

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MUHAMMAD AKBAR KHAN ... **MEMBER (Executive)**

Service Appeal No.1895/2023

Date of presentation of Appeal.....24.05.2023
Date of Hearing.....24.10.2024
Date of Decision.....24.10.2024

Karam Shah S/O Gul Shah R/O Shinwari Toti Khel tehsil Landi Kotal District Khyber.....(Appellant)

Versus

1. **Director** Elementary & Secondary Education.
2. **District Education Officer, (Male)** Khyber.
3. **DMOEA** District Khyber.....(**Respondents**)

Present:

Mr. Muhammad Jalal, 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 ILLEGAL ACT/VERBAL ORDER OF RESPONDENT NO.1 WHEREBY THE APPELLANT HAS NOT BEEN ALLOWED TO PERFORM/RESUME HIS DUTY ACCORDING TO THE NOTIFICATION DATED 26.04.2022.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averments of the appeal, are that appellant was appointed on 19.06.2020 in the Education Department; that vide order dated 28.10.2022, he was terminated from service, however vide order dated 26.04.2022, the said termination order was withdrawn; that after withdrawal of his termination order, he tried to join his duties, however, he was allegedly not allowed to resume his duties; that he

allegedly preferred applications to the authorities, however, no response was made, hence, the instant service appeal.

2. 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.

3. We have heard learned counsel for the appellant and 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. In the appellant's case, the facts reveal that he was appointed to the Education Department on June 19, 2020. Subsequently, he faced termination from service through an order dated October 28, 2022. However, this termination was withdrawn by an order dated April 26, 2022. Following the withdrawal, the appellant attempted to resume his duties but reportedly faced obstacles, as he was allegedly not allowed to do so. Despite submitting applications to the relevant authorities seeking clarification and reinstatement, he received no response. This lack of action from the authorities prompted the appellant to file the current service appeal, seeking redress for his inability to return to work after the withdrawal of his termination order.

6. The allegation against the appellant, due to which he was terminated from service, was that he had deployed another person as Teacher, allegedly reported by Education Monitoring Authority (EMA). However, the said termination order was withdrawn by the authorities. Therefore, he had to submit his arrival for joining his duties. The main grievance of the appellant is that the respondents were not allowing him for duty. While stance of the respondents, as reflected in their reply, is that the appellant is not performing his duties, rather another one, Mr. Arman Ali was used to attend the duties as his proxy. Therefore, the issue of not letting him into school, arose.

7. The department's stance regarding proxy attendance ought to have been confirmed through regular inquiry as per Rule-11 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. The said Rule is reproduced 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.]



8. In view of the above, the matter in hand is remitted back to the department to conduct proper inquiry, strictly in accordance with Rule-11 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Appellant is reinstated into service for the purpose of inquiry, which is to be conducted within 60

days of the receipt of this judgment. The issue of back benefits shall be subject to the outcome of inquiry. Costs shall follow the event.

Cosign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24th day of October, 2024.*



KALIM ARSHAD KHAN

Chairman



MUHAMMAD AKBAR KHAN


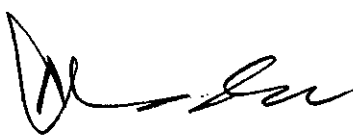
Member (Executive)

Mutazem Shah

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.1895/2023

Karam Shah versus Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
Order-13 24 th October, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Muhammad Jalal, Advocate on behalf of appellant.2. Mr. Naseer Ud Din Shah, Assistant Advocate General for the respondents. <p><u>Kalim Arshad Khan, Chairman:</u> Vide our detailed judgment of today, placed on file, the matter in hand is remitted back to the department to conduct proper inquiry, strictly in accordance with Rule-11 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Appellant is reinstated into service for the purpose of inquiry, which is to be conducted within 60 days of the receipt of the judgment. The issue of back benefits shall be subject to the outcome of inquiry. Costs shall follow the event. Cosign.</p> <p>2. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24th day of October, 2024</i></p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"><div style="text-align: center;"> (Muhammad Akbar Khan) Member (E)</div><div style="text-align: center;"> (Kalim Arshad Khan) Chairman</div></div> <p><small>*Mutazem Shah*</small></p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.1895/2023

Date of presentation of Appeal 24.05.2023
Date of hearing 24.10.2024
Date of Decision 24.10.2024

**Karam Shah S/O Gul Shah R/O Shinwari Toti Khel tehsil Landi Kotal District
Khyber.....(Appellant)**

Versus

1. Director Elementary & Secondary Education.
2. District Education Officer, (Male) Khyber.
3. DMOEA District Khyber.....(Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ILLEGAL ACT/VERBAL ORDER OF RESPONDENT NO.1 WHEREBY THE APPELLANT HAS NOT BEEN ALLOWED TO PERFORM/RESUME HIS DUTY ACCORDING TO THE NOTIFICATION DATED 26.04.2022.

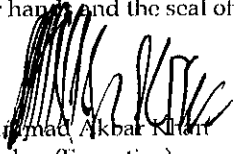
PRESENT

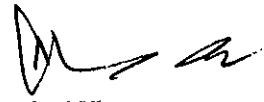
1. Mr. Muhammad Jalal, Advocate, for the Appellant
2. Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	Rs. 100/-	Total	Rs. Nil

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hand and the seal of this Court, this 24th day of October 2024.


Muhammad Akbar Khan
Member (Executive)


Kalim Arshad Khan
Chairman