

KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN
RASHIDA BANO ... MEMBER(Judicial)

Service Appeal No.1178/2023

Date of presentation of Appeal.....25.05.2023
Date of Hearing.....28.10.202
Date of Decision.....28.10.2024

Nazak Khan, son of Haleem Ullah, resident of Baber Colony, Garhi Habibullah, Tehsil Balakot, District Mansehra, Ex-Warder (BPS-07) at District Jail, Mansehra.....*Appellant*

Versus

1. **Inspector General of Prisons**, Khyber Pakhtunkhwa, Peshawar.
2. **Additional Inspector General of Prisons**, Khyber Pakhtunkhwa, Peshawar.
3. **Deputy Inspector General of Prisons**, Regional Prisons Office, Hazara, Haripur.
4. **Superintendent Circle Headquarter, Prison**, Haripur.
5. **Superintendent District Jail, Mansehra**.....(*Respondents*)

Present:

Mr. Tauqir Ahmad, Advocate.....For the appellant
Mr. Umair Azam, Additional Advocate General.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 30.01.2023 PASSED BY RESPONDENT NO.4/SUPERINTENDENT CIRCLE H.Q PRISONS, HARIPUR, VIDE WHICH APPELLANT WAS REMOVED FROM SERVICE AND SAME ORDER OF REMOVAL FROM SERVICE WAS UPHELD BY RESPONDENT NO.3 VIDE ORDER DATED 28.03.2023 AND FURTHER APPEAL FILED BY THE APPELLANT TO RESPONDENT NO.1 WAS REJECTED BY RESPONDENT NO.1 VIDE ORDER DATED 20.04.2023 WHICH WAS COMMUNICATED TO THE APPELLANT ON 27.04.2023 WHICH ORDER OF REMOVAL FROM SERVICE IS ILLEGAL , AGAINST LAW AND FACT OF THE CASE WITHOUT GIVING ANY OPPORTUNITY OF HEARING TO THE APPELLANT DURING INQUIRY, HENCE LIABLE TO BE SET ASIDE.



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The appellant's case in brief, as per averments of the appeal, is that he was appointed as Warder on 16.05.2021; that on 30.11.2022, he allegedly took permission for leave of one day and proceeded to home; that due to illness of his father, he, instead of one day leave, remained unable to attend the office after 02.12.2022; that he filed applications dated 02.12.2022 and 11.12.2022 for more leave on the ground of the said issue; that vide order dated 30.01.2023, he was removed from service; that he filed departmental appeal on 20.03.2023 but the same was regretted on 28.03.2023; that being aggrieved, he approached the respondent No.1 through filing application but that was also rejected on 20.04.2023, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who 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 Additional Advocate General for the 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 Additional Advocate General controverted the same by supporting the impugned order(s).

5. Perusal of record shows that appellant was serving as Warder (BPS-07) in the Prisons Department. Due to his father's illness (brain stroke) he proceeded home, by submitting an application for one day leave. However, the issue was severe for which he submitted two applications for further leaves. In the meanwhile, the respondents proceeded against him departmentally and vide impugned order dated 30.01.2023 he was removed from service. The said removal order was assailed by the appellant twice i.e. through departmental appeal as well as second application to the IG Prisons, Khyber Pakhtunkhwa Peshawar. Both of his written requests were turned down. Therefore, appellant was compelled to approach this Tribunal by filing the instant appeal.

6. The issue involved in this case is of absence which was not denied. However, the appellant tried to approach the authorities by filing application for leave. While the respondents, on the other hand, without conduct any regular inquiry and personal hearing, issued notice and removed from service. In such like matters, the authority ought to have followed Rule-11 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 which guides for steps to be taken prior to penalizing a civil servant, 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

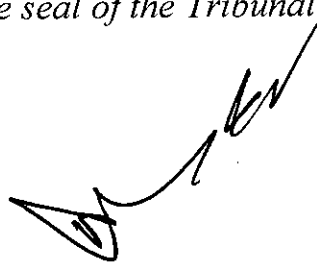


or charges have been proved or not proved and specific recommendations regarding exoneration or imposition of minor or major penalty or penalties upon the accused."

7. Nothing is available on file which could show that proper inquiry has been conducted in the matter by associating the appellant in order to defense himself.

8. In view of the above, the impugned order dated 30.01.2023 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

9. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 28th day of October, 2024.*



KALIM ARSHAD KHAN
Chairman
Camp Court, Abbottabad



RASHIDA BANO
Member (Judicial)
Camp Court, Abbottabad





KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.1178 of 2023

Nazak Khan

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
<p>Order-09 28th October, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Tauqir Ahmad, Advocate on behalf of appellant.2. Mr. Umair Azam, Additional Advocate General on behalf of respondents. <p><u>Kalim Arshad Khan, Chairman:</u> Vide our detailed judgment of today, placed on file the impugned order dated 30.01.2023 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 Abbottabad and given under our hands and the seal of the Tribunal on this 28th day of October, 2024</i></p> <p style="text-align: center;"> (Rashida Bano) Member (J)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p><small>*Muzam Shah*</small></p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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1. **Nazak Khan**, son of Haleem Ullah, resident of Baber Colony, Garhi Habibullah, Tehsil Balakot, District Mansehra, Ex-Warder (BPS-07) at District Jail, Mansehra.....**Appellant**

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PRESENT

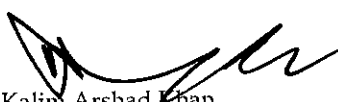
1. Mr. Tauqir Ahmad, Advocate, for the Appellant
2. Mr. Umair Azam, Additional Advocate General, for respondents

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 hands and the seal of this Court, this 28th day of October 2024.


Rashida
Member (Judicial)


Kalim Arshad Khan
Chairman