

Service Appeal No.4274/2021 titled "Mst. Humaira Bibi versus The Director (E&SE) Khyber Pakhtunkhwa, Peshawar and others" declared on 04.10.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

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

*Service Appeal No.4274/2021*

Date of presentation of Appeal.....29.03.2021  
Date of Hearing.....04.10.2024  
Date of Decision.....04.10.2024

**Mst. Humaira Bibi**, Ex-Primary School Teacher (PST), R/O  
Madina Colony Street No.3, Near Railway Station, District Mardan  
.....(*Appellant*)

Versus

1. **The Director (E&SE)** Khyber Pakhtunkhwa, Peshawar.
2. **The Deputy Director (ESTB)** Merged Area, Peshawar.
3. **The District Education Officer**, Khyber District, Jamrud.  
.....(*Respondents*)

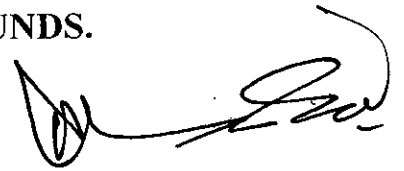
Present:

Syed Noman Ali Bukhari, Advocate.....For the appellant  
Mr. Muhammad Jan, District Attorney.....For respondents

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**SERVICE APPEAL UNDER SECTION-4 OF  
THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE  
ORDER DATED 28.11.2017 WHEREBY THE  
APPELLANT HAS BEEN STRUCK OFF  
FROM THE SERVICE AND AGAINST THE  
ORDER DATED 07.12.2020, RECEIVED TO  
THE APPELLANT ON 05.03.2021 THROUGH  
POST WHEREBY DEPARTMENTAL  
APPEAL OF THE APPELLANT HAS BEEN  
REJECTED FOR NO GOOD GROUNDS.**

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**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Facts of the  
case of the appellant, gathered from memorandum and  
grounds of appeal are that she joined the Education  
Department on 25.08.2009 and had more than eight years of  
service; that vide impugned order dated 28.11.2017, she was



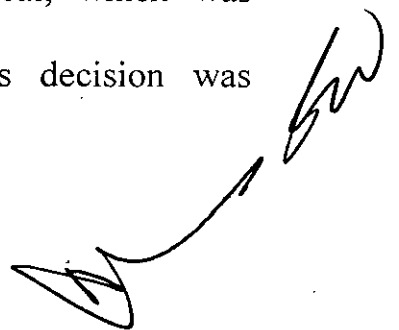
struck off from service; that feeling aggrieved, she filed departmental appeal but the same was rejected on 07.12.2020 which was received to the appellant on 05.03.2021, hence, the instant service appeal.

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 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 District Attorney controverted the same by supporting the impugned order(s).

5. The appellant commenced her career in the Education Department on 25.08.2009, accruing over eight years of dedicated service. Due to law & order situation, she remained unable to attend her duties. However, she faced a significant setback when, by order dated 28.11.2017, she was struck off from her position. In response to this action, the appellant filed a departmental appeal, which was ultimately rejected on 07.12.2020; this decision was communicated to her only on 05.03.2021.



6. It is worth to mention that the appellant was compelled to remain absent due to law & order situation. Besides the department has also omitted codal formalities which were mandatory before awarding major penalty of removal from service. For awarding major penalty to a civil servant, the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 guides the authority to conduct proper inquiry. Rule-11 of the rules *ibid* is as under:


***"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,***



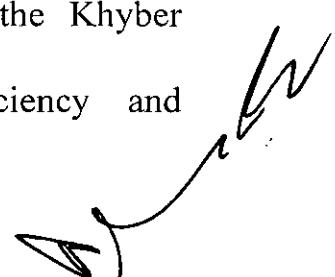
*he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.*

*(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 respondents have not bothered the above codal formalities, and just after issuance of notice in newspaper, have removed the appellant from service.

8. Keeping in view the above circumstances, impugned order dated 28.11.2017 is set aside, appellant is reinstated into service and the respondents are directed to conduct de-novo inquiry, strictly in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency and



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Discipline) Rules, 2011, within 60 days of the receipt of this judgment. 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\**

25<sup>th</sup> Sept, 2024

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant seeks further time for preparation of arguments. Granted. To come up for arguments on 04/10/2024 before the D.B. Parcha Peshi given to the parties.

SCANNED  
KPBT  
Peshawar

\*Naeem Amin\*



(Rashida Bano)  
Member (Judicial)



(Aurangzeb Khattak)  
Member (Judicial)

S.A #.4274/2021

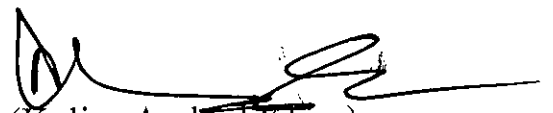
**ORDER**

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

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for respondents present. Heard.
2. Vide our consolidated order of today, impugned order dated 28.11.2017 is set aside, appellant is reinstated into service and the respondents are directed to conduct de-novo inquiry, strictly in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, within 60 days of the receipt of the judgment. 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\*

12<sup>th</sup> July, 2024

Learned counsel for the appellant present. Mr. Munawar Khan, ADEO alongwith Mr. Arshad Azam, Assistant Advocate General for the respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 20.09.2024 before the D.B. Parcha Peshi given to the parties.

(Muhammad Akbar Khan)  
Member (Executive)

(Aurangzeb Khattak)  
Member (Judicial)

\*Naeem Amin\*

20<sup>th</sup> Sept, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 25.09.2024 before D.B. P.P given to the parties.

(Rashida Bano)  
Member (J)

(Kalim Arshad Khan)  
Chairman

\*Adnan Shah, P A\*