

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1683/2020

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Sher Ayaz Khan S/O Sher Zada Khan (Assistant Director, Mineral Development Swabi R/O House No. 161, Sector G, Sheikh Maltoon Town, Sadberg Road, Mardan. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Minister, Chief Minister Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary Mineral Development Department, Khyber Pakhtunkhwa, Peshawar.
4. Director General, Mines & Minerals Department, Khyber Pakhtunkhwa, Peshawar. (Respondents)

Mr. Shaukat Ali Afridi,
Advocate ... For appellant

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

Date of Institution.....02.03.2020
Date of Hearing.....08.05.2023
Date of Decision..... 08.05.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned office order dated 24.02.2020, whereby the departmental appeal of the appellant against the impugned order of "Removal from Service" dated 11.10.2019 was dismissed. It has been



prayed that on acceptance of the appeal, both the impugned orders dated 24.02.2020 & 11.10.2019 might be set aside and the appellant might be reinstated in service with all back benefits in terms of seniority/promotion and arrears.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving as Assistant Director (Tech.) Mineral Development Mardan Division, Mardan and was lastly posted as Assistant Director Mineral Development Buner. The Mines & Minerals Development Department, Khyber Pakhtunkhwa advertised a publication in newspaper regarding auction of different minor minerals areas including area measuring 707.61 acres situated at Adnan Talao/Jaganath, District Swabi. The auction proceedings were held on 28.01.2019 by the Auction Committee in the office of Deputy Commissioner, Swabi and out of 10 participants, one Khan Pervez gave a highest bid of Rs. 64,50,000/- and the Auction Committee declared him the successful bidder. After completion of auction proceedings the appellant, being Assistant Director (Tech) Mineral Development Mardan Division, according to law, vide letter dated 04.02.2019 requested the respondent No. 4 for approval of one year mining lease in favour of Khan Pervez under usual terms and conditions as per Khyber Pakhtunkhwa Mineral Governance Act, 2017. Respondent No. 4 approved the grant of one year Mining Lease for Minor Minerals over an area of 707.61 acres near village Adnan Talao/Jaganath, District Swabi vide letter dated 07.02.2019. Accordingly, offer letter dated 15.02.2019 was issued to Mr. Khan Pervez, after which he was granted one year mining lease for minor minerals of that



area vide letter dated 28.02.2019. On 21.03.2019, a complaint was received by the Deputy Commissioner Swabi, wherein it was alleged that the area was not auctioned during the auction proceedings on 28.01.2019 due to an alleged stay order of the court. The D.C Swabi immediately ordered for enquiry and constituted an Inquiry Committee to unearth the facts. The enquiry committee submitted its report on 26.03.2019 which highlighted fraud and gross misconduct on the part of the appellant and his associated staff. The D.C Swabi vide letter dated 27.03.2019, addressed to D.G Mines & Minerals Khyber Pakhtunkhwa, recommended the following actions on the basis of the said enquiry report:-

- i. *The offer letter for grant of lease of lot of Adnan Talao/Jaganath of 707.61 acres be immediately cancelled.*
- ii. *The bid security and lease money submitted by the concerned contractor named Khan Pervez for the above mentioned block may be forfeited and the contractor should be immediately black listed besides taking other legal actions under the law.*
- iii. *The then Assistant Director Minerals Mardan Mr. Sher Ayaz Khan must be immediately suspended and a departmental inquiry be launched against him and his office staff of destroying evidence, forging fake auction documents and possible corruption.*
- iv. *The department should move to online auction mechanism if possible to avoid such incidents in future."*

3. The Assistant Director Mineral Development Mardan was directed by the Head Quarters office Peshawar vide letter dated 05.04.2019 to cancel the mining lease and also forfeit security of party. Accordingly mining lease was



cancelled vide letter dated 05.04.2019. The competent authority vide notification dated 21.05.2019 constituted an enquiry committee to conduct enquiry against the appellant. Charge sheet was served upon him which was duly replied by him. The enquiry committee, during the course of enquiry, found him guilty of the charges leveled against him and recommended that the competent authority might proceed against him under Rule 4 of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. The competent authority vide letter dated 02.08.2019 served a show cause notice upon the appellant which was duly replied by him. Respondent No. 2 being competent authority vide notification dated 11.10.2019, imposed major penalty of removal from service upon the appellant under Rule 4(b)(iii) of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 with immediate effect. Feeling aggrieved, he filed departmental appeal before respondent No. 1 which was rejected on 24.02.2020, hence the present appeal.

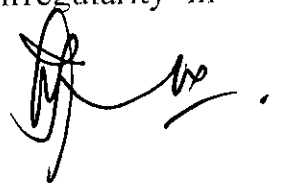
4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant after presenting the case in detail argued that the impugned orders dated 24.02.2020 and 11.10.2019 passed by the respondents were against the law, facts and material on record. He further argued that no allegations had been proved against the appellant during the course of enquiry, hence the impugned order, passed on the basis of the said enquiry, was against the norms of justice. According to him the



enquiry committee did not follow the procedure laid down under the relevant law and rules and no opportunity had been afforded to the appellant to cross examine the witnesses nor any opportunity of hearing was afforded to him. He further argued that burden of responsibility was wrongly shifted to the appellant, because the entire auction proceedings were conducted by the auction committee and thereafter proper approval was accorded by the competent authority. He contended that the inquiry committee based its findings on the statements of bidders, who were the interested parties and therefore, their statements were unreliable and inadmissible in the eyes of law. He requested that the appeal might be accepted as prayed for.

6. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the auction proceedings of Minor Minerals was conducted under the Chairmanship of Deputy Commissioner Swabi on 28.01.2019, however, as per his letter dated 27.03.2019, the auction of 707.61 acres area situated at Adnan Talao/Jaganath District Swabi, could not be held due to an alleged stay. He further argued that the appellant was proceeded under the relevant section of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 and after fulfillment of all codal formalities, he was removed from service. He contended that the appellant was provided proper opportunity of personal hearing in which he failed to satisfy the inquiry committee as well as his competent authority. According to him, the matter was thoroughly examined by the Inquiry Committee and irregularity in



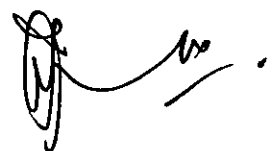
auction proceedings had been found beyond any shadow of doubt. He requested that the appeal might be dismissed.

7. Arguments and record presented before us reveal that auction of minor minerals in District Swabi was held, after following its proper procedure, for different areas including 707.61 acres area situated at Adnan Talao/Jaganath. Ten bidders participated out of whom, one Khan Parvez gave the highest bid of Rs. 64,50,000/- and the Auction Committee declared him successful. A notification provided during the hearing indicates that District Auction Committee for Minor Minerals consists of:-

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| a) Deputy Commissioner of the respective District; | Chairperson |
| b) District Police Officer or his representative not below the rank of BPS-17; | Member |
| c) Executive Engineer Communication and Works Department or his representative not below the Rank of BPS-17; | Member |
| d) Executive Engineer Irrigation Department or his representative not below the rank of BPS-17; and | Member |
| e) Assistant Director Minerals/Minerals Development Officer of the concerned district. | Member-cum-Secretary |

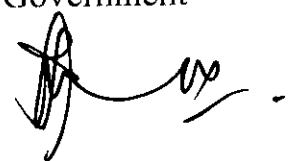
(2) *The Chairperson of the respective District Auction Committee may co-opt any other person as member when deemed necessary.*”

After completing all codal formalities, one year mining lease was granted to Khan Pervez vide letter dated 28.02.2019. A complaint was received by the Deputy Commissioner Swabi, wherein, it was alleged that the area of Adnan Talao/Jaganath was not auctioned during the auction proceedings as there was a stay order of the court. Upon that, an inquiry was conducted and the



appellant was held responsible for adding the forged documents to the case on the basis of which the block of Adnan Talao/Jaganath was auctioned. Based on that, a formal inquiry was conducted and the Inquiry Committee firmed up its findings. Inquiry report annexed with the appeal indicates that the entire process of bidding on 28.01.2019 took place under the supervision of Assistant Commissioner Swabi. Findings of the report mention that the Assistant Commissioner Swabi has signed the bid statement as Chairman of the Auction Committee, whereas the notification issued by the Provincial Government has declared the Deputy Commissioner as the Chairman of the Auction Committee. The Inquiry Report further states in its findings that the Auction Committee has blindly signed the bid statement for auction of Adnan Talao/Jaganath area, wherein, Mr. Khan Pervez, shown as the highest bidder, was recommended. The inquiry report further indicates that all the bid statements of auction were filled by Muhammad Siddique, ex-Assistant of Assistant Director Minerals Development, Mardan who took signatures from the auction committee on those statements.

8. The above facts, as highlighted by the Inquiry Committee themselves, indicate that it was not a task of one person, rather the entire office of Mineral Development at District Swabi alongwith the office of the Deputy Commissioner Swabi and the Auction Committee were responsible for the proceedings. It is strange to note why only the appellant was singled out. Perusal of record further indicates that the show cause notice issued to him was also incomplete as it did not mention the acts/omissions, committed by the appellant, specified in Rule 3 of the Khyber Pakhtunkhwa Government



Servants (Efficiency & Discipline) Rules, 2011. When there is no omission on the part of the appellant, then how the competent authority imposed the penalty of removal from service upon him?

9. In view of the above discussion, the appeal in hand is allowed as prayed for. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 08th day of May. 2023.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
CHAIRMAN

Fazle Subhan PS