

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

**BEFORE: KALIM ARSHAD KHAN, CHAIRMAN
SALAH-UD-DIN, MEMBER (JUDICIAL)**

Service Appeal No.537/2019

Date of Institution.....26.04.2019
Dates of Hearing.....09.02.2023 & 09.03.2023
Date of Decision.....12.06.2023

Bakht Munir, Ex-Associate Professor (BPS-19), Government College of Technology Mingora District Swat.(*Appellant*).

Versus

1. **Government of Khyber Pakhtunkhwa**, through Chief Secretary, Civil Secretariat Peshawar.
2. **Government of Khyber Pakhtunkhwa**, through Secretary Industries, Commerce & Technical Education Department, Peshawar.
3. **The Managing Director**, KP TEVTA Khyber Pakhtunkhwa, Peshawar.(*Respondents*).

Present:

Mr. Niaz Muhammad Khan,
Advocate

For appellant.


Mr. Muhammad Riaz Khan Paindakhel,
Assistant Advocate General
&

For respondents No. 1&2.

Mr. Fazal Shah Mohmand,
Additional Advocate General

Mr. Gohar Ali Durrani,
Legal Advisor

For respondent No.3.

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 Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 01.01.2019, whereby the appellant has been awarded the major punishment of

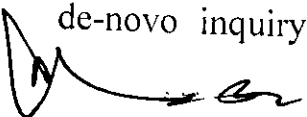
Removal from service and recovery of Rs. 1,43,43,764/- against which his departmental appeal dated 10.01.2019 has been rejected on 01.04.2019.

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JUDGEMENT

KALIM ARSHAD KHAN CHAIRMAN. This appeal has been filed by Bakht Munir, appellant against the order dated 01.01.2019, whereby he was awarded major punishment of removal from service and recovery of Rs.1,43,43,764/- was also directed to be made from. It is also against the order dated 01.04.2019 whereby his departmental appeal was rejected.

2. Brief facts of the case as enumerated in the memo and grounds of appeal are that the appellant was initially appointed in the respondent/department on 04.01.1988 and ever-since his appointment, he had performed his duties as assigned with zeal and devotion and had never given any chance of complaint whatsoever regarding his performance; that he, while performing his duties as Associate Professor (BPS-19) in Government College of Technology Swat, was charged to some allegations and disciplinary proceedings were initiated against him; that an inquiry was conducted and on the basis of its report, the appellant was awarded major penalty of compulsory retirement from service vide order dated 03.06.2015; that after exhausting departmental remedy, the appellant filed Service Appeal No.1169/2015 before the Service Tribunal, which was accepted vide judgment dated 29.11.2017; that the appellant was reinstated in service, however, the department was directed to hold de-novo proceedings within a period of four months after receipt of copy of the judgment; that the respondent/department reinstated the appellant in service vide order dated 13.02.2018 for the purpose of de-novo inquiry; that the departmental proceedings were initiated against the



appellant and he was served with statement of allegations, based on same allegations which were not proved in the first inquiry proceedings; that Mr. Javed Anwar (PCS SG BS-20) was appointed as inquiry officer to probe into the matter; that the appellant submitted his reply with evidence to the Inquiry Officer denying all the allegations leveled against him; that the appellant was served with show cause notice and on the basis of so-called inquiry vide notification dated 01.01.2019, was awarded major penalty of removal from service and recovery of Rs.1,43,43,764/- was also imposed upon the appellant with immediate effect. Feeling aggrieved, the appellant filed departmental appeal on 10.01.2019 which was rejected vide order dated 01.04.2019; hence the instant appeal.

3. On receipt of the appeal, notices were issued to the respondents to file their reply. They submitted their joint reply/para-wise comments. The respondents mainly contended that the personal file/record of the appellant presented a gloomy picture, which was full of complaints and multiple departmental enquiries; that the appellant was proceeded against in the light of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, on account of his direct involvement in embezzlement; that the enquiry committee, after having examined charges, evidence on record and explanation of the accused officer, submitted its report; that opportunity of personal hearing was also afforded to the appellant and after fulfillment of all codal formalities, the competent authority imposed upon him major penalty of compulsory retirement from service; that on the directions of the Khyber Pakhtunkhwa Service Tribunal, the proceedings of de-novo inquiry were initiated against the appellant under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and during the

proceedings all the allegations were again proved as those were proved in the first enquiry proceedings; that after fulfilling all the codal formalities, major penalty of removal from service and recovery of Rs.1,43,43,764/- was imposed on the appellant.

4. We have heard arguments of learned counsel for the parties and perused the record with their assistance.

5. The learned counsel for the appellant reiterated the grounds urged in the memorandum and grounds of appeal and submitted that the appellant was innocent and was penalized on the basis of malice and ill-will of the department because during the earlier enquiry as well as the de-novo enquiry he had accounted for all the accounts and had properly addressed the entire allegations. He prayed for acceptance of the appeal. On the other side the learned law officer refuted the arguments and supported the impugned action against the appellant.

6. The allegations against the appellant, as leveled in the charge sheet and statement of allegations, are as under:

- i. *Being a Principal of Government College of Technology, Dir (Lower) the accounts record maintained by him is miserably poor. The Government cash book has not been maintained for a period of 19 months (April, 2011 to October, 2012) despite that complete record of accounts of regular budget as well as 2nd shift program remained in his custody for maintenance.*
- ii. *The purchase Committee, the Store Purchase Officer and Storekeeper of the Institute have shown their ignorance regarding all purchases made by him alone without observing the legal and codal formalities.*
- iii. *No stock entries have been made by him regarding the purchases made in his tenure.*



- iv. Sanction order of the Directorate General Technical Education & Manpower Training, Khyber Pakhtunkhwa shown by him to the Enquiry Committee is fake as the sanctioned amount is beyond the powers of the Director General. The concerned Deputy Director (Budget & Accounts) has also confirmed his signatures on the sanctioned order as bogus.
- v. The receipt books regarding the tuition and administration fees which he has collected from students during his tenure has not been maintained by him making it difficult to determine the actual amount of receipts.
- vi. Cash book of the regular budget (morning shift program) is blank since September, 2011 and no voucher is available for reference. Similarly the 2nd shift cash book is also blank since April, 2012.
- vii. He has failed to deposit in the concerned Bank Accounts and Government Treasury, the receipts and other charges collected from the students in his tenure.
- viii. Vouchers against the drawls made from the 2nd shift program have not been produced before the enquiry committee during investigation.
- ix. He has obtained signatures of the regular and daily wages staff involved in 2nd shift program on blank proforma and thus charged more claim from the public exchequer against less-payment to the staff. Furthermore, he has also affixed their bogus signatures on such proforma.
- x. Due to the absence relevant record in the cash book the payments made to most of the staff members of the 2nd shift program for the month of October, 2012 cannot be determined.
- xi. He has collected admission fee of Rs.130400/- (Rupees One lac Thirty Thousand & four Hundred only) and as students fine charges of Rs.17000/- (Rupees Seventeen Thousand only) but the same have not been deposited to the concerned Bank Accounts and Government Treasury.
- xii. That in view of the above charges, the expenditures of Government funds for the year 2010 and 2011 which amount to a total of Rs.1396561/- (Rupees thirteen lacs ninety-six thousand five hundred and sixty-one) (other than pays and allowances) is conjure. Similarly. The Special Audit Report has calculated the receipts of Rs.13110000/- (Rupees one crore thirty-one lacs & ten thousands only) from the 2nd shift program but correct and timely deposit of all these funds by him stands fictitious. The figures of the special report's and shift and morning shift private funds are based on enrolments as actual receipts are not available and the cash books are incomplete.



xiii. The expenditures worth millions of rupees out of private/second shift funds are not supported by verified vouchers. All the codal formalities have been ignored and hence declared doubtful and vulnerable to misappropriation.

xiv. The income from the sales of prospectus, fines and hostel is around Rs.350000/- (Rupees three lacs and fifty thousands only) which has the same doubtful status as submitted in para-12 above.

7. Following were the findings of the enquiry officer Mr. Javed Anwar (PCS SG BS 20):

"During the tenure of the accused officer as Principal GCT, Timergara (Dir Lower), spanning from 01.02.2011 to 30.10.2012 (21 months in all). Last five months of the financial year 2010-11, a complete financial year of 2011-12 and first 4 months of financial year 2012-13 were covered. The following quantum of funds under head operating expenses were thus available to the accused officer which were utilized as indicated below:

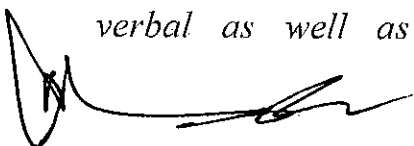
S.No	Period of Financial Year	Budget Available (Rs)	Expenditure made (Rs)	Balance
1.	1.2.2010 to 30.6.2011 F.Y 2010-11	901376	835360/-	66016/-
2.	1.7.2011 to 30.06.2012 F.Y 2011-12	727000/-	725697/-	1303/-
3.	1.7.2012 to 30.10.2012 F.Y 2012-13	1542600/-	87659/-	1454941/-

a) According to the internal audit party, the expenditure so made was irregular and needed proper justification by the accused officer because the requisite sanctions from the competent authority, quotations, tenders, demand lists, stock entries were not available, cash book not maintained and purchase committee not constituted.

b) In view of the incomplete/deficient record, the internal audit party calculated the amounts of revenue/income etc

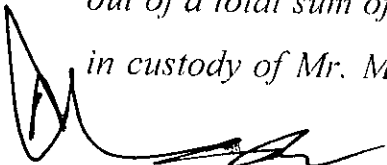
generated from the students of morning/regular shift and second shift, on the basis of the respective enrolments, which came to Rs.3939250/- & Rs.13110000/- respectively.

- c) Since no proper record was maintained, the number of students and amount of money actually collected/received from the students cannot be exactly worked out as the whole record was in the custody of accused ex-principal and it depends on his sweet will to disclose it the way he wanted as to how many were defaulters or failed to deposit the fee.
- d) On the same pattern the internal audit party calculated the cumulative amount from 32 hostel inmates (students) @ Rs.6500/- per student including security as well as mess advance for the session 2011-12 & 2012-13 to be rs.416000/-. Whereas according to the accused, the total amount received on that account was Rs.122000/-. The exact record was not maintained and thus the actual loss cannot be correctly estimated.
- e) According to General Financial Rules the accused officer was required to ensure regular maintenance of accounts and periodical inspection/checking/verification of all accounts books/registers, which he miserably failed to do. Both the cash books i.e. cash book of regular budgets/funds and 2nd shift cash books, were not maintained regularly. The accused initially tried to pass the responsibility on to Mr. Muhammad Israr (Head Clerk) and Muhammad Laiq (Senior Clerk), attributing the failure to keep accounts and maintain cash book despite repeated instructions. The accused officer, however, could not produce any tangible evidence as to why he had not taken any disciplinary action against the officials if they had not been maintaining the accounts/cash books properly. Both the officials blamed by him denied the claim of the accused which got support from verbal as well as written statements of other staff.



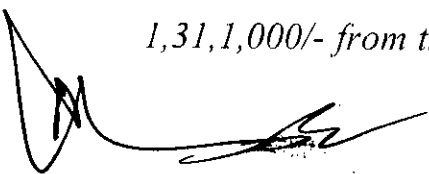
According to them, all record, cash books, receipt books and even cheque books had been taken into personal custody by the accused officer. Mr. Laiq, Senior Clerk, stated that though on papers the accounts of 2nd shift fund had been taken away from Muhammad Israr, Head Clerk, and handed over to him, in addition to morning shift/student fund accounts, but in reality the same had been taken by the accused officer in his personal custody. It was also revealed that a brother of the accused officer would take care of the account matters. Thus the accused was solely responsible to the lapses baselessly blaming others.

- f) Though the accused officer in reply to the Charge Sheet, has attached copies of some of the bids, documents etc regarding a couple of procurement cases but all the concerned staff related to Store, including the Store Purchasing Officer, as well as the special internal audit party as well as the preliminary enquiry committee had pointed out doubtful and fake procurements done without anything actually entering the college gates. Mr. Rehmat Islam, Assistant Professor, Mathematics (Store Purchasing Officer from February, 2011 to June, 2011, Mr. Karimullah, Lecturer Electrical, Mr. Muhammd Tariq Storekeeper and Mr. Ziarat Gul Shop Assistant in their verbal as well as written statements denied any procurements of stores etc in reality to have ever been made except pocketing the money. All purchases from the regular budgetary allocations and 2nd shift were done by the accused officer himself. No actual entries have been made in the stock register to date and the amount of fake sanction order of Rs.100150/- was also drawn and pocketed without purchasing any teaching material at all. Thus expenditures of Rs.371991/- was made out of a total sum of Rs.372400/- as main stock register was in custody of Mr. Muhammad Tariq being the store keeper,



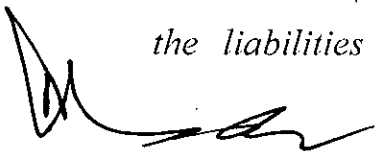
did not show any purchases of stores/stocks etc ever made during the period.

- g) *The fake sanctions order No.DGTE&MT/Acctt/3082; dated 21.06.2011 for Rs.100140/- on account of purchase of training material for GCT, Timergara was passed and the amount was pocketed. Mr. Hidayat-ullah, an ex-Deputy Director confirmed the same to be fake and the Anti-Corruption Establishment also took notice thereof in their report. Which amount was drawn and recoverable from the accused Officer. The fake sanction order was prepared and attested by the accused and sending the AC Bill to the DAO office with the remarks of "resubmitted after doing the needful". He was solely responsible for drawl of the amount. It was a clear fraud by the accused to which he was now flatly refused in his reply to the charge sheet.*
- h) *The accused officer deliberately kept the receipt books in his custody and accused officer has not responded clearly in his reply and simply brushed aside all charges to be baseless. In the absence of relevant record, counterfoils, receipt books, the special internal audit party, preliminary inquiry committee, college staff concerned could not determine the actual quantum of payment made o that account. Statements of Mr. Haider Ali, Assistant Professor Islamiyat (then in-charge of admission) and joint written statement on record by the members of the special internal audit is worth perusal and relevant in this regard.*
- i) *The accused officer has simply admitted to have deposited a sum of Rs. 3,82,000/- in Government Treasury through three challan No. 54,59 and 71 while in the absence of the relevant record on the basis of actual enrollment; special internal audit party as well as the preliminary inquiry Committee in their reports estimated total collection of Rs. 1,31,1,000/- from the admission/students of the 2nd shift and*



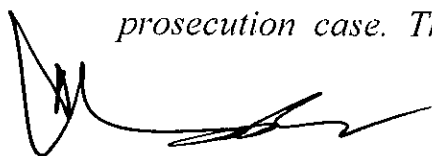
Rs. 38,39,250/- from admitted students of Morning/Regular shift during 2010-11, 2011-12, and 2012-13. The accused officer could not satisfy personal custody of receipt books, deposit of less collected money against estimated large quantum of collected amount and missing of unaccounted for amounts. In view of the foregoing, it is too difficult to reliably determine the actual amount of receipts on this account.

- j) According to GFR provisions and Treasury Rules, on receipt/payment/collection of public money or government Treasury/Bank Account. Withholding and retention of public money and deficient and missing amounts are gross violations and irregularities with clear ulterior motives behind the same.
- k) The accused in his statement while responding to the charge sheet has passed the buck on by claiming that all the relevant vouchers had been handed over to Mr. Fayaz, Sr. Clerk, Audit Section, DG, TE&MT (a member of the special internal audit party). However, his claim is not convincing as the special internal audit party's report did not endorse the accused's claim.
- l) About eleven (11) staff members who were also performing duties in the 2nd shift, in their complaint to the DG/TE&MT alleged that the accused would claim higher amount & pay them lesser amount and obtain their signatures on blank paper; also following a practice of making bogus signatures of certain employees. The charge was very serious and the complainants confirmed their stance verbally as well as in writing. The ACE also took cognizance of the matter registering the case against the accused.
- m) The salaries for the month of October, 2012 which could not be timely paid due to departure of the accused ex-principal, the liabilities were later on cleared by the incumbent



principal after necessary verification. It is now clear that a sum of Rs. 1,03,825/- on account of salary for October, 2012 stands paid to the concerned staff of 2nd shift.

- n) As far as charge at S.No.11 is concerned, a sum of Rs. 68,390/- is still outstanding against the accused officer. A total sum of 4,97000/- is recoverable against which a sum of Rs. 4,28,610/- stands deposited. A sum of Rs. 68390/- is thus still outstanding against the accused officer.
- o) In the charge No. 12, instead of financial years, calendar year of 2010 and 2011 stand reflected. Actually budgetary allocations are meant for financial year and accounts for the expenditure made for funds utilized therefrom are also maintained accordingly. Only one month of January, 2010 from previous tenure of the accused officer as Principal GCT, Timergara falls in calendar year 2010, while last 6 months of calendar year 2010-11 and first six months of Financial year 2011-12 are included therein. The reflected amounts of Rs. 13110000/- as total receipts from 2nd shift and Rs. 3839250/- from morning shift are based on total enrolment of students as taken into account by the Special internal audit team and later on upheld by the preliminary inquiry committee in its report given missing vouchers/missing receipt books. Thus the situation is still the same and in the absence of the complete accounts/receipts/record, the genuineness and accuracy of expenditure/utilization of funds during the tenure of the accused officer stands compromised and cannot be ascertained unless a comprehensive external audit is carried out. The accused officer failed to satisfy his reply to the charge No. 12 on these counts. Physical examination of record produced and oral as well as written statements rendered during the inquiry proceedings verify the prosecution case. The accused officer has claimed lesser



number of admissions of students, out of whom a significant number are claimed to have not paid the prescribed fee. The mere presence of such considerable number of defaulters on institutions' roll without paying the fee reflects adversely on the accused officer mismanagement and working.

p) The charge 13 is general in nature but reflects the truth of wastage of resources and public funds due to non-maintenance of proper record and lack of discipline in protection of public funds.

q) Charge 14 reflects variation in receipts from sale of prospectus which is a similar situation of a careless handling and non-maintenance of proper record resulting in unpredictable loss to the exchequer.

8. Thereafter under the rules the appellant was issued show cause notice by the Chief Minister, Khyber Pakhtunkhwa, wherein it was tentatively decided to impose upon the appellant penalty of removal from service and recovery of Rs. 1,4343,764/-. The appellant submitted reply to the show cause notice on 03.10.2018. The appellant was afforded opportunity of personal hearing and vide notification dated 01.01.2019 the appellant was removed from service and a recovery of Rs. 1,4343,764/- was also imposed upon him. We have perused all the record. The final show cause notice issued to the appellant reflects that the charges of recovery and misuse of powers and misconduct stood proved against him. Besides, the audit party also issued liabilities of 14.3 million rupees against him and recommended its recovery duly mentioned by the enquiry officer in the enquiry report at para-15. Para-15 of the report as discussed in the detailed report of the anti-corruption establishment Khyber Pakhtunkhwa but the recommendation of the enquiry officer contained in para-21(ii) says something else which is reproduced below:-




Besides, a special (external) audit of the accounts pertaining to the reported tenure(01.02.2011 to 30.10.2012) as well as previous tenure (01.04.2008 to 31.01.2010) of the accused officer as Principal GCT Timergara (Dir Lower) may be arranged/carried out in order to ascertain actual amount/quantum of income/receipts/expenditure and verification of accounts . After knowing factual position and actual quantum of the financial losses, recovery of the same from the accused officer must be ensured.

9. We hold that the Enquiry Officer had taken pains and had conducted thorough and detailed enquiry wherein he had recorded statements of a number of officers/officials duly associating the appellant with the proceedings, therefore, the same does not suffer from any defect. Yes, the recommendation No.2, referred to above was not taken into consideration by the competent authority while passing the impugned notification, therefore, we, maintain the punishment of removal of the appellant from service and also the recovery of known and ascertained losses. However, the department is at liberty to proceed regarding the recommendation No.2 of the enquiry proceedings but strictly in accordance with law. The appeal is disposed of in the above terms. 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 12th day of June, 2023.*


KALIM ARSHAD KHAN
Chairman


SALAH UD DIN
Member (Judicial)