

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.9138/2020

BEFORE: MR. AURANGZEB KHATTAK ... MEMBER (J)
MRS. RASHIDA BANO ... MEMBER (J)

**Muhammad Asad Faizan S/o Muhammad Iqbal R/o H.No. 474, Street
No. 16, Sector F-6, Phase-6, Hayatabad Peshawar.**
.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
3. The Executive Engineer, Public Health Engineering Division, District Karak.
4. The Superintendent Engineer, Public Health Engineering Department, Kohat Circle Kohat.

.... (Respondents)

Mr. Bashir Khan Wazir
Advocate

... For appellant

Mr. Naseer ud Din Shah,
Assistant Advocate General

... For respondents

Date of Institution.....10.08.2020

Date of Hearing.....25.09.2024

Date of Decision.....25.09.2024

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

“On acceptance of this appeal, the impugned order dated 16.12.2019, whereby the appellant has been removed from service and subsequently the order dated 26.12.2019 issued in respect of recovery under the Land Revenue Act may kindly be declared



illegal, unlawful, void ab initio and is against the natural justice, moreover the respondents be directed to act as per the outcome of Standing Medical Board and the pensionary benefits may kindly be granted to the appellant.”

2. Brief facts of the case are that the appellant was appointed as Tube Well Operator vide order dated 20.10.2007 on the basis of fixed pay since his appointment. The appellant served the department for almost 13 years since his proper appointment and later on he has serious illness and submitted application for constitution of Medical Board to examine the appellant. The respondents forwarded the same to the Superintendent District Head Quarter Hospital, Karak for proper examination of the appellant, who constituted the Medical board consists of 3 members and after examined the appellant on 19.09.2019, with opinion that the appellant is suffering from LBP Radiating Both Lower Lim and severe sciatica and he has been found out unfit for further government services. The appellant requested for release of his pension benefits as per the medical report of Standing Medical Board, the respondents assured the appellant for granting pension benefits but later on respondent No.3 issued letter on the subject “willful absence notice” vide letter dated 26.09.2019 and another notice on 07.10.2019 on the said subject, where after the father of the appellant submitted proper reply to respondent No. 3. The respondent No.3 without considering the reply and Medical report issued charge sheet to the appellant on willful absence on 05.12.2019, issued show cause notice on 16.12.2019 and on the same day office order removal from service has been issued against the appellant. The respondent No. 3 sent



letter to Deputy Commissioner Karak on 26.12.2019 for recovery of payment to the tune of Rs.1322905/- from the appellant under the Land Revenue Act. The appellant feeling aggrieved filed writ petition but Honorable Peshawar High Court raised objection to approach the Service Tribunal. Hence the present service appeal.

3. 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. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondent.

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

5. 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).

6. The perusal of record reveals that the appellant was departmentally proceeded against upon allegation of willful absence from duty by issuing willful absence notice on 26.09.2019 and 07.10.2019, reply of which was properly submitted by the father of the appellant, wherein he had mentioned that his son is laying on bed due to severe illness and will report after gaining health. Then charge sheet and statement of allegations were issued on 05.12.2019 with the allegations reproduce as under;



“i. That you have been remained absent from Government duty without any prior approval of the competent authority.

ii. That reportedly you are out of country and hence didn't obtain any Ex-Pakistan leave from the competent authority.

iii. That you were served with Notice No.11/E-10 dated 26.09.2019 and Notice No. 01/E-10 dated 07.10.2019 and subsequently a show cause notice was published in the daily mashriq Peshawar dated November 1st-2019, but you failed to comply with the direction of the competent authority.”

The principal allegation against the appellant is that he reportedly left the country without securing the requisite leave and No Objection Certificate (NOC) from the department.

7. It is noteworthy that the appellant submitted an application for invalid retirement on medical grounds dated 19.08.2019. In response, the Standing Medical Board was constituted by the MSDHQ Hospital, Karak, which evaluated the appellant and determined him unfit for government service due to his condition of lower back pain radiating to both lower limbs and severe sciatica, as per its report dated 19.09.2019. This report was subsequently forwarded to the Executive Engineer of Public Health Engineering, Karak, via letter dated 20.09.2019. Concurrently, the respondent/department became aware that the appellant had been continuously absent from duty since 2011 and was abroad without obtaining the necessary leave and NOC from the relevant authority. Consequently, the department issued a notice of absence directing the appellant to report to his office; however, the appellant failed to comply, and instead, his father submitted a reply to the notice. It is evident



that following the medical board's opinion, the respondents were obligated to issue an invalid retirement order. However, it emerged that the appellant had been abroad since 2011. A review of the appellant's travel history revealed that he had been outside the country since 05.06.2011, frequently traveling abroad and returning to Pakistan, with his last return on 08.08.2019. He applied for medical retirement on 19.08.2019 and arranged for the medical board's examination on 19.09.2019, subsequently departing Pakistan again on 24.09.2019. This explains why his father submitted a reply to the absence notice on 07.10.2019.

8. The appellant's case does not warrant invalid retirement; rather, it pertains to prolonged willful absence and traveling abroad without the necessary leave and NOC from the authority. Therefore, the issuance of an invalid retirement order is not a viable outcome, and upon discovering the appellant's extended absence, the department rightfully initiated departmental proceedings against him. It is pertinent to note that a tube well was installed at the appellant's premises, and the respondents were kept uninformed regarding the appellant's performance of duties.

9. Furthermore, when the notice of absence was dispatched to the appellant, he was required to attend the office of his authority. The nature of his ailment does not preclude him from attending his office to refute the allegations of traveling abroad without the proper leave and NOC by presenting his passport. It is also significant to mention that the appellant was not present in court today; he was represented by his father, who failed to produce the appellant's passport upon direction. Thus, in the unique circumstances of the present appeal, the authority acted appropriately in



accordance with the rules, as the appellant's case does not qualify for invalid retirement in a simplistic manner.

10. For what has been discussed above, we are unison to dismiss the instant service appeal as devoid of merits and the same is dismissed accordingly. Cost shall follow the event. Consign.

11. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 25th day of September, 2024.*


(AURANGZEB KHATTAK)

Member (J)


(RASHIDA BANO)

Member (J)

*M.KHAN

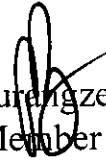
24th Sept, 2024

Mr. Noman, junior to Mr. Bashir Khan Wazir, Advocate present. Mr. Muhammad Jan, District Attorney for the respondents present.

Junior to learned counsel for the appellant seeks adjournment on the ground that learned senior counsel is busy in Peshawar High Court, Bannu Bench. Adjourned. To come up for arguments on 25/09/2024 before the D.B. Parcha Peshi given to the parties.



(Rashida Bano)
Member (Judicial)



(Aurangzeb Khattak)
Member (Judicial)

Naseer ud Din

ORDER

25.09.2024

1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, learned Assistant Advocate alongwith Mr. Irfan Anjum, Superintendent, for respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to dismiss the instant service appeal as devoid of merits and the same is dismissed accordingly. Cost shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 25th day of September, 2024.*



(AURANGZEB KHATTAK) 2024.
Member (J)



(RASHIDA BANO)
Member (J)

*M.KHAN