



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.142/2022

Date of presentation of Appeal.....31.01.2022
Date of Hearing.....05.11.2024
Date of Decision.....05.11.2024

Muhammad Nisar (late) S/O Muhammad Yaqoob through Legal Heirs namely:

1. Kanwal Nisar daughter of Muhammad Nisar.
2. Saeed Akhtar son of Muhammad Nisar

.....(*Appellants*)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Higher Education Khyber Pakhtunkhwa, Peshawar.
2. **Director** Higher Education Khyber Pakhtunkhwa, Peshawar.
3. **Principal** Government Degree College, KTS, Haripur. (*Respondents*)

Present:

Syed Noman Ali Bukhari, Advocate.....For the appellants
Mr. Naseer Ud Din Shah, Assistant Advocate General.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION NO.SO(C-1)HE/1-1/2021 DATED 30.12.2021 ISSUED BY RESPONDENT NO.1 TO IMPOSE MAJOR PENALTY OF COMPULSORY RETIREMENT FROM SERVICE UNDER RULE 14 OF THE KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY AND DISCIPLINE) RULES, 2011 IS ILLEGAL, UNLAWFUL, MALAFIDE, WITHOUT LAWFUL AUTHORITY, WITHOUT JURISDICTION, ARBITRARY, PERVERSE, CAPRICIOUS, FANCIFUL AND CONSEQUENTLY OF NO LEGAL EFFECT UPON THE RIGHT OF APPELLANT AND AGAINST THE REJECTION ORDER DATED 25.01.2022 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED WITHOUT SHOWING ANY REASON.



JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averments of the appeal, are that appellant was serving as Associate Professor in the Government Degree College, KTS Haripur; that he was transferred from the said College to Government Degree College Balakot, Mansehra; that he was relieved from GDC Haripur vide relieving chit on 23.09.2021; that he was allegedly again relieved on 30.09.2021, however, he was not let entered into the college, therefore, he submitted an application regarding the behaviour of the college from where he was transferred; that allegedly, fell vulnerable to heart attack due to which he could not attend the duties at the ordered station; that charge sheet had been issued to him on 17.02.2021 and inquiry was also conducted in the year 2017, the allegations of which were repeated, which were replied by the appellant; that an inquiry was conducted and correspondence was made through Principal GDC Balakot Manshera where the appellant was not serving as he had not arrived there; that again an inquiry was conducted, whereby the appellant was not allegedly informed; that resultantly, vide impugned Notification dated 30.12.2021 he was compulsorily retired from service; that feeling aggrieved, he filed departmental appeal, but the same was rejected vide order dated 25.01.2022, 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 Assistant 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 Assistant Advocate General controverted the same by supporting the impugned order(s).

5. The appellant, an Associate Professor at Government Degree College KTS Haripur, was transferred to Government Degree College Balakot, Mansehra, and relieved from his duties at Haripur on 23.09.2021. However, on 30.09.2021, despite being allegedly relieved again, the appellant was not allowed to enter the new college, leading him to file an application regarding the conduct of the college authorities. The appellant claims that the stress from this situation led to a heart attack, which prevented him from assuming his duties at the transferred station. Furthermore, a charge sheet was issued to the appellant on 17.02.2021, based on allegations from an inquiry conducted in 2017, to which the appellant had already responded. Despite these prior responses, another inquiry was conducted, during which the appellant was allegedly not informed. Another inquiry followed, and the outcome led to his compulsory retirement through an impugned notification dated 30.12.2021. The appellant filed a departmental appeal against his compulsory retirement, but this





appeal was rejected on 25.01.2022, prompting the current service appeal.

6. The impugned Notification dated 25.01.2022 was issued due to the appellant's failure to report to the station where he was transferred. The appellant's counsel objected to the proceedings conducted against him in 2017, as well as to the claim that the appellant suffered a heart attack due to being denied entry into the college. However, developments occurred in response to his absence in 2021, following his transfer to GDC Balakot. It is undisputed that the appellant had failed to assume charge at the ordered station, despite being relieved from his duties at GDC KTS Haripur on 23.09.2021, as indicated by the relieving chit issued by the Principal. As a civil servant, the appellant was expected to comply with the transfer orders without resorting to excuses, yet he failed to do so.

7. Therefore, we are unison that the impugned Notification dated 25.01.2022 was rightly issued and there is no weight in this case, and is dismissed with costs. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5th day of November, 2024.*

KALIM ARSHAD KHAN
Chairman

RASHIDA BANO
Member (Judicial)

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.142/2022

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.....(Respondents)

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

PRESENT

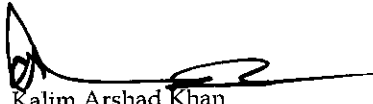
1. Syed Noman Ali Bukhari, Advocate, for the Appellant
2. Mr. Naseer Ud Din Shah, Assistant Advocate General, for respondents

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 5th day of November, 2024.


Rashida Bano
Member (Judicial)


Kalim Arshad Khan
Chairman



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.142 of 2022

Muhammad Nisar

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
<p>Order-18 5th November, 2024.</p>	<p><u>Kalim Arshad Khan, Chairman</u></p> <p>Present:</p> <ol style="list-style-type: none">1. Mr. Noor Muhammad Khattak, Advocate, on behalf of appellant.2. Mr. Naseer Ud Din Shah, Assistant Advocate General, on behalf of respondents.3. Vide our detailed judgment of today, placed on file we are unison that the impugned Notification dated 25.01.2022 was rightly issued and there is no weight in this case, and is dismissed with costs. Consign.4. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5th day of November, 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>