

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**FAREEHA PAUL ... MEMBER (Executive)**

*Service Appeal No.7872/2021*

Date of presentation of Appeal.....30.11.2021  
Date of Hearing..... 26.05.2023  
Date of Decision.....26.05.2023

**Mst. Bakht Mina, PST (BPS-12), GGPS Mathra, District Peshawar.**  
.....*Appellant*

Versus

1. **The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.**
  2. **The Director Education Officer (Female), District Peshawar.**
  3. **The District Education Officer (Female), District Peshawar.**
  4. **The District Account Officer, District Peshawar.**
- .....(*Respondents*)

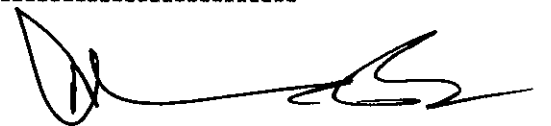
Present:

Mr. Noor Muhammad Khattak,  
Advocate.....For the appellant

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

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**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974  
AGAINST THE IMPUGNED ORDER DATED 31.07.2021  
WHEREBY THE APPELLANT HAS BEEN AWARDED  
MAJOR PENALTY OF REMOVAL FROM SERVICE AND  
AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL  
APPEAL OF APPELLANT WITHIN THE STATUTORY  
PERIOD OF NINETY DAYS.**

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**JUDGMENT**



**KALIM ARSHAD KHAN CHAIRMAN:** According to the memorandum and grounds of appeal the appellant was serving as Primary School Teacher at Government Girls Primary School, Mathra, District Peshawar; that during the

service she applied for Ex-Pakistan leave, which was sanctioned to the appellant w.e.f. 16.01.2009 to 15.04.2009 (ninety days) vide order dated 04.04.2009; that after completion of leave, the appellant submitted her arrival report and started performing duties; that the appellant, while performing her duties at GGPS Kachi Kopar, District Malakand, a baseless allegation of absence was leveled against her; that the appellant filed a complaint against one Rukhsana Rahim, Sub-Divisional Education Officer, Dargai Malakand and on the basis of that complaint an enquiry was conducted; that after conducting enquiry the Sub-Divisional Education officer, Dargai Malakand was exonerated from the charges and the appellant was removed from service vide order dated 11.12.2015 without conducting regular inquiry in the matter; that aggrieved from the order dated 11.12.2015 the appellant filed departmental appeal followed by service appeal No. 38/2016 which was accepted in favor of the appellant vide judgment dated 05.03.2019; that in compliance of the judgment of this Tribunal, the appellant was reinstated in service vide order dated 12.07.2019 but no back benefits were allowed to her; that feeling aggrieved, the appellant filed departmental appeal, which was not responded within the statutory period of ninety days, then she filed service appeal No.1962/2019 before this Tribunal; that during the pendency of that service appeal, the respondents/department issued impugned order dated 31.07.2021, whereby the appellant was awarded major penalty of removal from service; that the appellant preferred departmental appeal but was not responded, hence, the instant service appeal.




2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing

their respective written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant, and learned Additional Advocate General for respondents.

4. Learned counsel for appellant contended that the impugned order dated 31.07.2021 was against the law, rules, and norms of natural justice and materials on the record. He further contended that the appellant had not been treated by the respondents in accordance with law and rules on the subject notice above and as such the respondents violated Article-4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. Furthermore, no charge sheet and statement of allegation as well as show cause notice had been served on the appellant prior to issuance of the impugned order dated 31.07.2021. Learned counsel for the appellant argued that no chance of personal hearing was provided to the appellant nor any regular inquiry had been conducted against the appellant. Reliance was placed on 2003 PLC (CS) 365, 2007 SCMR 1726, PLD 2008 Supreme Court 451, 2009 SCMR 339, 2011 SCMR 1618 and 2012 PLC (C.S) 787. He requested that the appeal might be accepted.

5. Conversely the learned Additional Advocate General argued that the impugned order had been issued in accordance with law and no violation had been made. Moreover, that the appellant was also not serious in her duty because time and again she was found absent from duty without any prior approval of the competent authority. He further argued that in compliance of the judgment of this Tribunal the respondent/department conducted de-novo enquiry and after

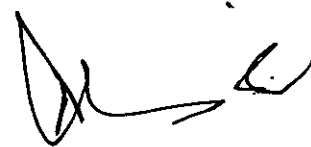


conducting of de-novo enquiry, she was removed from service. Lastly he requested that the appeal might be dismissed.

6. Having heard the learned counsel for the appellant and learned Additional Advocate General for the respondents, it appears that this is second round of litigation between the parties. Earlier the appellant was proceeded by the Chief Secretary and she was removed from service vide notification dated 11.12.2015. Whereafter the appellant challenged the same in service appeal No. 383/2016 which was decided on 05.03.2019 in the following manner:-

*" 5.As observed here-in-before the appellants were both serving against BPS-12 at the relevant time and as such, the authority competent to proceed against them departmentally was the concerned Executive District Officer and not the Chief Secretary, Khyber Pakhtunkhwa/respondent No.1, therefore, the proceedings and orders impugned before us could safely be termed as coram-non-judice.*

*6. As a sequel to the above, we allow both the appeals and set aside the impugned orders of removal from service passed against the appellants on 11.12.2015. Resultantly, the appellants are reinstated into service. The respondents may, however, undertake departmental proceedings against the appellants but only in accordance with law and rules. The de-novo proceedings, if taken, shall be concluded within a period of ninety days from the receipt of copy of instant judgment. The issue of back benefits in favour of appellants shall follow the result of de-novo proceedings."*



7. After remission of the matter to the competent authority, it was incumbent upon the authority to have started departmental proceedings against the appellant right from issuance of show cause notice etc strictly in accordance with law and the rules. As against that admittedly while proceeding again against the appellant no show cause notice and/or statement of allegations were served upon the appellant in utter disregard of the relevant provision of the Khyber Pakhtunkhwa Governments Servants (Efficiency and Discipline) Rules, 2011. The entire

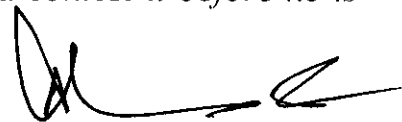
proceedings, thus conducted, are in violation of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and could not sustain, therefore, the remand of this matter seems to us to be inevitable. Therefore, we think it appropriate to remit the matter back to the Competent Authority with the directions that it shall proceed against the appellant, if it so intends, but following provisions of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 in their strict sense.

8. In this respect we refer to the judgment of the august Supreme Court of Pakistan in C.P No. 545-K/2021 titled "*Raja Muhammad Shahid vs Inspector General of Police and others*" wherein the august Supreme Court of Pakistan was pleased to observed in para-4 as under:



*"4. Heard the arguments. We have flicked through the enquiry report and find that various witnesses were associated in the enquiry and their statements were also recorded but neither any opportunity was afforded to the petitioner to conduct cross examination, nor is it mentioned that an opportunity of cross examination was afforded, but it was declined by the petitioner. In the abovementioned case of Usman Ghani Vs The Chief Post Master, GPO Karachi and others (2022 SCMR 745), it was held that the foremost aspiration of conducting departmental inquiry is to find out whether a prima facie case of misconduct is made out against the delinquent officer for proceeding further. The guilt or innocence can only be thrashed out from the outcome of inquiry and at the same time it is also required to be seen by the learned Service Tribunal as to whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution. A distinction also needs to be drawn between a regular inquiry and preliminary/fact finding inquiry. A regular inquiry is triggered after issuing show cause notice with statement of allegations and if the reply is not found suitable then inquiry officer is appointed and regular inquiry is commenced (unless dispensed with for some reasons in writing) in which it is obligatory for the inquiry officer to allow an even-handed and fair opportunity to the accused to place his defence and if any witness is examined against him, then a fair opportunity should also be afforded to cross-examine the witnesses. The doctrine of natural justice communicates the clear insight and perception that the authority conducting the departmental inquiry should be impartial and the delinquent civil servant should be*

provided a fair opportunity of being heard and if the order of the competent authority based on inquiry report is challenged before the Service Tribunal then it is the legal duty of the Service Tribunal to give some reasons and there should be some discussion of evidence on record which is necessary to deliberate the merits of the case in order to reach a just conclusion before confirming, reducing or setting aside the penalty. Whereas in the case of Federation of Pakistan through Chairman Federal Board of Revenue FBR House, Islamabad and others Vs. Zahid Malik (2023 SCMR 603), it was held that the primary objective of conducting departmental inquiry is to grasp whether a clear-cut case of misconduct is made out against the accused or not. The guilt or innocence is founded on the end result of the inquiry. The learned Service Tribunal may observe whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). The purpose of the cross-examination is to check the credibility of witnesses to elicit truth or expose falsehood. When the statement of a witness is not subjected to the cross-examination, its evidentiary value cannot be equated and synchronized with such statement that was made subject to cross-examination, which is not a mere formality, but is a valuable right to bring the truth out. If the inquiry officer or inquiry committee is appointed for conducting inquiry in the disciplinary proceedings, it is an onerous duty of such Inquiry Officer or Inquiry Committee to explore every avenue so that the inquiry may be conducted in a fair and impartial manner and should avoid razing and annihilating the principle of natural justice which may ensue in the miscarriage of justice. The possibility cannot be ruled out in the inquiry that the witness may raise untrue and dishonest allegations due to some animosity against the accused which cannot be accepted unless he undergoes the test of cross-examination which indeed helps to expose the truth and veracity of allegations. The whys and wherefores of cross-examination lead to a pathway which may dismantle and impeach the accurateness and trustworthiness of the testimony given against the accused and also uncovers the contradictions and discrepancies. Not providing an ample opportunity of defence and depriving the accused officer from right of cross-examination to departmental representative who lead evidence and produced documents against the accused is also against Article 10-A of the Constitution in which the right to a fair trial is a fundamental right. What is more, the principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, give explanation and contest it before he is found guilty and condemned.



9. Thus, we allow this appeal, set aside the impugned order dated 31.07.2021 and remit the matter back to the respondents to conduct proper departmental

proceedings and de-novo inquiry strictly in accordance with law/rules and as per the guidelines given in the above judgment. In the course of departmental proceedings and de-novo inquiry, ample opportunity of hearing should be provided to the appellant. The issue of back benefits shall be subject to the final outcome of the proper departmental proceedings and de-novo inquiry to be conducted and concluded within sixty days on receipt of copy of this judgment. The date of receipt of judgment shall be communicated to the Tribunal through its Registrar. Costs shall follow the event. Consign.

10. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 26<sup>th</sup> day of May, 2023.***



**KALIM ARSHAD KHAN**  
Chairman



**FAREEHA PAUL**  
Member (Executive)

*\*Adnan Shah, P.A.\**