

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 6568/2021

BEFORE: ROZINA REHMAN --- MEMBER(J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Qaiser ur Rahman S/o Aziz ur Rehman Village Shaheed Abad
(Tambulak) Mardan (Ex-Chowkidar). The Govt. Primary School,
Shaheed Abad (Tambulak) Mardan..... (*Appellant*)

VERSUS

1. The Secretary, Elementary and Secondary Education Department
Khyber Pakhtunkhwa, Peshawar.
2. The Director, Elementary and Secondary Education Department
Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male), Elementary & Secondary
Education Department Mardan..... (*Respondents*)

Present:

ADAM KHAN,
Advocate --- For Appellant

ASAD ALI,
Assistant Advocate General, --- For respondents

Date of Institution.....18.06.2021
Date of Hearing.....07.04.2023
Date of Decision.....07.04.2023

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service
appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa
Service Tribunal, Act 1974 with the prayer as copied below;

*“That on acceptance of this appeal, setting aside the
impugned order, the appellant may be ordered to be
reinstated into service with all back & service benefits.”*

02. Brief facts of the case are that the appellant was appointed as
Chowkidar & posted in GPS Shaheed Abad Tambulak Mardan vide

Notification dated 12.01.2015. On 06.03.2021, the appellant was removed from service on the ground of negligence towards his duties by allowing private function/Wedding Ceremony within the premises of school building. Feeling aggrieved the appellant filed departmental appeal on 10.03.2021 through Registered A/D post which was not decided within the statutory period hence the instant service appeal.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Assistant Advocate General and have gone through the record with their valuable assistance.


04. Learned counsel for the appellant contended that the allegations leveled against the appellant are incorrect, false and based on malice. That the impugned order dated 06.03.2021 is illegal, void and unjustified. He next contended that it is incorrectly mentioned in the impugned order that the same is based on inquiry report. It was vehemently contended that neither any charge sheet/statement of allegations nor any Show Cause Notice was ever served upon the appellant and the inquiry proceedings were conducted in absence of the appellant. No codal formalities were fulfilled and the appellant was condemned unheard. He, therefore, requested for acceptance of the instant service appeal.

05. Learned Assistant Advocate General argued that the appellant while serving at GPS Shaheed Abad Tambulak Mardan was suspended from Government service due to negligence towards his duty. That the appellant had allowed a private function/wedding ceremony in the school building and a dance party was held in GPS Shaheed Abad Tambulak on

05.03.2021 and its video got viral on social media. He next argued that the local police had take action and the culprits were arrested. That proper charge sheet and statement of allegations were issued to the appellant and proper inquiry was conducted into the allegations against the appellant and upon the recommendation of the inquiry officer he was awarded the major punishment of removal from service. The inquiry officer visited his school and the appellant has given his statement to the inquiry officer. The inquiry was not conducted on the back of appellant, therefore, it is legal and according to law. Since all the codal formalities were fulfilled before passing the impugned order, the appeal in hand may therefore, be dismissed, he concluded.

06. Scrutiny of record submitted by the respondents reveal that legal procedure/codal formalities as laid down in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 were not observed properly while proceeding against the appellant. Rule 10(1) of the Rules *ibid* interalia provide that:

Procedure to be followed by competent authority where inquiry is necessary-(1) *If the competent authority decides that it is necessary to hold an inquiry against the accused under rule 5, it shall pass an order of inquiry in writing, which shall include-*

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- (b) *the grounds for proceeding, clearly specifying the charges alongwith apportionment of responsibility;*
 - (d) *direction to the accused to submit written defense to the inquiry officer or the inquiry committee, as the case may be, **within reasonable time which shall not be less than seven days** and more than fifteen days of the date of receipt of orders.*

Similarly Rule 14 sub rule (4) (a) of the Rules *ibid* stipulates that;


(4) Where the charge or charges have not been proved, the
accuse, the competent authority shall issue a show cause
notice to the accused by which it shall-


(a) Inform him of the charges proved against him and the
penalty or penalties proposed to be imposed upon him;

07. Facts of the case in hand reveal that the entire proceedings against the appellant were taken in utter violation of the rules specified above. No charge sheet/statement of allegations prepared and served upon the appellant. No Show Cause Notice given to him by the competent authority before imposition of penalty. At no stage of the disciplinary proceedings opportunity of defense given to the appellant. In fact the whole proceedings starting from placing of the appellant under suspension, order of inquiry and imposition of penalty were completed in one eventful day on 06.03.2021. This summary trial tantamount the appellant (Chowkidar) condemning unheard and making him escape goat.

08. In view of the foregoing we do not find the impugned order sustainable. The appeal in hand is, therefore, accepted as prayed for and the appellant is reinstated into service with effect from 06.03.2021 with all back benefits. Consign.

09. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 07th day of April, 2023.


(ROZINA REHMAN)
MEMBER (J)


(MUHAMMAD AKBAR KHAN)
MEMBER (E)