

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No: 76/2019

Date of Institution ... 21.12.2018

Date of Decision... 09.01.2023

Dr. Irfan-ud-Din, Medical Officer (BPS-17), Type-C Hospital Takhate Nasrati Karak.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar and 03 others.

... (Respondents)

SYED NOMAN ALI BUKHARI,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
District Attorney

--- For respondents.

SALAH-UD-DIN
MIAN MUHAMMAD

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that the appellant was appointed as Medical Officer (BPS-17) on 01.10.2012. The appellant while performing his duty in Type-C Hospital Takht Nasrati District Karak was proceeded against departmentally on the allegations of absence from duty as well as his refusal to conduct post-mortem of three dead bodies received in the Type-C Hospital Takht-e-Nasrati District Karak on 30.06.2016. On conclusion of the departmental

inquiry, the appellant was awarded major penalty of removal from service vide order dated 18.01.2018. The review petition of the appellant was, however partially allowed and the penalty of removal from service was converted into withholding of two annual increments for two years vide order dated 03.09.2018, which has been partially impugned by the appellant through the instant appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant has contended that as per record of emergency register, the dead bodies were brought to the hospital at 08:30 PM, which was the duty time of Dr. Aftab Ahmad and not that of the appellant but even then he was wrongly and illegally proceeded against departmentally; that initially a fact finding inquiry was conducted in the matter, wherein the inquiry officer had concluded that it was Dr. Aftab Ahmad, who reached for his duty very late and had refused to conduct the post-mortem of the dead bodies; that in the light of fact finding inquiry, charge sheet and statement of allegations were issued only to Dr. Aftab Ahmad but the inquiry committee wrongly and illegally considered the appellant as an accused also and submitted findings against him, which course of the inquiry committee was totally illegal for the reason that no charge sheet or statement of allegations were issued to the appellant; that the inquiry committee has given findings against the appellant in view of the statement of Tehsildar Karak, however the

appellant was not provided any opportunity of cross-examination of Tehsildar Karak, therefore, his statement could not be legally taken into consideration by the inquiry committee for awarding penalty to the appellant; that the charge of absence from duty was also leveled against the appellant, however neither any evidence was collected regarding absence of the appellant nor any findings regarding his alleged absence were given by the inquiry committee; that the inquiry proceedings against the appellant were carried out without following the mandatory provisions of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, therefore, the impugned penalty awarded to the appellant is liable to be set-aside.



4. On the other hand, learned District Attorney for the respondents has contended that a regular inquiry was conducted in the matter and the appellant was held responsible for absence from duty as well as his refusal to conduct post-mortem of the dead bodies; that the appellant has already been dealt with leniency by awarding him only minor penalty of stoppage of two annual increments; that the appellant was provided adequate opportunity of personal hearing as well as self defence and the inquiry proceedings were conducted by complying with all legal and codal formalities.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. According to the available record, initially a fact finding inquiry was conducted in the matter by appointing Motasim Billah

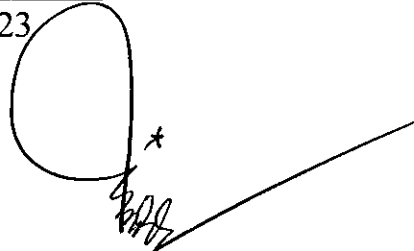
Shah, the then Additional Secretary (E&A) Health Department as inquiry officer in the matter. According to the recommendations of inquiry officer of the fact finding inquiry, Dr. Aftab Ahmad was held responsible for serious negligence in his official duties as he had neither performed post-mortem of the dead bodies nor obeyed orders of his senior. According to the record an inquiry committee comprising of Mr. Shah Saud the then OSD in E&AD alongwith Dr. Fakhr-e-Alam the then Medical Superintendent Women and Children Hospital, Karak was constituted for regular inquiry against Dr. Aftab Ahmad. Charge sheet as well as statement of allegations were issued to Dr. Aftab Ahmad, however the appellant as well as Dr. Gul Sanat Shah and some staff members of the concerned hospital others were also considered as accused by the inquiry committee and were summoned for submitting their written replies in the matter, despite the fact that no charge sheet or statement of allegations were issued to the appellant. The inquiry committee recommended in its recommendations that the appellant may be awarded minor penalty of withholding of two annual increments. On receipt of inquiry report, show cause notice was issued to the appellant and he was awarded major penalty of removal from service vide order dated 18.01.2018, however his departmental appeal was partially allowed and the penalty so awarded to the appellant was converted into minor penalty of withholding of two annual increments for two years. In our view, the proceedings so taken against the appellant were not in conformity with the mandatory provisions of Khyber Pakhtunkhwa Government Servants



(Efficiency & Discipline) Rules, 2011. The competent Authority was not justified in awarding any penalty to the appellant without issuing him charge sheet as well as statement of allegations. Competent Authority can though award penalty to a civil servant without issuing him charge sheet or statement of allegations by dispensing with regular inquiry, which is not the case in hand.

7. In view of the above, the appeal in hand is allowed by setting-aside the impugned penalty and the two annual increments of the appellant are restored with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
09.01.2023



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)