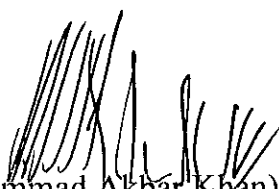
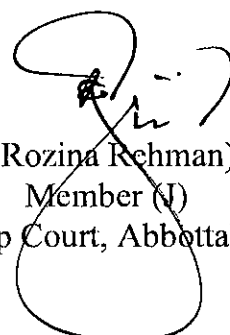


Senior Clerk (BPS-14) was imposed upon him. His service appeal was allowed by this Tribunal and the respondents were directed to place Muhammad Taqi Shah on the post of Assistant from the date he was reverted to lower scale with all back and consequential benefits. Minutes of the scrutiny committee meeting was produced before this Bench which shows agenda item No.5 in respect of the service appeal of Muhammad Taqi Shah. The scrutiny committee noticed that the procedure adopted during the inquiry proceedings was not in accordance with law and rules, therefore, filing of CPLA would not be advisable against the judgment of this Tribunal and in view thereof it was decided with consensus by the scrutiny committee that the case might be returned to the Administrative Department. Muhammad Taqi Shah was accordingly reinstated on the post of Assistant vide order dated 09.01.2023. The present appellant was also punished on the strength of same inquiry. He was not given a fair chance of defending his case. No chance was afforded in respect of personal hearing and no opportunity of cross examining the witness was afforded, hence, the service appeal in hand is allowed by setting aside the impugned order. The appellant stands reinstated on the post of Senior Clerk from the date he was compulsorily retired with all back and consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

29.03.2023


(Muhammad Akbar Khan)
Member (E)
Camp Court, Abbottabad


(Rozina Rehman)
Member (J)
Camp Court, Abbottabad

Peshawar on which he ordered the Director Licensing-South and Deputy Director Mineral-South to conduct inquiry and submit report within 15 days. The report was submitted. It was on 04.03.2020 that a charge sheet was issued to the appellant with directions to submit his written reply within seven days of its receipt. Perusal of charge sheet would reveal that the appellant while posted as Senior Clerk at the office of Assistant Director Mineral Mansehra committed the following irregularities:

(a). That he failed to perform official duties according to the rules and regulation.

(b). That he was involved in processing and creating tempered decision of mineral title committee and due to his involvement in concealing the appeal period of the lessee Mr.

Hameed & Company under file No.MDW/MA/PL/(532) 2005.

Charge sheet indicates that the charges leveled against the appellant were that he committed the irregularities and failed to perform official duties according to rules and regulations. The charges should have been specified as to which official duty was not performed according to rules and regulation. So far as involvement in processing and creating tempered decision of the mineral title committee is concerned, no such document was brought before this Bench which could show that the appellant was involved in any sort of creating tempered decision of the mineral title committee. It merits a mention here that the statement of allegations is missing and the competent authority did not identify the inquiry committee to conduct formal inquiry into the matter as required under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. On the strength of the same inquiry one Muhamad Taqi was also proceeded against departmentally, whereby, penalty of removal from the post of Assistant (BPS-16) to the post of



reliance was placed on preliminary inquiry which was done before framing of charges and could not be considered for a major punishment. He submitted that the appellant was condemned unheard and he was not given proper opportunity of defense. Lastly, he submitted that Muhammad Taqi Shah Assistant, office of Assistant Director Minerals, Mansehra was also proceeded against departmentally on the strength of one and the same inquiry who filed Service Appeal No.15961/2020 which was allowed by this Tribunal by setting aside the impugned orders dated 28.07.2020 and 03.12.2020, therefore, the instant service appeal may also be accepted.

5. Conversely, learned DDA argued that the Department carried out proper inquiry in the matter on the complaint of Attorney of the licensee. That a proper inquiry was conducted against appellant and other official/officer of the office of respondent No.4, wherein, the Inquiry Officer appended in the recommendation imposing the charge that the appellant was involved in tempering the decision of mineral title committee and concealing the appeal period of letter No.1875 dated 25.07.2019. That the said recommendations were placed before the competent authority and the competent authority ordered for compulsory retirement of the appellant from service vide order dated 28.07.2020 after fulfillment of all codal formalities.

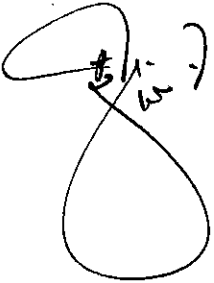
6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that one Mr. Atta Ullah Abbasi son of Muhammad Suleman Khan of Village Malkot Tehsil & District Abbottabad submitted an application dated 18.11.2019 to the Director General Mines & Minerals Khyber Pakhtunkhwa,



2. Brief facts of the case are that the appellant was serving as Junior Clerk in the respondent Department and served the Department with devotion and dedication who left no stone unturned in the smooth functioning of the Department. The appellant served the Department for a period of about 31 years having unblemished service record. He was shocked to receive a letter dated 04.03.2020, whereby, a charge sheet containing charges of failure to perform the duties according to rules and regulation and involvement in processing and creating tempered decision of mineral title committee and concealing the appeal period of the lessee Mr. Hameed & Company under file No.MDW/MA/PL-(532)/2005 was served upon him. He submitted a detailed reply, denied all the charges being baseless. As a result of that charge sheet, he was given penalty of compulsory retirement vide order dated 28.07.2020. He preferred departmental appeal which was not responded, hence, the present service appeal.

3. We have heard Muhammad Arshad Khan Tanoli Advocate, learned counsel for the appellant and Asif Masood Ali Shah learned Deputy District Attorney for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Muhammad Arshad Khan Tanoli Advocate, learned counsel for the appellant argued inter-alia that the impugned compulsory retirement order dated 28.07.2020 of the appellant is against law, facts being based on malafide, hence, liable to be set aside. He submitted that general allegation without specifying the exact charge was leveled by the respondent and that the so called allegations of concealment of appeal period and tempering the decision of mineral title committee was not proved and the respondents did not consider the reply of the appellant. He further contended that no regular inquiry was conducted and that



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, ABBOTTABAD

Service Appeal No. 15612/2020

Date of Institution ... 07.12.2020
Date of Decision ... 29.03.2023

Mr. Muhammad Arif Ex Senior Clerk Directorate General Mines & Minerals Khyber Pakhtunkhwa Peshawar, presently Resident of Village Jabrian Post Office Salhad Tehsil and District Abbottabad.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Mineral Development Department, Civil Secretariat Khyber Pakhtunkhwa, Peshawar and four others.

... (Respondents)

Muhammad Arshad Khan Tanoli,
Advocate

... For appellant.

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents.

Mrs. Rozina Rehman

...

Member (J)

Mr. Muhammad Akbar Khan

...

Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the jurisdiction of this Tribunal through above title appeal with the prayer as copied below:

“On acceptance of the instant service appeal, impugned compulsory retirement order No.11763/DGMM/ADMN/HAZARA/DIVN dated 28.07.2020 may graciously be set aside and respondents may be directed to reinstate the appellant in service from the date of his compulsory retirement with all back benefits with further direction to respondents to promote the appellant to next higher scale from the date of his deferment i.e. 08.07.2020.”

