



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 2439/2023

Noor Muhammad Yasir versus Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and 03 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
<u>Order-09</u> 23 rd Oct, 2024	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Tariq Altaf, 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 hands and seal of the Tribunal on this 23rd 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>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.2439/2023

Date of presentation of Appeal.....:17.10.2023
Date of Hearing.....23.10.2024
Date of Decision.....23.10.2024

Noor Muhammad Yasir, Assistant Programmer BPS-16 DC Office
Kohat.....(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
2. Secretary Home, Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Commissioner Kohat.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar....(Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 19.05.2023, WHEREBY MAJOR PENALTY OF WAS IMPOSED ON THE APPELLANT OF STOPPAGE OF 02 ANNUAL INCRMENTS AS WELL AS RECOVERY OF SALARY W.E.F 01.08.2021 TO 22.02.2023 WHEREBY THE APPELLANT FILED DEPARTMETNAL APPEAL BEFORE RESPONDENT NO. 1 WHICH WAS NOT RESPONDED TILL DATE, HENCE THE INSTANT APPEAL.


PRESENT


1. Mr. Tariq Altaf, 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 23rd day of October, 2024.


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman

from Deputy Commissioner Kohat, the respondent department upon willful absence of the appellant initiated disciplinary proceedings against him under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Several Show Cause Notices were served upon the appellant and through publication in the two daily newspapers he was asked to resume duty and explain the reasons of his absence by appearing in person before the competent authority. After publication in the newspapers and recommendation of the inquiry committee, the competent authority imposed the penalty of "stoppage of annual increments for two years" and "recovery of salary from 01.08.2021 to 22.02.2023" vide order dated 09.05.2023.

06. We have observed that the appellant was properly proceeded against as per law by affording him appropriate opportunity of defense. An inquiry to this effect was also conducted where the appellant was afforded appropriate opportunity to defend his cause, but the appellant admitted his guilt, hence the allegations were proved against him without any doubt. A lenient view has already been taken by the respondents and we did not notice any irregularity in the process, hence does not warrant any interference, therefore, the appeal in hand is dismissed. Costs shall follow the event. Consign.

07. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 23rd day of October, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR KHAN)
MEMBER (E)

violated; that imposing of two simultaneous punishments “stoppage of annual increments for two years” and “recovery of salary from 01.08.2021 to 22.02.2023” were excessively harsh and against the principles of natural justice, hence the impugned Notification dated 19.05.2023 suffered from material irregularities, rendering that liable to be set aside; that imposing two punishments, prima facie, the coexistence of these punishments was untenable, making the impugned Notification dated 19.05.2023 was against the norms of justice and established legal principles; that the respondents had blatantly violated the appellant's fundamental rights, discriminating against him and denying his constitutional rights under the Constitution of Islamic Republic of Pakistan, 1973.

04. Learned Assistant Advocate General argued that the appellant was rightly removed from service as he was willfully absent from duty 01.08.2021 to 19.02.2023. He submitted that the impugned order is in accordance with law and norms of justice and the appellant has been proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011; that the impugned Notification was passed after observing all the codal formalities as per law/rules; that proper inquiry was initiated against the appellant and the codal formalities fulfilled including issuance of Show Cause Notice alongwith statement of allegations and affording opportunity of defense.

05. Perusal of record reveals that the appellant was transferred to the office of Deputy Commissioner Kohat and he assumed the charge of his post on 13.07.2021 and thereafter he did not attend his duties, which was reported by the office of Deputy Commissioner Kohat. Upon receiving the absence report



JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN:- Brief facts of the case as per memorandum of appeal, are that the appellant was serving as Assistant Programmer (BPS-16) and presently he was posted in the office of Deputy Commissioner Kohat; that the appellant was issued Show Cause Notice on the allegation of absence from duty w.e.f 01.08.2021 to 19.02.2023 which was duly reply by the appellant; that an enquiry was conducted and after completion of inquiry proceedings, the appellant was given opportunity of personal hearing and after recommendation of the inquiry officer the competent authority imposed penalty of "stoppage of 02 annual increments as well as recovery of salary w.e.f 01.08.2021 to 22.02.2023" upon the appellant vide order dated 19.05.2023. Feeling aggrieved, the appellant filed department appeal on 13.06.2023 which was not responded, hence preferred the instant service appeal on 17.10.2023.

02. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Assistant Advocate General and have gone through the record with their valuable assistance.

03. Learned counsel for the appellant contended that the impugned office order dated 19.05.2023 violates the fundamental rights of the appellant, contravening the principles of natural justice and was nullity in the eyes of law and rules, hence liable to be set aside; that the inquiry officer overstepped his authority by recommending multiple penalties, exceeding his mandate to merely investigate the charges genuineness, therefore, the rights of the appellant guaranteed under the law and Constitution, had been badly

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

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

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3. Deputy Commissioner Kohat.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar....(Respondents)

Present:

TARIQ ALTAF,
Advocate

--- For appellant.

NASEER-UD-DIN SHAH,
Assistant Advocate General

--- For respondents

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