

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No.7611/2021

Date of presentation of appeal.....04.10.2021
Dates of Hearing.:.....10.10.2024
Date of Decision.....10.10.2024

Mr. Sher Bahadur, Junior Clerk (BPS-11), District Population Welfare Office, District Charsadda.....(***Appellant***)

Versus

1. **The Secretary**, Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.
2. **The Director General**, Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.
3. **The District Population Welfare Officer**, District Charsadda.
.....(***Respondents***)

Present:

Mr. Waleed Adnan, Advocate.....For the appellant
Mr. Naseer Ud Din Shah, Assistant Advocate General...For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 29.04.2021 WHEREBY THE INTERVENING PERIOD W.E.F 09.08.2015 TO 10.03.2015 IS TREATED AS EXTRA ORDINARY LEAVE WITHOUT PAY AND AGAINST THE INACTION OF THE RESPONDENTS BY NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL DATED 05.06.2021 OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case in brief, as per averments of appeal, is that he was serving in the Education Department as Junior Clerk on temporary basis; that the same post was advertised in the Population Welfare Department against

which he applied and was accordingly appointed as Junior Clerk (BPS-07) on 27.12.2012; that while serving in the said capacity, his salary was stopped by respondent No.4; that the appellant filed Writ Petition No.2225/2014 before the Hon'ble Peshawar High Court but the same was dismissed vide judgment dated 23.06.2015; that he subsequently filed CPLA No.2251/2015 in the Supreme Court of Pakistan and during the pendency of his petition before the Supreme Court, he was terminated from service vide order dated 08.08.2015; that the said order was assailed by the appellant through departmental appeal dated 08.08.2015 followed by Service Appeal No.1393/2015 but the same was also dismissed on 04.07.2017; that for rejoining his previous service, he filed departmental appeal before the respondent No.2 in the light of FR-14(A) which was also rejected on 29.04.2021; that he filed Service appeal No.1176/2017 before this Tribunal and vide judgment dated 11.02.2021 the Tribunal decided the said appeal in his favor; that vide impugned order dated 29.04.2021, the respondents adjusted/accepted arrival report of the appellant but without back benefits rather the intervening period w.e.f 09.08.2015 to 10.03.2021 was treated as leave without pay; that feeling aggrieved, he filed departmental appeal but the same was not responded, hence, the instant service appeal.

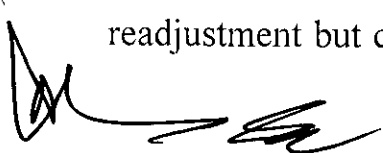
02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein

numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.


04. 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).

05. From the record, it is evident that, appellant began his career as a Junior Clerk in the Education Department on a temporary basis before securing a permanent position as a Junior Clerk (BPS-07) in the Population Welfare Department on December 27, 2012. His salary was halted by respondent No. 4, prompting him to file Writ Petition No. 2225/2014, which was ultimately dismissed by the Peshawar High Court on June 23, 2015. Following this, he lodged CPLA No. 2251/2015 with the Supreme Court of Pakistan, during which he was terminated from service on August 8, 2015. The appellant challenged this termination through a departmental appeal followed by Service Appeal No. 1393/2015, which was dismissed by July 4, 2017. Seeking reinstatement, he filed another departmental appeal based on FR-14(A), which was rejected on April 29, 2021. His subsequent Service Appeal No. 1176/2017 was ruled in his favor by the Tribunal on February 11, 2021. Despite this, the impugned order dated April 29, 2021, permitted his readjustment but classified the intervening period from August 9,



2015, to March 10, 2021, as leave without pay, with no back benefits awarded. The appellant's dissatisfaction with this decision led him to file a departmental appeal, which went unanswered, thus resulting in the current service appeal.

06. It appears from the judgment of the Supreme Court of Pakistan, passed on 09.05.2015 in C.P No.2251 of 2015 that some departmental appeal of the appellant was pending before the Director General, Population Welfare Department, Khyber Pakhtunkhwa, Peshawar. The august Supreme Court of Pakistan directed that the Director General may pass appropriate order on the representation of the appellant. When already there was an application/representation of the appellant filed before the judgment dated 09.10.2015 of the Supreme Court of Pakistan, what was the need to file another request on 07.07.2017. Again, when there is a judgment of the larger Bench of this Tribunal passed in Service Appeal No.1176 of 2017 of the appellant decided on 11.02.2021 with the direction to allow the appellant to rejoin his parent department and to post him against the post of Junior Clerk, the department, in compliance with the judgment, passed an order dated 29.04.2021 which was again challenged by making request on 05.06.2021. Since the impugned order was passed in pursuance of the judgment, which was not challenged further and besides, the learned counsel for the appellant could not convince us as why the matter was not jointly agitated at proper time because the benefits, the appellant is seeking, are allegedly from 2015 and he ought to



have raised appropriate contention at the appropriate time,
whereas, he did not.

07. Dismissed accordingly. Consign.

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



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

Mutazem Shah

Note


8th October, 2024 The case is accelerated being target one. Hence be fixed on 10/10/2024 before DB at Principal Seat Peshawar. The Counsel is informed telephonically.



(Habib Ur Rehman Orakzai)
Registrar

S.A #.7611/2021

ORDER

- 10th Oct. 2024
1. Learned counsel for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for the respondents present.
Heard.
 2. Vide our detailed judgment of today, placed on file; instant service appeals stands dismissed with costs. Consign.
 3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10th day of October, 2024.*


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman