

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**FAREEHA PAUL ... MEMBER (Executive)**

*Service Appeal No.5189/2021*

Date of presentation of Appeal.....07.05.2021  
Date of Hearing.....25.07.2023  
Date of Decision.....25.07.2023

**Mr. Shamsher Khan, Assistant (BPS-16), O/O Deputy Commissioner, Buner.....(Appellant)**

Versus

1. **The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.**
2. **The Commissioner Malakand Division, at Saidu Sharif, Swat.**
3. **The Deputy Commissioner, District Buner. ....(Respondents)**

Present:

Mr. Kamran Khan, Advocate .....For the appellant  
Mr. Fazal Shah Mohmand, Additional Advocate General ...For the respondents

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**Appeal Under Section 4 Of The Khyber Pakhtunkhwa Service Tribunal Act, 1974 Against The Impugned Order Dated 22.02.2021, Whereby, Two Annual Increments Have Been Forfeited For Two Years And Against The Appellate Order Dated 08.04.2021, Whereby, The Departmental Appeal Of The Appellant Has Been Dismissed With No Good Reason**

**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case are that appellant was serving as Senior Clerk at District Revenue Accounts Branch, District Buner; that an application was submitted before the respondent No.3 by a lady, namely Mst. Salma, widow of Late Muqarab Khan, Ex-Naib Tehsildar for the retirement sanction and retirement benefits of her husband, on 07.10.2020; that the respondent No.3 vide letter dated 03.11.2020, sought



opinion from the SMBR through respondent No.2. Resultantly, the SMBR ordered an inquiry into the delay for non submission of pension benefits and the Additional Deputy Commissioner, after conducting inquiry, submitted inquiry report to the respondent No.3 on 22.02.2021 recommending the forfeiture of two increments for two years. Accordingly, the impugned order dated 22.02.2021 was passed, whereby, minor penalty of two increments for two years, was imposed upon the appellant. Feeling aggrieved, he filed departmental appeal which was rejected, hence, this appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

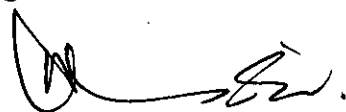
4. We have heard learned counsel for the appellant and learned Additional Advocate General for respondents.

5. Learned counsel for the appellant argued that the impugned orders were against the law, facts and norms of justice; that the appellant had not been treated in accordance with law and rules and as such they had violated Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He submitted that the appellant had not been the custodian of the Branch of District Revenue Accountant rather the District Revenue Accountant himself had the responsibility for all such matters; that the family of the deceased had been informed verbally to provide the relevant succession certificate from the concerned Senior Civil Judge but their application for succession had been dismissed by the Senior Civil Judge with direction to approach the

competent Civil Court to determine the legal heir ship. Further submitted that no charge sheet and statement of allegations had been provided to the appellant before initiating the inquiry, hence, the whole procedure adopted by the respondents was doubtful and void. He concluded that no chance of personal hearing was provided and no regular inquiry had been conducted into the matter. Therefore, he requested for acceptance of the instant service appeal.

6. On the other hand, learned Additional Advocate General submitted that the appellant had rightly been punished according to law, rules and facts and had been dealt in accordance with law as per Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973; that the appellant was the custodian of the Branch as he had been dealing with the entire accounts matters at that time and being a responsible official, he had to provide the necessary documents required in all such cases. He submitted that all the codal formalities had been fulfilled and the procedure adopted had not been doubtful in any way. Further submitted that no malafide had been done and proper opportunity of defense had been provided to the appellant. Lastly he concluded that proper inquiry had been conducted and the inquiry report was attached for ready reference. Therefore, he requested for dismissal of the instant service appeal.

7. It appears from the available record that no proper inquiry was conducted as the appellant was not associated with the inquiry proceedings. Besides, on receipt of inquiry report, without issuing show cause notice, the appellant was penalized. Therefore, the impugned order is not sustainable on




acceptance of the appeal, we set aside the impugned order. The case is remitted back to the Department for de-novo inquiry within 60 days of the receipt of this judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25<sup>th</sup> day of July, 2023.*



**(KALIM ARSHAD KHAN)**  
Chairman



**(FAREEHA PAUL)**  
Member (Executive)