

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 3244/2021

Date of Institution ... 10.02.2021

Date of Decision... 30.05.2023

Saleem Khan, Ex-Junior Clerk, Mardan Irrigation Division, Mardan.

... (Appellant)

VERSUS

Chief Engineer (South), Irrigation Department, Khyber Pakhtunkhwa,
Peshawar and one other.

... (Respondents)

MR. AIMAL KHAN BARKANDI,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

MR. SALAH-UD-DIN
MS. FAREEHA PAUL

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)


JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts giving rise to filing of the instant service appeal are that the appellant was proceeded against departmentally on the allegations that he had made illegal transaction by taking money from one Hassan Gul S/O Sahib Gul resident of Kas Koroona District Mardan for appointment of his son and other relatives. On conclusion of the inquiry, appellant was awarded major penalty of compulsory retirement from service vide order dated 02.11.2020 passed by Superintending Engineer Mardan Irrigation Circle Mardan. The departmental appeal of the appellant was

also rejected vide order dated 24.12.2020, the information of which was conveyed to the appellant vide letter dated 12.01.2021. The appellant then submitted the appeal in hand for redressal of his grievance.

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. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Deputy District Attorney for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.



4. We have heard the arguments of learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have perused the record.

5. A perusal of the record would show that during the inquiry proceedings, statements of complainant Hassan Gul S/O Tahir Gul and Arshad Ali were recorded in support of the allegations leveled against the appellant. The appellant was, however not provided an opportunity of cross examination of the witnesses so examined during the inquiry proceedings. The inquiry proceedings against the appellant were conducted under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The procedure to be followed

by inquiry officer or inquiry committee has been laid down in rule-11 of the said rules. Rule -11 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provides that on receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness. Similarly, sub-rule 4 of rule-11 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provides that statements of witnesses and departmental representative(s), if possible, will be recorded in the presence of appellant and vice versa. As the appellant was not provided an opportunity of cross examination of the witnesses examined during the inquiry, therefore, such evidence could not be legally taken into consideration for awarding penalty to the appellant. Furthermore, the available record does not show that the witnesses were examined in presence of the appellant. August Supreme Court of Pakistan in its judgment reported as 2023 SCMR 603 has observed as below:-

“10. The scrutiny and analysis of the aforesaid Rules and the procedure set forth therein (present or repealed) unambiguously divulge that the right of proper defence and cross-examination of witnesses by the accused is a vested right. Whether the evidence is trustworthy or inspiring confidence could only be determined with the tool and measure of cross-examination. The purpose of the cross-examination is to check the credibility of witnesses to elicit truth or expose falsehood. When the

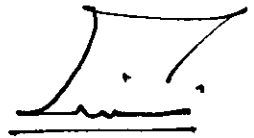
statement of a witness is not subjected to the cross-examination, its evidentiary value cannot be equated and synchronized with such statement that was made subject to cross-examination, which is not a mere formality, but is a valuable right to bring the truth out. If the inquiry officer or inquiry committee 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 coverage, give explanation and contest it before he is found guilty and condemned. The doctrine of natural justice is destined to safeguard individuals and whenever the civil rights, human rights, Constitutional rights and other guaranteed rights under any law are found to be at stake, it is the religious duty of the Court to act promptly to shield and protect such fundamental rights of every citizen of this country. The principle of natural justice and fair-mindedness is grounded in the philosophy of affording a right of audience before any detrimental action is taken, in tandem with its ensuing constituent that the foundation of any adjudication or order of a quasi-judicial authority, statutory body or any departmental authority regulated under some law must be rational and impartial and the decision maker has an adequate amount of decision making independence and the reasons of the decisions



arrived at should be amply well-defined, just, right and understandable, therefore, it is incumbent that all judicial, quasi-judicial and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principle of natural justice. (Ref: Sohail Ahmad v. Government of Pakistan through Secretary of Interior Ministry, Islamabad and others (2022 SCMR 1387) and Inspector General of Police, Quetta and another v. Fida Muhammad and others (2022 SCMR 1583)."

6. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service for the purpose of de-novo inquiry with the directions to the competent Authority to conduct de-novo inquiry strictly in accordance with the relevant law/rules within a period of 90 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity including opportunity of cross-examination be provided to him to defend himself. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.05.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(FAREEHA PAUL)
MEMBER (EXECUTIVE)