

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.3247/2021

Date of Institution ... 12.02.2021  
Date of Decision ... 09.05.2023

Mr. Zia Ullah Khan S/O Hidayat Ullah Khan R/O Jamsheed Abad  
Babu Ghari Chowk Warsak Road, Peshawar.

... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary Civil  
Secretariat Peshawar and two others.

... (Respondents)

Mr. Zartaj Anwar,  
Advocate ... For appellant

Mr. Fazal Shah Mohmand,  
Additional Advocate General ... For respondents

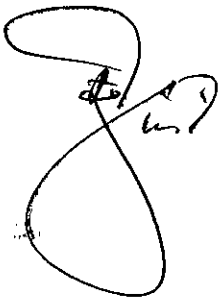
Mr. Kalim Arshad Khan ... Chairman  
Mrs. Rozina Rehman ... Member (J)

**JUDGMENT**

Rozina Rehman, Member(J): The appellant has invoked the jurisdiction of  
this Tribunal through above titled appeal with the prayer as copied below:

**“On acceptance of this appeal the order dated  
15.09.2020, may please be set aside and the annual  
increments may kindly be continued/restored from the  
date of stoppage/discontinuation with all back  
benefits.”**

2. Brief facts leading to filing of the instant appeal are that  
appellant was serving as Planning Officer (BS-17) in the Directorate of  
Social Welfare, Special Education & Women Empowerment Khyber



Pakhtunkhwa. While serving in the said capacity, he was served with a charge sheet alongwith statement of allegations. He submitted his reply to the charge sheet by denying all the allegations. An inquiry was conducted and three annual increments were ordered to be withheld vide order dated 15.09.2020. Feeling aggrieved, he filed departmental appeal which was not responded to, hence, the present service appeal.

3. We have heard Zartaj Anwar Advocate learned counsel for the appellant and Fazal Shah Mohmand, learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Zartaj Anwar Advocate, learned counsel for appellant, inter-alia, contended that the impugned order is illegal, against law, rules and facts, hence, not tenable and liable to be set aside as the appellant was not treated in accordance with law, and his rights secured under the law and Constitution were badly violated. It was argued that no proper procedure was followed before awarding the penalty of withholding of three annual increments and that he was prematurely transferred which act is against law and rules. Learned counsel further contended that the appellant was not given proper opportunity of personal hearing before awarding the penalty and that he was condemned unheard; that the appellant was neither involved in corruption nor embezzlement or any immoral activities, therefore, the penalty of withholding of three annual increments did not commensurate with the nature of his so called misconduct, therefore, the order passed was against law and proper procedure. He, therefore requested for acceptance of the instant service appeal.



5. Conversely, learned AAG submitted that appellant is highly problematic and his service history reveals various ups & downs in shape of explanations and inquiries. He submitted that the charge sheet was served upon appellant in the light of findings of the Inquiry Officer and that the charges leveled against the appellant were proved partially. He submitted that the official vehicle was under his use even when he had been posted out as Social Welfare Officer Charsadda and no written order was available with the appellant to have an official vehicle after posting out. Lastly, he submitted that he used to file complaints by using unauthorized channel for submission of complaints/requests. Therefore, he was punished according to law 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 the present appellant while working in the capacity of Planning Officer was charged with the following allegations:

- a) *That an inquiry was initiated on your complaint dated 19/07/2019, addressed directly to the Chief Secretary. As per findings of the inquiry committee the allegations were found to be false, self-installed, concocted and fabricated, whereupon the inquiry committee recommended disciplinary action against you. As per record of Social Welfare Department, you have involved yourself in lodging baseless complaints, bypassed the proper channel for redressal of your grievances and sending references to the*



*outside forums instead of approaching the immediate supervisors, thus affecting the reputation/credibility of the department adversely.*

*b) That your service profile reveals that you are a habitual complainant. You started your career in 2012 and submitted first complaint in 2013. Since then you have submitted about 20 complaints to various authorities except your own chain of command. You also attended the disbanded Ihtesab Commission more than 40 times without any knowledge and direction of the department. Reportedly, you have been misusing the complaints' redressal forums in order to blackmail your co-workers for settling your personal grudges and disputes. The array of your baseless complaints have seriously hindered the functioning of the department over the past many years. You have earned a bad name for yourself and for the department.*

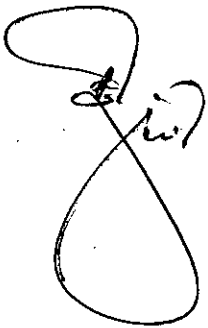
*c) That you were deputed to survey a site at Timergara District Dir Lower for construction of school for handicapped children. However, you suggested an unfeasible and inaccessible site for construction of the proposed school apparently due to illegal gratification by the land owners. The Administrative Department when constituted a fact finding inquiry into the matter, you refused to cooperate with the inquiry officer. Ironically instead of responding to a letter from Inquiry Officer you*



*addressed your reply to numerous irrelevant offices apparently to discredit the administrative Department. The Inquiry Officer has proved allegations against you.*

- d) That your attitude towards your colleagues, particularly female workers, has been indecent and exploitative. By threatening, harassing and intimidating your co-workers, you have created an unfavorable and hostile environment for them and by doing so, interrupting the smooth running of official business. One of the co-workers has already charged you under the Harassment at the Work Place Act, 2016.*

For the purpose of inquiry against the accused officer with reference to the above allegations an Inquiry Officer namely Mushtaq Hussain (PMS BS-18/OSD) Establishment Department was nominated. Inquiry was conducted as per law. The inquiry report is available on file which shows that the present appellant made several complaints to various authorities except his chain of command. On a complaint addressed directly to the Chief Secretary Khyber Pakhtunkhwa, a fact finding inquiry was ordered and conducted. The inquiry committee found the allegations baseless and recommended formal action against the complaining officer i.e. Mr. Zia Ullah, the present appellant. The inquiry Officer recorded the statement of complainant besides additional evidence provided by him during the course of inquiry proceedings. Charge No.1 in view of the reply of the accused appellant had been proved. In case any violation of any rule is observed then it is brought in writing to the next higher authority. If the higher authority



i.e. Director Social Welfare had found it appropriate, he would have passed it on to the Secretary or inform the officer for not doing so. In case immediate next officer is not taking action on a rightly filed complaint, then it is sent through proper channel through same officer to the next higher authority. The chain of command could not be bypassed but in the instant case the accused officer was totally unaware about the filing of complaint through proper channel. Charge No.2 had been proved only to the extent that appellant was habitual complainant whereas attending of Ihtesab Commission was on the authority of the Department which had not been canceled and he was summoned being a witness. Charge No.3 was partially proved as other persons were also members of the committee. Minutes of the feasibility of site selection for upgradation of Government school for deaf and dumb Timergara are available on file which had been signed by four persons including appellant, Muhammad Zeb District Officer Social Welfare Dir Lower, Engr. Yaqoob Ur Rehman nominee of the Finance Minister and Riaz Muhammad Tehsil Nazim Timergara. Charge No.4 was being investigated by the Provincial Ombudsman against the Harassment of Women at Work Place Khyber Pakhtunkhwa, Peshawar, therefore it was not taken under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 by the Inquiry Officer. Charge No.5 regarding use of official vehicle also stood proved as vehicle was returned by the appellant on 06.12.2019 after hectic pursuance of the Department. Authorized use (permission/authorization of using the vehicle by the accused officer) was not established. Lengthy arguments were heard in the instant case but nothing was brought by the appellant



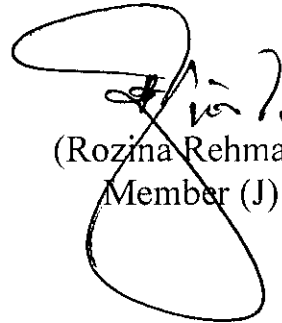
in respect of those charges which had been proved against the appellant. However, all charges were not proved against the appellant, therefore, lenient view is taken into the matter and the penalty of withholding of three increments for three years is converted into withholding of one increment for three years. Order accordingly. Parties are left to bear their own costs.

ANNOUNCED

09.05.2023



(Kalim Arshad Khan)  
Chairman



(Rozina Rehman)  
Member (J)

\*Mutazem Shah\*