

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7882/2021

BEFORE: **MR. SALAH-UD-DIN** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Mr. Shahzad Khan S/O Amar Khan, R/O Moh. Ghari Jabbar Khan P.O Pabbi Dag Baisud, District Nowshera. (Appellant)

Versus

1. **The Director Institutional & Human Resource Development & Management, Forest Department, Khyber Pakhtunkhwa, Peshawar.**
2. **Chief Conservator of Forests, Central Southern Forest Region-I, Khyber Pakhtunkhwa, Peshawar.**
3. **Secretary Institutional & Human Resource Development & Management, Forest Department, Khyber Pakhtunkhwa, Peshawar. (Respondents)**

Akhunzada Syed Pervez,
Advocate ... For appellant

Mr. Asad Ali Khan, ... For respondents
Assistant Advocate General

Date of Institution..... 07.12.2021
Date of Hearing..... 30.05.2023
Date of Decision..... 30.05.2023

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 order dated 30.04.2021 of respondent No. 1, whereby the appellant was terminated from service and against order dated 09.08.2021 of respondent No. 2, whereby the representation of the appellant was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might



be set aside and the appellant might be reinstated to his service with all back and consequential benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Watchman (Chowkidar) on fixed pay. Later on, vide order dated 02.05.2019, his services were regularized. On 30.04.2021, respondent No. 1 issued termination order of the appellant on the ground of absence from duty but the period of absence was not specifically shown in the termination order. Feeling aggrieved, the appellant filed representation before respondent No. 2 which was rejected on 09.08.2021 but he came into know about the rejection order when he received letter dated 25.11.2021; hence the instant appeal.

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

4. Learned counsel for the appellant, after presenting the case in detail, contended that the appellant never remained absent from his duty and that the period of his absence was not specifically mentioned in the impugned order. According to him, neither charge sheet/statement of allegations was served upon him nor proper inquiry was conducted. He contended that no show cause notice was served upon the appellant and also opportunity of personal hearing was not provided to him, which was not a formality but mandatory under the law. He requested that the appeal might be accepted as prayed.



5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was habitual absentee. He further contended that the appellant was under probation and under Section 11 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, there was no need of holding regular enquiry into the matter. He requested that the appeal might be dismissed.

6. Arguments and record presented before us indicate that the appellant was appointed as Chowkidar (BPS-3) on 02.05.2019 under the Khyber Pakhtunkhwa Civil Servants Act, 1973. According to the terms and conditions of his appointment he was on probation for a period of one year extendable for further one year under Section 6(2) of the Khyber Pakhtunkhwa Civil Servants Act 1973 read with Rule 15(i) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Record further shows that the probation period after lapse of one year was not extended for another one year as per terms and conditions of his appointment, which indicates that his probation period ended on 02.05.2020.


7. Through the impugned order, services of the appellant were terminated on the grounds that he was in the habit of absenting himself from his duty. His services were terminated under clause 2 and 3 of terms and conditions of his appointment order and hence neither any inquiry was conducted nor any show cause notice was issued before passing the impugned order. As stated above, probation period of the appellant was not extended and therefore, it ended on 02.05.2020 and from that date onwards, he was a regular civil servant and any




disciplinary action against him had to be taken under the Government Servants (Efficiency & Discipline) Rules, 2011. It is a well established norm that before awarding any major penalty, a formal inquiry is essential and before conducting such inquiry a properly drafted charge sheet and statement of allegations is necessarily served upon the accused. Then he has to be given a fair chance to present his case before the inquiry officer or committee alongwith an opportunity of personal hearing. In this case no procedure has been adopted; neither the charges have been fully defined nor the appellant has been given a chance of fair trial.

8. In view of the above, the impugned order is set aside. Respondents are directed to reinstate the appellant and conduct proper inquiry into the matter, strictly following the rules, and complete the procedure within 60 days of the receipt of this judgment. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 30th day of May, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)