

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

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

Service Appeal No.7482/2021

Date of presentation of Appeal.....28.09.2021

Date of Hearing..... 23.05.2023

Date of Decision.....23.05.2023

Sajid Mumtaz, Ex-Patwari Division Sheikh Muhammadi, District Peshawar.

.....*Appellant*

Versus

1. **The Commissioner Peshawar Division**, Peshawar.
2. **The Deputy Commissioner**, Peshawar.

.....(*Respondents*)

Present:

Miss. Naila Jan,
Advocate.....For the appellant

Mr. Muhammad Jan,
District Attorney.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 11/06/2021 OF RESPONDENT NO.2 WHEREBY THE APPELLANT WAS REMOVED FROM HIS SERVICES WITHOUT ANY JUSTIFICATION AND ORDER DATED 06/10/2021 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED IN A CURSORY MANNER THROUGH NON-SPEAKING ORDER IN UTTER VIOLATION OF TERMS, RULES AND PRINCIPLES OF NATURAL JUSTICE.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that appellant was serving as Patwari Halqa Sheikh Muhammadi, when in the

meanwhile, a complaint was filed by one Aziz Ahmad against the appellant. In response to the said complaint, respondent No.2 conducted a fact finding inquiry and later on issued a show cause notice to the appellant. Although, the complainant had withdrawn his complaint and declared the appellant innocent but the competent authority without considering that withdrawal of complaint, removed the appellant from service vide impugned order dated 11.06.2021. Feeling aggrieved, he filed departmental appeal, which was rejected vide order dated 06.10.2021, 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 District Attorney for the respondents.



4. Learned counsel for the appellant contended that the impugned order dated 11.06.2021 was against law, facts, Constitution and principles of natural justice, hence, *void ab-initio*; that no charge sheet alongwith statement of allegations had been issued which were mandatory under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and the appellant had been condemned unheard as no opportunity of personal hearing or defense was provided to him either by Inquiry Officer or the Competent Authority. She submitted that neither statement of any witness had been recorded nor the appellant had been confronted with any documentary or oral evidence. She further submitted that the respondents had violated Article 10-A of the

Constitution of Islamic Republic of Pakistan, 1973 by not providing fair chance of trial, hence the whole proceedings were liable to be set aside. The dictum had been laid down by the august Supreme Court of Pakistan in its judgment reported as 2016 SCMR 943. She requested that the appeal might be accepted.

5. As against that, learned District Attorney argued that the impugned order had been issued in accordance with law and no violation had been made; that proper inquiry was held against the appellant after fulfilling of all codal formalities; that fair opportunity of defense had been provided to him, however, he failed to produce any pro and contra evidence in his favor to defend his stance. He further argued that on 03.06.2021, the appellant was given the chance of personal hearing but he failed to defend himself against the allegations. Lastly he requested that the appeal might be dismissed.

6. The appellant was penalized on the basis of an enquiry. Enquiry report has been perused which is found bereft of the necessary requirements. It appears that no statements of any of the witnesses were recorded rather only interrogation was made, therefore, the enquiry cannot be said to be a regular enquiry under the law and rules. 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 observe 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.

7. Deriving wisdom from the above judgment of the august Supreme Court of Pakistan, we are constrained to set aside the impugned order dated 11.06.2021 as well as enquiry report and remit the matter back to the respondents to conduct de novo inquiry. In the course of de novo inquiry, ample opportunity of hearing should be provided to the appellant. The back benefits, if any, shall also be subject to the final outcome of the inquiry. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23rd day of May, 2023.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

*Adnan Shah, P.A *