

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

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

Service Appeal No.1556/2022

Date of presentation of Appeal.....02.11.2022
Date of Hearing.....31.10.2024
Date of Decision.....31.10.2024

Saima Bibi, Daughter of Saqab Khan Ex-Primary School Teacher
GGPS Momin Abad, Pllas, District Kohistan.....(**Appellant**)

Versus

1. **The Secretary** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **The Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **The District Education Officer (Female)** District Khyber Pakhtunkhwa Kohistan at Palas.....(**Respondents**)

Present:

Mr. Muhammad Riaz, Advocate.....For the appellant
Mr. Umair Azam, Additional Advocate General.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION/ORDERS NO.1198-1210 DATED 20.04.2019 ISSUED BY RESPONDENT NO.3 AND 2374 DATED 20.10.2022 PASSED BY RESPONDENT NO.2 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE UPON THE APPELLANT WAS IMPOSED AND UPHELD ON THE GROUND OF ALLEGED ABSENCE FROM DUTY WITHOUT MENTIONING THE LENGTH OF ALLEGED ABSENCE.



JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averments of the appeal, are that appellant was serving as Primary School Teacher; that vide order dated 20.04.2019, she was removed from service on the allegation of absence; that the said order was assailed by her through departmental appeal dated 14.06.2019; that vide impugned order dated 20.10.2022, her departmental appeal was rejected, hence, the instant service appeal.

2. 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.

3. We have heard learned counsel for the appellant and learned Additional Advocate General for 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. In the present case, the appellant, who was serving as a Primary School Teacher, was removed from service by an order dated 20.04.2019 on the grounds of alleged absence from duty. Aggrieved by this decision, the appellant filed a departmental appeal on 14.06.2019, seeking to challenge her removal. However, the

departmental appeal was rejected by the authorities through an impugned order dated 20.10.2022, which led to the filing of the current service appeal.

6. In a similar nature Service Appeal No.135/2022 titled "Bibi Hawa versus Government of Khyber Pakhtunkhwa" wherein the same impugned order has been challenged in the said case, the Tribunal vide its judgment dated 29.10.2024 has decided the appeal in the following terms:

"6. At the very outset, learned Deputy District Attorney raised a preliminary objection on the issue of limitation. The impugned order 20.04.2019 and some other orders passed on different dates in the year 2019 were challenged in different appeals earlier, which were decided through judgment dated 24.05.2023 passed in Service Appeal No.1972/2019. During the pendency of the said appeal, the instant service appeal was filed on 06.01.2022. Against the impugned order dated 20.04.2019, departmental appeal was filed on 24.04.2019 and this appeal has been filed after passage of order dated 07.12.2021, whereby, application dated 17.11.2021 of the appellant made after requesting the respondents to decide the departmental appeal of the appellant, was dismissed.

7. Since other appeal against the same order of 20.04.2019 was within time, therefore, this appeal is also considered to be within time. The other appeal was decided in the following manner:

"6. A perusal of the record would show that the appellant was proceeded against on account of willful absence from duty with effect from 01.01.2019. The procedure to be adopted in case of willful absence has been provided in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, which is reproduced as below:-

"9. Procedure in case of willful absence:

Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received

from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant".

7. *The record so submitted by the respondents would show that instead of issuing notice to the appellant through registered acknowledgement on her home address directing her to resume her duty, the competent Authority had issued final show-cause notice to the appellant on her school address on 01.02.2019 i.e the date on which the school was already closed on account of winter vacations. Moreover, final show-cause notice issued to the appellant would show that she was found guilty of habitual absence and not willful absence. Furthermore, final show-cause notice is issued to a delinquent officer/official in case he is proceeded against on the allegations of habitual absence. There is no concept of issuing final show-cause notice in case of proceedings against a government servant on account of willful absence from duty. According to the available record, the proceedings against the appellant were conducted in a haphazard manner without complying relevant procedure prescribed under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.*

8. *Moreover, it has been alleged by learned counsel for the appellant that the appellant has been proceeded against on account of absence from duty with effect from 01.01.2019, which is the date on which the schools in the region were already closed on account of winter vacations. In this respect, he produced Notification dated 17.12.2018, which has not been denied by learned Assistant Advocate General.*

9. *In view of the above discussion, the impugned order is set-aside and the appellant is reinstated in service with the directions to the competent Authority to conduct de-novo inquiry in the matter strictly in accordance with the relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to her to defend herself. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room."*

8. *Being similar in nature, instant service appeal is also decided in terms of the above judgment. Costs shall follow the event. Consign."*

7. Both the cases are of similar nature, therefore, instant service appeal is also decided in terms of the above-mentioned judgment. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 31st day of October, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutazem Shah



MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.1556/2022

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Versus

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2. **The Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
.....(**Respondents**)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.


PRESENT

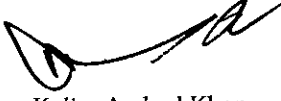
1. Mr. Muhammad Riaz, Advocate, for the Appellant
2. Mr. Umair Azam, Additional Advocate General, for respondents

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 31st day of October, 2024.


Rashida Bano
Member (Judicial)


Kalim Arshad Khan
Chairman

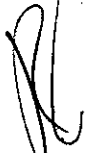

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.1556 of 2022

Saima Bibi

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
Order-14 31 st October, 2024.	<p><u>Kalim Arshad Khan, Chairman</u></p> <p>Present:</p> <ol style="list-style-type: none">1. Mr. Muhammad Riaz, Advocate, on behalf of appellant.2. Mr. Umair Azam, Additional Advocate General, on behalf of respondents.3. Vide our detailed judgment of today, placed on file, the impugned order is set-aside and the appellant is reinstated in service with the directions to the competent Authority to conduct de-novo inquiry in the matter strictly in accordance with the relevant law/rules within a period of 60 days of receipt of copy of the judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to her to defend herself. The issue of back benefits shall be subject to outcome of de-novo inquiry. Costs shall follow the event. Consign.4. <i>Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 31st day of October, 2024</i> <p style="text-align: center;"> (Rashida Bano) Member (J)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p><small>*Mutazem Shah*</small></p>