

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
M. AKBAR KHAN ... MEMBER (Executive)

Service Appeal No. 12789/2020

Date of presentation of Appeal.....26.10.2020
Date of Hearing..... 29.05.2023
Date of Decision.....29.05.2023

**Muhammad Anwar Sohail S/o Nawab Din (Ex-Patwari/AOK
Lahor District Swabi) residence near Post office Swabi.**
.....*Appellant*

Versus

1. **The Deputy Commissioner/The District Collector, Swabi.**
2. **The Additional Commissioner, Mardan Division, Mardan.**
3. **The Secretary, Board of Revenue, Khyber Pakhtunkhwa Peshawar.**
.....(*Respondents*)

Present:

Mr. Muhammad Adam Khan,
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 ORDER OF THE DEPUTY
COMMISSIONER/RESPONDENT NO.1 VIDE ENDORSEMENT
NO. 30/DES/DK/INQUIRY DATED 14.01.2020, WHEREBY THE
APPELLANT IS AWARDED THE PUNISHMENT OF REMOVAL
FROM SERVICE.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are
that the appellant while posted as Patwari/AOK Lahor, District Swabi,
under the respondent No.1, was awarded punishment of removal from
service on 18.05.2010, on the grounds of alleged absence from duty;

that the appellant had filed service appeal No. 1842 of 2010 against the said order before this Tribunal, which was accepted on 28.11.2018, setting aside the impugned order and remanding the case to the Senior Member Board of Revenue, Khyber Pakhtunkhwa for conducting de-novo enquiry within a period of one month; that it was further directed that the issue of back benefits would be subject to outcome of the de-novo enquiry; that the Deputy Commissioner (respondent No.1), vide order dated 14.01.2020, upheld the previous punishment i.e. removal from service; that the impugned order was never communicated to the appellant rather it was provided to the Tribunal during pendency of execution petition; that feeling aggrieved, the appellant filed representation on 09.02.2020 to the Additional Commissioner through registered post on 15.02.2020 which was not responded within the statutory period of ninety days; that the appellant filed writ petition No. 2130-P/2020, which was disposed of on 22.9.2020 on the ground of jurisdiction. Thereafter, he filed 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 appellant contended that the impugned order dated 14.01.2020 is illegal, void, untenable under the law and thus the same is liable to be set aside; He further contended that no fresh enquiry was carried out, therefore, the appellant has been condemned unheard. Lastly, he submitted that the instant appeal might be accepted.

5. Learned District Attorney for the respondents argued that the proper de-novo inquiry was conducted as per directions of Hon'ble Service Tribunal through the Additional Deputy Commissioner (G) and submitted recommendations, whereby order of removal from service of the appellant was upheld. He further argued that the appellant has been treated in accordance with law and rules. He requested that the appeal might be dismissed.

6. In an earlier round of litigation, the Tribunal decided the service appeal No. 1842/2010 in the following manner:-

"7. The appellant was on leave and he applied for further extension in leave for three years which was allowed by BOR on 06.05.2009 under Rule-12(1) of Revised Leave Rules, 1981 up to 31.12.2010. The DO (R&E) issued on 18.05.2010 the removal from service of the appellant order which appears to be not fair on the part of the DO(R&E) hence the appeal is partially accepted, the case is remanded to SMBR for conducting de-novo enquiry within a period of one month



positively. The issue of re-instatement into service of the appellant and the back service benefits depends on the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room".

7. The above paragraph shows that impugned order of removal of the appellant from service was set aside, the matter was sent to the Senior Member Board of Revenue for conducting de-novo enquiry within one month positively, whereafter impugned order was passed on 14.01.2020 in the following manner:

"In pursuance of the august Service Tribunal, Khyber Pakhtunkhwa judgment passed in case titled "Muhammad Anwar Sohail (Ex-Patwari/AOK Labor District Swabi) versus District Officer (R&E) the District Collector, Swabi etc dated 28.11.2018, the De-novo enquiry was conducted wherein the enquiry officer recommended/upheld the removal from service order issued by the then DOR, Swabi bearing No. 1182-1200/DOR/S.B.A dated 18.05.2010.

Agreeing with the recommendation of the inquiry officer, the order of removal of Mr. Muhammad Anwar Sohail from service bearing No. 1182-1200/DOR/S.B.A dated 18.05.2010 is hereby upheld."

8. The impugned order has upheld the earlier order dated 18.05.2010 which was set aside by the Tribunal in the earlier judgment, therefore, upholding of order which had already been set aside by the Tribunal is not only strange but also unwarranted. The Deputy Commissioner, Swabi ought to have acted responsibly. The mere agreement with the recommendation of the enquiry officer would not be sufficient rather the competent authority had to pass appropriate order. The Competent Authority ought to have issued show cause notice to the appellant and then proceeded against him



after providing him opportunity of hearing. Therefore, we hold that the procedure adopted by the Deputy Commission, Swabi after receipt of the enquiry was not as per the relevant rules.

9. Thus, we allow this appeal, set aside the impugned order dated 14.01.2020 and remit the matter back to the respondents to conduct proper departmental proceedings after the stage of receipt of enquiry report by issuing final show cause notice and providing opportunity of personal hearing to the appellant. The exercise should be completed within thirty days of receipt of copy 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 29th day of May, 2023.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

Adnan Shah, P.A