck off from the Education roll Khyber Agency in the best interest of public service.”*

6. The Tribunal had left the respondents to conduct inquiry into the matter of stoppage of salary, which was conducted, however, the outcome of the said inquiry was resulted otherwise. The inquiry was also not in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 which recognize the inquiry in the following manner:

*“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 law and rules as per the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

8. Keeping in view the above circumstances, impugned order dated 30.11.2017 is set aside and the respondents are directed to conduct de-novo inquiry, duly associating the appellant with the inquiry proceedings, for his defense, to be conducted strictly in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, within 60 days of the receipt of this judgment. Appellant is reinstated for the purpose of de-novo inquiry. 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 4<sup>th</sup> day of October, 2024.*

  
**KALIM ARSHAD KHAN**  
Chairman

  
**RASHIDA BANO**  
Member (Judicial)


\*Mutazem Shah\*

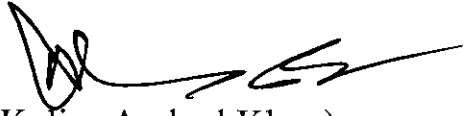
S.A #.7745/2021

**ORDER**

4<sup>th</sup> Oct. 2024

1. Learned counsel for the appellant and Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents present. Heard.
2. Vide our detailed judgment of today placed on file, impugned order dated 30.11.2017 is set aside and the respondents are directed to conduct de-novo inquiry, duly associating the appellant with the inquiry proceedings, for his defense, to be conducted strictly in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, within 60 days of the receipt of the judgment. Appellant is reinstated for the purpose of de-novo inquiry. The issue of back benefits shall be subject to the outcome of inquiry. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 4<sup>th</sup> day of October, 2024.*

  
(Rashida Bano)  
Member (J)

  
(Kalim Arshad Khan)  
Chairman


\*Mutazem Shah\*


06<sup>th</sup> June, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Munawar Khan, ADEO for the respondents present.

2. Learned counsel for the appellant seeks further time for preparation of brief. Absolute last chance is given for arguments. To come up for arguments on 02.09.2024 before the D.B. Parcha Peshi given to the parties.


SCANNED  
KPST  
Peshawar

  
(Fareeha Paul)  
Member (Executive)

  
(Kalim Arshad Khan)  
Chairman

\*Nacem Amin\*

2-9-24

Due to summer vacation the bench is cancelled. The case is adjourned to 4/10/24.  Reader.