

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Service Appeal No. 2056/2023

Tajir Khan (Ex-PSHT) Tehsil Landi Kotal, District Khyber.
.....(Appellant)

Versus

1. District Education Officer (Male) E&SE, District Khyber at Jamrud.
2. Sub Divisional Education Officer, Landi Kotal.
3. District Accounts Officer, District Khyber.
4. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
5. Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat Peshawar.
..... (Respondent)

Mr. Naseerud Din Yousafzai,
Advocate ... For appellant

Mr. Naseerud Din Shah,
Assistant Advocate General ... For respondent

Date of Institution.....13.10.2023
Date of Hearing.....10.10.2024
Date of Decision..... 10.10.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 03.07.2023, whereby the appellant was removed from service. It has been prayed that on acceptance of the appeal, the impugned order dated 03.07.2023 might be set side and the appellant be reinstated into service with all back benefits, alongwith other remedy which the Tribunal deemed appropriate.



2. Brief facts, as given in the memorandum of appeal, are that the appellant was appointed as PTC (BPS- 9) in the year, 2006 vide order dated 26.07.2006 and rendered 15 years service to the department. He was promoted in pay scale 14 in the year 2018 and then to BPS- 15 on 24.05.2021. He improved his educational qualification during service, got degree of B.Ed in 2014 and Master in Islamiyat in 2020. Being the only medical attendant, he submitted an application on 22.05.2023, on account of serious illness of his mother, which was not responded and the status of leave application was never conveyed to him. Respondent No. 1 did not consider his leave application for which he was entitled and without fulfillment of codal formalities, passed the impugned removal order of the appellant. Feeling aggrieved, he preferred departmental appeal which was not responded; hence the instant service appeal.

03. Respondents were put on notice who submitted written reply/comments. We heard the learned counsel for the appellant and learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

04. Learned counsel for the appellant, after presenting the case in detail, argued that in case of absence from duty, the respondents should have published absence notice in two leading newspapers or conducted a proper inquiry, but without doing so, he was removed from service. He further argued that absence of the appellant was not willful but due to serious illness of his mother and that the impugned order was harsh in nature and not commensurate with the charges against him. He requested that the appeal might be accepted as prayed for.



05. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was posted as PSHT GPS Badshah Mir BZK Landikotal District Khyber on his promotion but soon he managed to re-deploy himself at GPS Zin Tara only to seek his convenience at the expense of his much needed services at GPS Badshah Mir Killi. His deployment was cancelled vide endst. dated 10.05.2023. He did not comply with the office order. Resultantly an explanation was called from him. He submitted compliance report on 20.05.2023 but actually never performed duty at GPS Badshah Mir killi and managed to have some proxies in the Teachers' Attendance Register. He further argued that the DEO Khyber as competent authority had not received any leave application or information about the appellant. Regular inquiry was dispensed with and a charge sheet and show cause notice were served upon him under Rule 7 of the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011. The appellant was afforded opportunity of hearing but he could not prove his innocence and after observing all the codal formalities, he was dismissed by the competent authority. He requested that the appeal might be dismissed.

06. From the arguments and record presented before us, it transpired that the appellant was removed from service on the ground of habitually absenting himself from duty without prior approval. It was noted that a charge sheet was issued to him on 25.05.2023 but later on the competent authority decided to dispense with the inquiry and issued show cause notice on the same day. As stated by learned counsel for the appellant before us, the appellant was not given a fair chance to present his case to prove his innocence. It was felt that before imposing major penalty of removal from service, the appellant would



have been given every opportunity to present his case before the competent authority. It would have been in the fitness of the matter that before awarding major penalty, a proper inquiry under the Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules 2011 would have been conducted into the matter. It was further noted that the competent authority hastily decided to dispense with the inquiry which was evident from the charge sheet which was issued to the appellant on 25.05.2023 and on the very same day a show cause notice was also issued to him.

07. In the light of the above discussion, the case is remitted back to the respondent department to conduct a proper inquiry under the Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules 2011 by fully associating the appellant in the entire process and completing all codal formalities in the light of law/rules. The appellant is reinstated into service for the purpose of inquiry and the matter of back benefits is subject to the outcome of inquiry. The process of inquiry shall be completed within sixty days of the receipt of copy of this judgment. Cost shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 10th day of October, 2024.*


(FAREEHA PAUL)
Member(E)


(KALIM ARSHAD KHAN)
Chairman

SA 2056/23

10.10.2024

01. Mr. Naseerud Din Yousafzai Advocate for the appellant present. Mr. Naseerud Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the case is remitted back to the respondent department to conduct a proper inquiry under the Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules 2011 by fully associating the appellant in the entire process and completing all codal formalities in the light of law/rules. The appellant is reinstated into service for the purpose of inquiry and the matter of back benefits is subject to the outcome of inquiry. The process of inquiry shall be completed within sixty days of the receipt of copy of this judgment. Cost shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 10th day of October, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman