

Ph: 9220581
Fax:9220406

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4792

Dated 7/4/2023

SCANNED
KPST
Peshawar

REGISTERED

No. C.A. 4109/2022 - SCJ

SUPREME COURT OF PAKISTAN.

Islamabad, dated 03-04, 2023.

From

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Subject: CIVIL APPEAL NO. 4109 OF 2022.

OUT OF

CIVIL PETITION NO. 675-P OF 2021.

Government of Khyber Pakhtunkhwa thr. Secretary
Establishment, Peshawar and others.

Versus

Farman Ali Khan.

On appeal from the Judgment/Order of the K.P.K., Service
Tribunal, Peshawar dated 30.8.2021, in Appeal No.4308/2020.

Dear Sir,

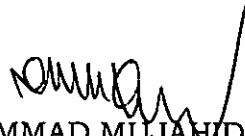
I am directed to forward herewith a certified copy of the
Order/Judgment of this Court dated 19.04.2022, converting into appeal
the above cited civil petition and allowing the same, in the terms stated
therein, for information and necessary action.

I am also to invite your attention to the directions of the Court
contained in the enclosed Order for immediate compliance.

Please acknowledge receipt of this letter along with its
enclosure immediately.

Encl: Judgment:

Yours faithfully


(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

37/23

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik

CIVIL PETITIONS NO.675-P OF 2021

[Against the judgment dated 30.8.2021, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, in Service Appeal No.4308 of 2020]

Government of Khyber Pakhtunkhwa thorough
Secretary Establishment, Peshawar and
another

...Petitioner(s)

Versus

Farman Ali Khan

...Respondent

For the Petitioner(s) : Mr. Shumail Aziz,
Addl. A.G., KP a/w
Shahid Iqbal, Litigation Officer,
KP PSC

Respondent(s) : Fazal Shah Mohammad, ASC


Date of Hearing : 19.04.2022

JUDGMENT

AYESHA A. MALIK, J.- This Civil Petition for Leave to Appeal under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973, has arisen out of the judgment dated 30.08.2021, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar (**the Tribunal**), whereby Service Appeal No.4308 of 2020, filed by the present Respondent, was accepted.

2. The basic facts are that the Respondent worked as a Junior Clerk with the Petitioners. During this time, he was elected as President of the All Pakistan Clerks Association (**APCA**). He has been warned several times against the protests


ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

unlawful demands and his absence from duty. The Respondent was charge sheeted, inquired against and ultimately, removed from service on 14.02.2020 due to wilful absence from duty. The Respondent filed a departmental appeal, which was partially accepted such that the removal from service was converted to compulsory retirement on 16.04.2020. Against this order, the Respondent filed an appeal before the Tribunal claiming reinstatement with all back benefits. This claim of the Respondent was accepted by the Tribunal and the Respondent was reinstated in service with all back benefits.

3. The Petitioners before the Court are aggrieved by the impugned judgment of the Tribunal on the ground that the Respondent was proceeded against on the charge of wilful absence from duty for different periods from 20.11.2013 to 24.10.2019. The inquiry report concluded that the Respondent was guilty of absenting himself from duty without any approval from the competent authority. However, instead of recommending a punishment on account of his absence from duty they proceeded to say that since the Respondent was regretful of his behaviour and had submitted a written apology to the inquiry committee as well as to the Secretary, Khyber Pakhtunkhwa Public Service Commission (**KP PSC**), therefore, taking a lenient view, they accepted his apology and suggested that he be given a chance to improve his behaviour and his performance. The learned counsel has argued that the committee could not have accepted the apology especially since the charge of absence from duty was established. The learned counsel


ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

further argued that a proper inquiry was conducted, due process was followed and the Respondent tendered an apology wherein he admitted all the charges, with a promise that he will improve his behaviour. The learned counsel further argued that although a case of *mala fide* intent and a grudge harboured by the Secretary KP PSC against the Respondent was alleged, this fact was not established. The inquiry committee noted that due to the Respondent's mis-behaviour as President APCA, there appears to be a tussle between the Respondent and the Secretary, KP PSC, which may have influenced the manner in which the Respondent was treated. The learned counsel states that the original record produced in Court shows that the Respondent was absent from duty and that he was in the habit of misbehaving and abusing his position as he was the President of APCA. That he misbehaved with several officers including the Secretary, KP PSC. However, so far his absence from duty is concerned, this fact was established by the inquiry committee, which has been overlooked by the Tribunal.

4. On behalf of the Respondent, it was argued by the learned counsel that due process was not followed. He was not given an opportunity to cross-examine the witnesses and that the fact of absence from duty was never established, that he always conducted himself in a fair manner as the President, APCA so as to ensure the welfare of all the Clerks who worked with the Petitioners. The learned counsel argued that the Petitioners had acted with *mala fide* intent as the Secretary, KP PSC has a personal grudge against the Respondent and, therefore, he was


WITNESSED


Court Associate
Supreme Court of Pakistan
Islamabad

removed from service The learned counsel submits that these facts have been duly considered by the Tribunal. Hence, he was reinstated in service and there was no occasion to remove him from service or to have him compulsorily retired.

5. We have heard the learned Additional Advocate General, Khyber Pakhtunkhwa as well as the learned counsel for the Respondent and have examined the record before us. The Respondent was issued a charge sheet on 20.11.2019, which contains a series of specific dates with reference to absence from duty. An inquiry committee was appointed under Rules 10(1)(a) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 (**the Rules**) to look into the allegations against the Respondent and submit their recommendations. The inquiry committee considered the matter and as per the inquiry report dated 16.01.2020 absence from duty from 24.10.2019 to 11.11.2019 is established and absence from duty from 01.01.2018 to 24.10.2019 is also established. The report provides that the Respondent is guilty of the charges of misconduct, inefficiency and habitually absenting himself from duty without any prior approval. However, the inquiry committee observed that since the Respondent was regretful of his behaviour and has submitted an apology before the inquiry committee as well as the Secretary, KP PSC on 18.12.2019 with a promise that he will behave in future, therefore, they thought it appropriate that he be given a chance to improve his behaviour. As per the recommendations provided in the report, the inquiry

ATTESTED



Court Associate
Supreme Court of Pakistan
Islamabad

committee recommended that the competent authority may proceed as it deems appropriate.

6. The report was considered and show cause notice was issued by the competent authority on 27.01.2020, stating therein that the competent authority had decided to impose the penalty of dismissal from service and the Respondent was asked to show cause as to why this penalty should not be imposed. The Respondent filed his reply and was heard in person by the Secretary, KP PSC in the presence of the Deputy Director (Admn), KP PSC and the Assistant Director (Admn), KP PSC vide order dated 14.02.2020. The competent authority awarded major penalty of removal from service under the Rules. However, the Respondent challenged this order through a departmental appeal wherein, while taking a lenient view, the appellate authority modified the punishment of removal from service to compulsory retirement as provided under Rule 4(1)(b) of the Rules. The order provides for no reasoning for taking a lenient view and does not refer to the record or the inquiry report or the fact that the charges of wilful absence from duty for the periods from 24.10.2019 to 11.11.2019 and 01.01.2018 to 24.10.2019 were established.

7. The Respondent then filed an appeal before the Tribunal seeking reinstatement with all back benefits. The Tribunal considered the case of the Respondent and while relying on the findings of the inquiry report with reference to the Respondent having tendered an apology and regretting his behaviour, concluded that since there was a tussle between the


ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

Respondent and the Secretary, KP PSC, the proceedings against the Respondent were not conducted in a fair manner and he was not given an opportunity to cross-examine the witnesses and to prove the allegations levelled against him. Hence, the punishment of compulsory retirement from service was set aside and the Respondent was reinstated in service with all back benefits.

8. We find that the impugned judgment has misconstrued the facts and failed to consider the law, while setting aside the order dated 16.04.2020. The inquiry report explicitly provides that the charge of wilful absence from duty stands established. The charge sheet shows that specific dates were provided when the Respondent was absent from duty and that the Respondent did not give any conclusive response rather simply insisted that he has always on duty. The Petitioners have relied on the original record to show that the Respondent was absent from duty and have stated that since he tendered an apology it means that he has accepted the charges levelled against him. In this regard, we note that in cases of wilful absence from duty, this Court has held that there is no need to hold an inquiry as absence is an admitted fact from the record as Hassan Raza v. Federal Board of Revenue through Chairman and others (2020 SCMR 994) and National Bank of Pakistan and another v. Zahoor Ahmed Mengal (2021 SCMR 144). Therefore, the Tribunal's findings that a proper inquiry was not conducted and that he was not given an opportunity to cross examine the witnesses to rebut the findings on wilful absence is without

ATTESTED



Court Associate
Supreme Court of Pakistan
Islamabad

basis, as for the purposes of establishment of wilful absence from duty there was no need to hold an inquiry. In this case, an inquiry was conducted and the charge of wilful absence from duty was established. The Respondent has not been able to establish *mala fide* intent on part of the Petitioners nor has he been able to establish the fact that the Secretary, KP PSC acted on the basis of a personal grudge. He presented himself before the inquiry committee and had ample opportunity to produce evidence in support of his contentions. However, he choose to tender an apology and seek forgiveness for the charges levelled against him thereby acknowledging and admitting that the charges levelled against him were correct. Hence, the emphasis on cross-examination and lack of due process is without basis.

9. Under the circumstances, the Tribunal's emphasis on the inquiry report and the need for cross-examination is totally without justification. Furthermore, we find that under Rule 9 of the Rules, a procedure has been prescribed for cases of wilful absence. As per the Rule, if a person is absent for more than seven days, a notice has to be issued and if they do not resume duty without fifteen days, proceedings can commence against such a government servant who has been absent from duty. Hence, in terms of the Rules proceedings are justified if the government servant has been absent for seven days. In this case the period of absence from duty is far longer than seven days being 24.10.2019 to 11.11.2019 and 01.01.2018 to 24.10.2019.


10. Finally, we note that the case of the Petitioners before the inquiry committee and the Tribunal has been that the

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

Respondent is habitually absent from duty and that he has on many occasions misbehaved within the office premises; that he often disturbed the environment, that he has always disregarded punctuality and on account of his inefficiency and absence from duty and rude behaviour he has been warned several times but he has paid no heed to the warnings. The Petitioners have specifically stated that on account of his position as President, APCA, he has misused his authority and has misbehaved several occasions. Notwithstanding, the same the Petitioners took a lenient view and converted his removal from service to compulsory retirement vide order dated 16.04.2020. We find that the Tribunal totally ignored this fact and instead proceeded to set aside the punishment in totality and reinstated the Respondent. The impugned order has totally misconstrued the record and the inquiry report. In this regard, even the inquiry committee acted beyond the purview of their jurisdiction in terms of Rule 12 read with Rule 10 of the Rules, wherein they are to inquire into the matter and provide their recommendation. The entire purpose of an inquiry committee is to unearth the facts and on the basis of the same provide recommendations. The inquiry committee could not have accepted the apology of the Respondent nor could it have required the Secretary, KP PSC to accept the apology of the Respondent and thereafter, suggest that the Respondents behaviour be forgiven and he be given another chance. Although this was a simple suggestion given by the inquiry committee because the inquiry report itself recommends that the competent authority do as it deems fit, nonetheless the very suggestion that

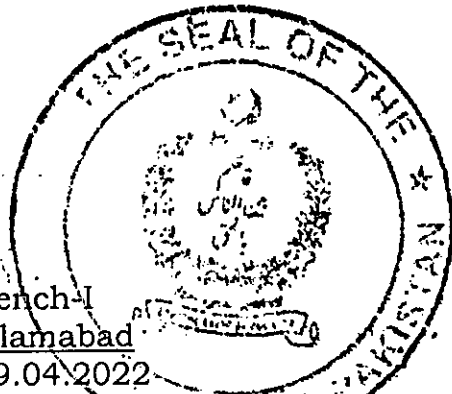
WITNESSED


Court Associate
Supreme Court of Pakistan
Islamabad

it accepted the apology was beyond the jurisdiction vested with the inquiry committee.

11. Therefore, we find that the impugned judgment is incorrect in stating that the charge of absence from duty was not established and that the entire case against the Respondent is based on a grudge of the Secretary, KP PSC. We also find that the Tribunal failed to consider the judgments of this Court where it has categorically stated that mere wilful absence from duty is established from the record there is no need to hold an inquiry as held by this Court in the cases reported as Hassan Raza (*supra*) and National Bank of Pakistan (*supra*).

12. In view of the above, we convert this Petition into Appeal and the same is allowed, while setting aside the impugned judgment dated 30.08.2021, passed by the Tribunal.



Bench-I
Islamabad

19.04.2022

'NOT APPROVED FOR REPORTING'

Mahmood H. Sheikh

20/3/22

Sd/- H/T
Sd/- T
Sd/- T

Certified to be True Copy

Coun. Associate
Supreme Court of Pakistan
Islamabad