

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 4527/2021

Before: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Ibrar Hussain S/O Hazrat Hussain R/O Qutub Garh Tehsil Takht-Bhai
District Mardan. ... (Appellant)

VERSUS

1. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
 2. District Education Officer (Male) Mardan.
 3. Secretary, Elementary & Secondary Education, Government of Khyber Pakhtunkhwa, Peshawar.
- ... (Respondents)

Fazal Shah Mohmad
Advocate

--- For appellant

Naseer Uddin Shah
Assistant Advocate General

--- For respondents

Date of Institution.....02.04.2021
Date of Decision..... 03.10.2024
Date of Hearing..... 03.10.2024

JUDGMENT

RASHIDA BANO, MEMBER (J):- The instant service appeal has been instituted under section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 with prayer copied as below;


“That acceptance of this appeal the impugned order of respondent No. 1 communicated to the appellant vide letter dated 29.03.2021 and order dated 21.05.2019 of respondent No.2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefit.”



2. Brief facts of the case are that the appellant joined Education Department as PST on 28.03.2012 and was posted to GPS Gul Mir Kalli. The appellant had M.Phil Degree holder and wanted to improve his qualification to PhD, therefore, in November 2017, he requested the respondent for NOC. Finally in July 2018, the admission of the appellant was confirmed for PhD in China where-after he requested for leave with effect from 24.09.2018 till 30.09.2020. The appellant was, however proceeded against departmentally on the allegations of willful absence and he was removed from service vide order dated 21.05.2019. Feeling aggrieved, appellant filed, departmental appeal on 21.08.2019 which was rejected vide order date 29.03.2021, hence the instant service appeal.

3. Respondents were put on notice who submitted written reply on the appeal. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents and perused the case in detail.

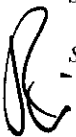
4. Learned counsel for the appellant has contended that the appellant had submitted application for study leave and had proceeded abroad for higher education, however he was wrongly and illegally removed from service by the competent Authority; that the impugned order of removal of the appellant was passed in utter violation of the procedure prescribed in rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011; that the whole proceedings were conducted at the back of the appellant, without providing him any opportunity of personal hearing or self-defense. He further argued that the impugned order being wrong and illegal is liable to be set-aside.



5. Conversely, the learned Assistant Advocate General for the respondents has contended that the appellant was not entitled for four years for leave without pay as the length of service of the appellant was less than 10 years. He further argued that appellant remained absent without any obtaining leave from the competent authority, therefore, he was proceeded against on the allegations of willful absence and was rightly removed from service. He further argued that all legal and codal formalities were complied with and after conducting of proper inquiry the appellant was removed from service.

6. A perusal of the record would show that the appellant was proceeded against on the ground of willful absence, therefore, the authority was required to have followed the procedure as laid down in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, which is reproduced as below:-

“9. Procedure in case of willful absence: Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant”.



7. In view of the Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the competent authority was required to issue notice to the appellant through registered acknowledgement upon his home address, however copy of show-cause notice available on the record would show that the same was sent to the appellant on his school address, despite knowing the fact that he was already absent from his duty place i.e school. Moreover, the show-cause notice would show that copy of the same was forwarded to SDEO (Male) Takht Bhai for issuance of absence notice upon the home address of the appellant, however nothing is available on record, which could show that notice was issued to the appellant on his home address through registered acknowledgement due, therefore, the impugned order of removal of the appellant from service is illegal and void ab-initio, hence not sustainable in the eye of law.

8. Admission notice was offered admission in program of International Relation to be completed in the period from September 2018 to September 2022. The date of registration was from September 2018 to September, 2022, therefore, the appellant submitted an application on 28.08.2018 for obtaining leave with effect from 24.09.2018 till 30.09.2020. The application of the appellant remained pending and decision on leave application of the appellant was unnecessarily delayed and nothing is available on the record to show that the outcome of the same was conveyed to the appellant. Moreover, the service of the appellant was though less than ten years, however in view of rule-12 sub-rule (1) of Khyber Pakhtunkhwa Civil Servants



Revised Leave Rules, 1981, it is within the competency of the leave sanctioning Authority to grant extra-ordinary leave without pay for maximum period of two years, even if the civil servant has not completed ten years of continuous service. The appellant was admittedly proceeded abroad for higher education, therefore, the departmental Authority should have exercised its discretion in granting leave to the appellant but the request of the appellant for leave was declined without any plausible reason.

9. As a sequel to the above discussion, the appeal in hand is accepted by setting-aside the impugned order dated 21.05.2019 and the appellant is reinstated in service. The period of his absence from duty may be treated as extra-ordinary leave without pay. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 3rd day of October, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(RASHIDA BANO)
Member (J)0

ORDER

03.10.2024

1. Learned counsel for the appellant present. Mr. Naseer Uddin Shah, Assistant Advocate General alongwith Mr. Abdul Jameel, ADEO for the respondents present.

2. Vide our detailed judgment of today placed on file, the appeal in hand is accepted by setting-aside the impugned order dated 21.05.2019 and the appellant is reinstated in service. The period of his absence from duty may be treated as extra-ordinary leave without pay. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 3rd day of October, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(RASHIDA BANO)
Member (J)

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.4527/2021

Date of presentation of Appeal 02.04.2021
Date of hearing 03.10.2024
Date of Decision 03.10.2024

Ibrar Hussain S/O Hazrat Hussain R/O Qutub Garh Tehsil Takht-Bhai District Mardan. ... (Appellant)

Versus

Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
The District Education Officer (Male), Mardan.
Secretary, Elementary & Secondary Education, government of Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE LETTER DATD 29.03.2021 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE ORDER DATED 21.05.2019, HAS BEEN REJECTED.

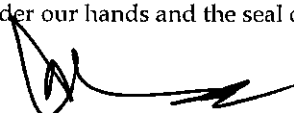
PRESENT


1. Mr. Fazal Shah Mohmand, for the appellant
2. Mr. Naseer Uddin Shah, Assistant Advocate General alongwith Mr. Abdul Jamil, ADEO for the 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 3rd day of October 2024.


(Kalim Arshad Khan)
Chairman


(Rashida Bano)
Member (J)