

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

AT CAMP COURT, D.I.KHAN

Service Appeal No.867/2018

Date of Institution ... 02.07.2018

Date of Decision ... 27.10.2022

SCANNED
KPSI
Peshawar

Mustafa Kamal S/o Qutab Khan, District Attorney Tank.

... (Appellant)

VERSUS

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

... (Respondents)

Abdullah Baloch,
Advocate

... For appellant.

Kabir Ullah Khattak,
Additional Advocate General

... For respondents.

Mr. Kalim Arshid Khan

... Chairman

Mrs. Rozina Rehman

... Member (J)

JUDGMENT

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

“That on acceptance of the instant appeal it is earnestly
and very humbly requested to set aside the impugned
order dated 07.06.2018 wherein punishment of
withholding of two annual increments for two years has



been imposed upon the appellant and to reinstate him to his original post with all allowances and back benefits."

2. Brief facts of the case are that appellant joined police department as prosecuting Sub-Inspector on 22.04.1999 through Public Service Commission and successfully completed all the courses and passed all the exams with credit. The nomenclature of the appellant's post was changed from prosecuting Sub-Inspector to Assistant Public Prosecutor on 18.02.2002 and thus he served in the Prosecution Directorate under the Home and Tribal Affairs Department with no complaint from any quarter. He was again selected as Additional Government Pleader by qualifying the examination conducted by Khyber Pakhtunkhwa Public Service Commission on 29.09.2005 and was posted in law department. His post was upgraded from (BS-18) to (BS-19) and was posted as Senior Government Pleader (BS-19) and currently the nomenclature of the post was changed from that of Government Pleader to District Attorney and he is now serving in Law Department as District Attorney (BS-19) in District Tank. That while serving in the above capacity, he was served with charge sheet alongwith statement of allegations containing some false and frivolous allegation which was replied by the appellant. An inquiry committee was constituted and inquiry was conducted without giving him opportunity of self-defense or personal hearing. He was recommended for major penalty upon the conclusion of inquiry and was served with a show cause notice which was replied and without providing opportunity of personal hearing by the competent authority, he was awarded major

penalty of reduction to lower pay scale from (BS-19) to (BS-18) vide notification dated 22.01.2018. Feeling aggrieved he filed review petition which was partially accepted and punishment was modified/reduced into withholding of two annual increments for two years vide notification dated 07.06.2018. Feeling aggrieved from the said notification (final order) the instant service appeal was filed.

3. We have heard Abdullah Baloch, Advocate learned counsel for the appellant and Kabir Ullah Khattak, learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Abdullah Baloch Advocate, learned counsel for appellant submitted that the impugned order is against law, rules and facts on record and that the authority had passed the impugned order without proper perusal of record. He contended that the very constitution of the inquiry committee was illegal and in violation of the rules under which it was required to be constituted; and that the appellant had objected to the constitution of inquiry committee to the extent of one Mr. Shakeel Asghar, Ex-Deputy Solicitor, being not legally competent and being biased towards the appellant, therefore, entire proceedings conducted by a not very impartial committee has no legal footing and thus liable to be set aside and that the biased attitude is evident from the review petition preferred by the then Secretary Law; that enquiry committee admitted that the appellant had not caused any loss of a single penny to the government exchequer on one hand, while on the other hand the said committee held that the allegations

levelled against the appellant stood proved. He submitted that the appellant had rendered his opinion in the case in good faith and in the best interest of the government and in shape of request/information to review the order and that the department took action by calling comments from the concerned department in the light of review application. He submitted that the appellant was condemned unheard and no opportunity of personal hearing was afforded to him. Lastly, he submitted that the inquiry as well as the other proceedings were not carried out as per Efficiency & Discipline Rules 2011, hence on acceptance of the instant appeal the impugned order regarding penalty of withholding of two annual increments for two years may kindly be set aside and he may be reinstated to his original position with all back benefits.

5. Conversely, learned AAG submitted that the inquiry was conducted against the appellant in the light of observation passed in CMA No. 1606/2015 and that after fulfillment of all codal formalities, he was punished according to law. He submitted that the inquiry committee was impartial and had no bias whatsoever against the appellant, he therefore, requested for dismissal of the instant service appeal being frivolous and devoid of legal footing.

6. We have heard learned counsel for the parties and perused the record carefully. From the record it is evident that the disciplinary proceedings against the appellant were initiated on the charges of having been failed to file the relevant application under Section 12(2) of Civil Procedure Code in case of inquiry report pertaining to the issue of fresh robakar by Deputy District Officer

(R) Deputy Settlement Commissioner D.I.Khan for attestation of mutation of land measuring 244 Kanals and 16 Marlas in Garra Jamal Tehsil & District D.I.Khan against which the Supreme Court of Pakistan took serious notice vide order dated 07.06.2017 and 22.03.2017. In this regard charge sheet and statement of allegations reveals that the matter was in respect of property measuring 244 Kanals and 16 Marlas. An inquiry committee was constituted comprising of Mr. Javed Anwar (PCS SG BS-20) Secretary Public Service Commission KP and Mr. Shakeel Asghar Deputy Solicitor, Law Department, inquiry report is also available on file which clearly shows that minutes of the scrutiny committee meeting held on 20.01.2017 indicated that the land in question was measuring 2480 Kanals and 8 Marlas which was allotted originally to Mr. Sadaqat Hussain S/o Ejaz Khan resident of Karachi through RL-II dated 18.03.1963 whereas the charge sheet/statement of allegations indicates the land to be measuring only 244 Kanal and 16 Marlas. The record supplied by Deputy Commissioner Office D.I.Khan indicates that the land in question measuring 2438 Kanals and 9 Marlas was originally allotted to Mr. Sadeeq Ul Hasan S/O of Ijaz Ali Khan. The competent authority failed to mention the correct area of disputed land in the charge sheet/statement of allegations. As per recommendation of the enquiry committee, mutation of the state land on the basis of false sale deeds on stamp papers with back date entries by the revenue staff needed to be further investigated by the government of Khyber Pakhtunkhwa to bring those involved in fraudulent business to book. Similarly the charge of misconduct against the appellant was reported to have been proved. Record further suggests that the Supreme Court of Pakistan found the provincial government of KP not following up the matter properly but particularly pointed out the incompetency of the government pleader and in pursuance an inquiry was conducted by an inquiry committee constituted for the purpose. The inquiry report in its recommendations



had clearly pointed out that the mutation cases of state land on the basis of false sale deeds on stamp papers with back date entries by the revenue staff need to be further investigated by the government of Khyber Pakhtunkhwa to bring those involved in fraudulent business to book. Report further reveals that the issue spread over district administration, the revenue department and law department, but record is silent as to whether any such action was taken by the government against the staff of district administration or revenue department and only the appellant was proceeded against and penalized which, however, was not appropriate. The inquiry report further reveals that the appellant had caused no loss to the government exchequer on one hand while on the other hand the said committee held him responsible just for non-filing of application U/S 12(2) of CPC. The respondents had taken the issue in a slipshod manner and directed only the appellant whereas other stakeholders were not touched. Contention of the appellant gains strength to the effect that major penalty of reduction to lower scale imposed upon the appellant was reduced to minor penalty of withholding of two increments upon his review petition submitted to the competent authority. Record further reveals that in the review petition the appellant was not afforded proper opportunity to defend his cause but looking into flaws committed in earlier proceedings, penalty was reduced.

7. We have observed that the opinion rendered by the appellant for not filing application in the said case was duly processed by the law department and sent to the revenue department for comments, hence, since the appellant had got no option except to wait for further orders of law department. He was not solely responsible for the alleged negligence occurred. The reservation of the appellant upon one of the inquiry officer was not taken into consideration which, however, was a valid observation as the inquiry officer in question was party to the case.

The proceedings were conducted in slipshod manner only to pacify the observations raised by the Supreme Court of Pakistan.

8. We are of the considered opinion that the appellant was not treated in accordance with law and he was kept deprived of his right to defend his cause and proceedings were conducted in slipshod and mechanical manner, which is evident from the record. It is not clear from the record that any opportunity of personal hearing was ever afforded to the appellant. It is otherwise a well settled legal proposition that regular inquiry is must before imposition of major penalty which includes provision of full opportunity of defence to be provided to the civil servant which however was not done in the case of appellant. Reliance is placed on 2009 PLC (CS) 650.

9. In view of the above, instant appeal is accepted as prayed for. The impugned order is set aside and the appellant is restored to his original position with all back benefits. File be consigned to record room.

ANNOUNCED

27.10.2022



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan



(Rozina Rehman)
Member (J)
Camp Court D.I.Khan