

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.788/2022

Date of presentation of Appeal.....13.05.2022
Date of Hearing.....24.10.2024
Date of Decision.....24.10.2024

Chaman Sultan w/o Saud Nawaz R/o Quom Utmankhel, Tappa Abba Khel tehsil Abba Khel Lower, District Orakzai
.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **Director** Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer (DEO)** district Orakzai.
4. **Higher Education Commission** through its Chairman, Sector H-9, Islamabad.....(**Respondents**)

Present:

Mr. Muhammad Irshad Mohmand, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE OFFICE ORDER ENDST NO.416-28 DATED 22.01.2022 WHEREBY THE APPOINTMENT ORDER OF THE PETITIONER HAS BEEN WITHDRAWN/CANCELLED, AND THE DEPARTMENTAL APPEAL/REPRESENTATION OF THE APPELLANT HAS NOT BEEN RESPONDED AND DECIDED WITHIN THE STIPULATED PERIOD.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averments of the appeal, are that the Education Department

advertised the posts of Certified Teacher (BPS-15) through ETEA; that the appellant applied against the said post and after going through the formalities in shape of Test/Interview, she was appointed against the said post vide order dated 04.11.2021; that she submitted her arrival report and was performing her duties; that in the meanwhile, vide impugned order dated 22.01.2022, appointment of the appellant was withdrawn/cancelled; that feeling aggrieved, she filed departmental appeal, but the same remained un-responded, hence, the instant service appeal.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 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. Perusal of record shows that appellant, after going through the mandatory test/interview for the post of Certified Teacher (BPS-15), was appointed on 04.11.2021. She was performing her duties in the said capacity. All of a sudden, vide impugned order dated 22.01.2022, her appointment order was withdrawn/cancelled on the analogy that

BA degree of the appellant was not obtained from an unlawful and unrecognized university. The said order was assailed by the appellant through departmental appeal but the same was not responded, compelling the appellant to approach this Tribunal by filing the instant service appeal.

6. The appellant, being a civil servant, ought to have been dealt in accordance with law and rules. However, nothing has been taken into consideration in order to meet the legal requirements, rather straight away, cancelled/withdrawn the appointment order. If the appellant was involved in any type of production of fake documents the department ought to have proceeded against her departmentally as well as criminally. Besides, withdrawal of the appointment order on the basis of submission of documents of an unrecognized does not suit legally. There is no charge sheet/statement of allegation, and no inquiry at all. The department ought to have proceed the appellant under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Especially, by conducting proper inquiry into the matter. Rule-11 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 guides for steps to be taken prior to penalizing a civil servant on an allegation, which 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



Service Appeal No.788/2022 titled "Chaman Sultan versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar and others", decided on 24.10.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

imposition of minor or major penalty or penalties upon the accused."

7. In view of the above, the impugned order dated 22.01.2022 stands set aside and the matter 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.

8. *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


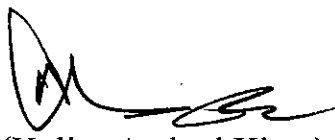
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.788/2022

Chaman Sultan

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-16 24 th October, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Muhammad Irshad Mohmand, Advocate on behalf of appellant.2. Mr. Muhammad Jan, District Attorney for the respondents. <p><u>Kalim Arshad Khan, Chairman:</u> Vide our detailed judgment of today, placed on file, the impugned order dated 22.01.2022 stands set aside and the matter 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 data-bbox="523 2091 925 2305" style="text-align: center;"> (Muhammad Akbar Khan) Member (E)</div><div data-bbox="1005 2091 1356 2305" style="text-align: center;"> (Kalim Arshad Khan) Chairman</div></div> <p><small>*Mutazem Shah*</small></p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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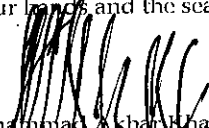
PRESENT

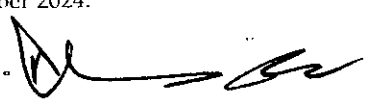
1. Mr. Muhammad Irshad Mohmand, Advocate, for the Appellant
2. Mr. Muhammad Jan, District Attorney for respondents

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 hands and the seal of this Court, this 24th day of October 2024.


Muhammad Akbar Khan
Member (Executive)


Kalim Arshad Khan
Chairman