

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, SWAT

Service Appeal No. 1560/2022

BEFORE: MR. AURANGZEB KHATTAK... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Roshan Ali son of Gul Ghani, R/O Alpuri, District Shangla. Projectionist
District Population Welfare Office Alpuri, Shangla. (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Population Welfare Department, Peshawar.
2. Director General Population Welfare, Khyber Pakhtunkhwa, Peshawar.
3. District Population Welfare Office, Alpuri, District Shangla.
.....(*Respondent*)

Mr. Asghar Ali,
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney

... For respondents

Date of Institution..... 04.11.2022

Date of Hearing.....04.11.2024

Date of Decision..... 04.11.2024

JUDGMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, with the prayer that on acceptance of the appeal, the retirement order of the appellant be declared illegal, unlawful, unconstitutional and void and the respondents might be directed to reinstate him against the post of Projectionist (BPS- 13), alongwith any other remedy which the Tribunal deemed appropriate.

02. Brief facts of the case, as given in the memorandum of appeal, are that the



appellant was serving against the post of Projectionist (BPS- 13) in the District Population Welfare Office since 20.12.1994. During service, he suffered from epilepsy, for which he remained under treatment of the concerned doctors, however when he did not recover, he submitted an application on 17.09.2018 for early retirement before respondent No. 3, which was processed. He was referred for expert opinion vide letter dated 17.09.2018 to Medical Superintendent Saidu Group of Teaching Hospitals, Saidu Sharif, Swat, whereupon he was examined and found to be suffering from epilepsy. Moreover, it was also opined that he was unable to perform his duties and might be retired on medical ground. The opinion of medical board was forwarded to respondent No. 2 vide letter dated 09.10.2018. Consequent upon the aforesaid medical certificate, he was retired on medical ground w.e.f. 08.10.2018 vide order dated 19.10.2018. Through letter dated 20.10.2018, respondent No. 2 was requested for compilation of pension papers of the appellant, however instead of doing that, the retirement order dated 19.10.2018 was withdrawn vide order dated 22.07.2019 and appellant was directed to join the duty vide letter dated 30.07.2019. Before withdrawal of the order dated 19.10.2018, some legal/requisite steps regarding the retirement were taken and ultimately the retirement of appellant was approved in August, 2020. After retirement, the treatment of appellant continued and after regular treatment he completely recovered from the aforesaid sickness. After getting complete recovery, the appellant submitted an appeal on 18.07.2022, before respondent No. 2, for his reinstatement against the post of Projectionist, which was not responded; hence the instant service appeal.



03. Respondents were put on notice who submitted their joint written reply/comments. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

04. Learned counsel for the appellant, after presenting the case in detail, argued that refusal of respondents to reinstate the appellant in service was illegal and unlawful as he was fully recovered from his sickness and was eligible for reinstatement against the said post. He argued that the appellant had not attained the age of superannuation and was quite active to perform his duties. He further argued that in similar circumstances, other persons were reinstated into service while he was discriminated. He requested that the appeal might be accepted as prayed for.

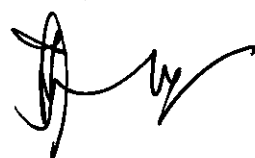
05. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the medical certificate was quite clear wherein it had been mentioned that Mr. Roshan Ali was completely and permanently incapacitated for further service of any kind in Population Welfare Department in consequence of his psychiatric illness. He further argued that the appellant had moved an application for reinstatement into service at a belated stage without the application for condonation of delay as required under Section 5 of the Limitation Act and thus the instant appeal, being time barred, was not maintainable. He requested that the appeal might be dismissed.

06. Through the instant service appeal, the appellant has impugned his retirement with the prayer to cancel his retirement order on the ground of being illegal, unlawful, unconstitutional and void and give directions to the




respondents to reinstate him on the post of Projectionist (BS 13). Arguments and record presented before us, transpired that while serving as Projectionist in the District Population Welfare Office, Shangla, the appellant was diagnosed with epilepsy for which he remained under treatment but when he did not recover from that sickness, he submitted an application for early retirement, which was processed and the case was referred to the Standing Medical Board. The Standing Medical Board, after considering his case, declared him to be completely and permanently in-capacitated for further service of any kind in the Population Welfare Department in pursuance of his psychiatric illness. Accordingly, his retirement order was issued on 19.10.2018 but the same was later on withdrawn on the ground that the case was processed by an incompetent authority as the Director General, Population Welfare Department was the competent authority to issue such order. After completing all the legal requirements, his order of retirement was restored on 18.10.2019 with retrospective effect i.e from the date of its issuance on 19.10.2018 and the appellant stood retired w.e.f. 18.10.2018. If we take into consideration the plea taken by the appellant, in his prayer, that his retirement order was illegal, unlawful, unconstitutional and void, FR 10-A (c) (i) is extremely clear where it states as follows:-

“If the medical authority after examining the Government servant, certifies that the Government servant is permanently incapacitated for service, the findings of the medical authority shall be communicated to the Government servant immediately. The Government servant may, within seven days of the receipt by him of the official intimation of the findings of the medical authority, apply to the Director General, Health, for a review of his case by a



second medical board. Such an application shall be accompanied by fee the amount of which shall be fixed by the Director General, Health. The Director General, Health, shall then arrange for the convening of reviewing medical board consisting of persons who were not members of the first medical board. If the reviewing medical board also certifies that the Government servant is permanently incapacitated for further service, the competent authority may require him to retire from service and may grant him such invalid pension and/or gratuity as may be admissible to him under the rules, and the competent authority may do so as if the Government servant had himself applied for an invalid pension."


07. In view of the above rule, if the appellant was not satisfied with the findings of the Medical Board, he had to apply to the Director General Health to get his case reviewed by a second Medical Board within 07 days of receipt of original order of the first Medical Board. In the case under consideration, the appellant himself had requested for early retirement on medical grounds and when their opinion was communicated, it was not questioned by the appellant at that time, rather the findings of the Board were accepted by him based on which he was retired from service and started getting pension. As far as reinstatement of the appellant is concerned, as stated by his learned counsel that the appellant had completely recovered from epilepsy, we would like to refer to the findings of the Medical Board wherein it was categorically stated that the appellant was completely and permanently incapacitated for further service of any kind in Population Welfare Department in consequence of his Psychiatric illness, which means that he was no more fit for any government job in future




as well.

08. In view of the above discussion, the appeal in hand is dismissed being devoid of merit. Cost shall follow the event. Consign.

09. *Pronounced in open court in Swat and given under our hands and seal of the Tribunal on this 04th day of November, 2024.*


(FAREEHA PAUL)
Member (E)
Camp Court, Swat


(AURANGZEB KHATTAK)
Member (J)
Camp Court, Swat.
04/11/2024.

Fazle Subhan P.S

MEMO OF COSTS.
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1560/2022

Roshan Ali son of Gul Ghani, R/O Alpuri, District Shangla. Projectionist District Population Welfare Office Alpuri, Shangla. (Appellant)

VERSUS

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Mr. Asghar Ali,
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... For appellant

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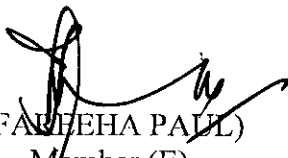
... For respondents


Date of Institution..... 04.11.2022
Date of Hearing.....04.11.2024
Date of Decision..... 04.11.2024

Appellant	Amount	respondents	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. Services of processes	Rs. Nil	3. Services of processes	Rs. Nil
4. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
5. Security fee	Rs. 100/-	5. Security Fee	Rs. Nil
6. Profess fee	Rs. Nil	6. Process fee	Rs. Nil
7. Costs	Rs. Nil	7. 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 04th day of November, 2024.


(FARHEHA PALL)
Member (E)
Camp Court, Swat




(AURANGZEB KHATTAK)
Member(J)
Camp Court, Swat

Fazle Subhan, P.S

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1560 of 2022

Roshan Ali Versus Government of Khyber Pakhtunkhwa
through Secretary Population Welfare
Department, 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
Order-15 04 th November, 2024	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Asghar Ali Khan, Advocate on behalf of the appellant.2. Mr. Muhammad Jan, District Attorney on behalf of the respondents. <p>01. Vide our detailed judgment consisting of 06 pages, the appeal in hand is dismissed being devoid of merit. Cost shall follow the event. Consign.</p> <p>02. <i>Pronounced in open court in Swat and given under our hands and seal of the Tribunal on this 04th day of November, 2024.</i></p> <p> (FAREEHA PAUL) Member (E) Camp Court, Swat</p> <p> (AURANGZEB KHATTAK) 2024 Member (J) Camp Court, Swat</p> <p>*Fazle Subhan, P.S*</p>