

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 263/2015

BEFORE: ROZINA REHMAN --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Bakhtiar Nabi, Assistant Directorate of Reclamation & Probation
Benevolent Fund Building Room No. 126, 128, Peshawar Cant.
..... (*Appellant*)

VERSUS

1. The Secretary, to Government of Khyber Pakhtunkhwa Home Department.
2. Director Reclamation and Probation Khyber Pakhtunkhwa, Peshawar.
..... (*Respondents*)

Present:-

REHMAN ULLAH,
Advocate --- For Appellant.

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

Date of Institution.....19.03.2015
Date of Hearing.....20.03.2023
Date of Decision.....20.03.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That the appeal of the appellant may kindly be accepted and the impugned order of the Secretary Home & T.As Department may very kindly be declared as illegal, void and ineffective with cost.”

02. Brief facts of the case are that the appellant was serving as Assistant when the complaint was filed against him for harassment of three person; Mrs. Bibi Hafsa, (Junior Clerk) Miss Samina Naz, (Junior Clerk) and Miss Dulari (Sweeper) of the Directorate of Reclamation & Probation. To probe the complaint a three member's inquiry committee was constituted in accordance with the provision of protection against Harassment of Women at the work place Act, 2010. Report of the said inquiry committee was forwarded to Sectary of Government Khyber Pakhtunkhwa Home Department although the respondent No. 2 was competent to dispose of the case on the basis of report of the inquiry committee. The respondents No. 1 ordered for de-novo enquiry, de-novo enquiry was conducted and appellant was awarded minor penalty of stoppage of five annual increment with cumulative effect on 05.11.2014 against which the appellant preferred department appeal to respondent No. 1 on 28.11.2014 which was partially allowed vide order dated 16.02.2015 and the punishment of stoppage of five annual increments with cumulative effect was converted into punishment of stoppage of two annual increments without cumulative effect. Against the final order the appellant filed the instant service appeal on 19.03.2015.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order was passed in violation of mandatory provision of law. The complaint was filed against the appellant but later on the same was withdrawn by the complainant, as such there was no ground to punish the appellant. The first inquiry did not prove involvement of the appellant and the de-novo inquiry had no legal standing. He further argued that no opportunity of personal hearing was provided to the appellant before passing the impugned order, therefore, the impugned order is not sustainable in the eye of law and are liable to be set-aside, he concluded.

05. Learned Deputy District Attorney controverted the arguments of learned counsel for the appellant and contended that the charges/allegations leveled against the appellant were proved during inquiry proceeding. The complaint made against the appellant was duly proved, thereafter the penalty of stoppage of two annual increments was awarded. The appellant was provided ample opportunity of personal hearing but neither he could advance convincing arguments nor he provided any documentary proof in his defence to be innocent. Since all the procedural and codal formalities have been fulfilled before imposition of the impugned penalty upon the appellant, the service appeal being devoid of merit may, therefore, be dismissed with cost, he concluded.


06. We went to the entire process and legalities of the case. The matter entirely falls under the parameters of Protection against Harassment of Women at Workplace Act, 2010. The three member's inquiry committee after thorough inquiry into the matter did not find any cogent and convincing evidence regarding harassment of the female complainants. Moreover on the demand of the complainants the accused (Appellant) took oath on the Holly

Quran before the committee that he is innocent and did not committed the act. After their satisfaction the complainants made written request to withdraw the complaint. The respondent No. 2 being competent authority was legally bound to pass orders in light of findings and recommendations of the committee. If he was not satisfied with the findings and recommendations of the committee he could have remanded it back to the inquiry committee. Constitution of de-novo inquiry by the respondent No. 1 through an individual inquiry officer was in contravention of the said law. The de-novo inquiry was not initiated/conducted under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. It was a preliminary inquiry and the inquiry officer was aware of it and he recommended to conduct formal inquiry under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. However, on the basis of this preliminary inquiry respondent No. 1 issued Show Cause Notice and imposed penalty of five increments vide order dated 05.11.2014 which was reduced to stoppage of two increments by respondent No. 1 as appellate authority.

07. In light of legal scrutiny as discussed above, we allow the instant appeal and set aside the orders of respondent No. 2 dated 05.11.2014 and respondent No. 1 dated 16.02.2015. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 20th day of March, 2023.*


(ROZINA REHMAN)
MEMBER (J)


(MUHAMMAD AKBAR KHAN)
MEMBER (E)