



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 274/2022

Muhammad Iqbal versus Director Elementary & Secondary Education,
Government of Khyber Pakhtunkhwa, Peshawar and two others

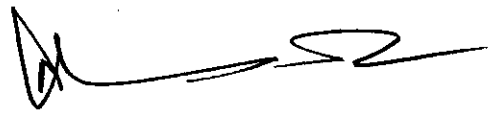
S. No. of Order & Date of Proceedings	Order or other proceedings with signature of Chairman/Member (s)/Registrar and that of parties or counsel where necessary
<p><u>Order-12</u> 22nd October, 2024</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Umar Farooq Mohmand, Advocate on behalf of the appellant present.2. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.3. Vide our detailed judgment of today placed on file, the appeal in hand is dismissed. Costs shall follow the event. Consign.4. <i>Pronounced in open court at Peshawar and given under our hand and seal of the Tribunal on this 22nd day of October, 2024.</i> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p> <p style="text-align: right;"> (Muhammad Akbar Khan) Member (E)</p> <p>*Kamranullah*</p>

commitment to his responsibilities. Furthermore, the appellant's unilateral decision to pursue study leave without formal approval violates established rules and procedures.

6. Record further reveals that the appellant was terminated from service vide order dated 18.03.2019 on the allegation of absence from duty while the appellant preferred a departmental appeal on 02.11.2021 which was barred by time after more than two years. This Tribunal can take merits of the case only when the appeal is within time. August Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on the ground of limitation then its merits need not to be discussed.

7. In view of the above, the appeal in hand is dismissed. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 22nd day of October, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(MUHAMMAD AKBAR KHAN)
Member (E)

six (06) days duty and there-after disappeared to complete his Ph.D. that Mr. Sher Azam was appointed on 04.01.2019 while the process of appointment of the Mr. Sher Azam started in 2017 and these posts were advertised on 28.12.2017 and completed on 04.01.2019; that the appellant is not a civil servant rather an adhoc employee, therefore, can be proceeded without enquiry and other formalities; that the appellant without permission of his high ups went for Ph.D and did not bother to wait for approval of his study leave, that the appellant had been served with the show cause notice and having satisfaction of the facts, the respondent withdrawn the appointment order of the appellant.

5. Perusal of record reveals that the appellant moved an application for obtaining study leave but admittedly that was not granted and he left the duty without approval of the leave and disappeared just after six days of his appointment. The appellant's actions demonstrate a clear disregard for procedural compliance and institutional protocols. Despite seeking study leave, the appellant's failure to secure approval and subsequent abandonment of duties constitutes a serious breach of trust and responsibility. His disregard for established rules and procedures, compounded by ignoring warnings and show-cause notices, reveals a stark lack of commitment to his role. Despite moving an application for study leave, the appellant failed to secure approval before abandoning his duties. His decision to leave without authorization, merely six days into his appointment, constitutes a grave breach of disciplinary norms. This precipitous departure, coupled with the appellant's failure to respond to warnings and show-cause notices, underscores a lack of

stoppage of two Increments on account of absence of the appellant on 26-01-2019 and 28-03-2019; that the appellant was terminated from service on 18-03-2019, then respondents were required to have advertised the post while according to the impugned order dated 30- 03-2019, Mr. Sher Azam has been appointed against the vacant post; that according to the impugned order dated 18-03-2019 the appellant remained absent from duty with effect from 12-01-2019 while according to the Attendance Register the appellant was present on duty on the same day which speaks of anything but not fair and bonafide; that neither Show Cause Notice was issued to the appellant nor opportunity of personal hearing was afforded to the appellant; that the entire proceedings were carried out at the back of the appellant and he has been condemned unheard; that no regular inquiry was conducted in the matter which is mandatory obligation on the part of competent authority; that the impugned order is void as the appellant was awarded the penalty of termination which is not provided in case of absence; that the appellant was not afforded opportunity of personal hearing. In the last, he argued that the appellant may be reinstated in service with all back benefits.

4. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was an adhoc employee, therefore, proceeded in accordance with the prevailing law and policies; that on the report of Independent Monitoring Unit and the information of Head Master of the said school dated 30.01.2019, the appellant had been proceeded and was awarded the penalty of stoppage of two increments; that the appellant appointed on 04.01.2019 and performed only

KALIM ARSHAD KHAN, CHAIRMAN:- Brief facts of the case are that the appellant hold an M.Phil degree and was enrolled in a Ph.D. Program at the University of Veterinary & Animal Science, Lahore, from January, 5, 2016; that in year 2017, the respondent advertised various posts including the primary School Teachers and after due process the appellant was appointed as Primary School Teacher (BPS-12) on 04.01.2019; that the appellant applied for study leave on 10.01.2019 but the same was not granted and accordingly he was terminated from service on the allegations of absence from duty 2 w.e.f 12.01.2019. Feeling aggrieved, the appellant filed a departmental appeal on 02.11.2021 which was not responded within the statutory period of 90 days, hence preferred the instant service appeal on 01.03.2022.

2. Respondents were put on notice. They submitted written reply/comments on the appeal. We heard the learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

3. Learned counsel for the appellant argued that the impugned order is illegal, unlawful and void ab-initio, lacking lawful authority; that mandatory legal and rule provisions were severely violated, denying the appellant lawful treatment under Article 4 and 25 of the Constitution; that respondent No. 2 vide letter dated 28.03.2019 addressed to the Sub Divisional Education Officer Tangi Charsadda directed for the deduction of one day salary from the appellant for the alleged absence on 28.03.2019; that the alleged Show Cause Notice dated 28.03.2-019 smacks further malafide according to which it was decided to impose minor penalty of decided to impose minor penalty of

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

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

Service Appeal No. 274/2022

Date of Institution..... 01.03.2022
Date of Hearing..... 22.10.2024
Date of Decision..... 22.10.2024

Muhammad Iqbal Ex-Primary School Teacher Govt. Primary School
Anbar Qala, Union Council Koz Bahram Dheri Tehsil Tangi, District
Charsadda. (Appellant)

Versus

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

Present

Mr. Umar Farooq Mohmand,
Advocate ... For appellant

Mr. Naseer-Ud-Din Shah, ... For respondents
Assistant Advocate General

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ WITH ALL ENABLING LAWS & RULES AGAINST THE ACT & OMISSION OF THE RESPONDENT NO. 2 BY NOT ISSUING PROMOTION ORDER TO THE APPELLANT AGAINST THE POST OF JUNIOR CLERK (BPS-11) IRRESPECTIVE OF THE FACT THAT THE APPELLANT HAS PROPERLY BEEN RECOMMENDED BY THE DEPARTMENTAL PROMOTION COMMITTEE CONDUCTED 11.06.2019.

JUDGEMENT



MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.274/2022

Date of Institution..... 01.03.2022
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Date of Decision..... 22.10.2024

Muhammad Iqbal Ex-Primary School Teacher Govt. Primary School Anbar Qala, Union Council Koz Bahram Dheri Tehsil Tangi, District Charsadda.
..... (Appellant)

Versus

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

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PRESENT

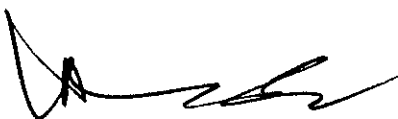
1. Mr. Umar Farooq Mohmand, Advocate on behalf of the appellant present.
2. Mr. Naseer Ud Din Shah, Assistant Advocate General, for respondents present.

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 22nd day of October, 2024.


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman