

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD

Service Appeal No. 1486/2019

Date of Institution... 05.11.2019

Date of Decision... 25.07.2023

Muhammad Arif, SPST (BPS-12), GPS Potha, District Mansehra.
... (Appellant)

VERSUS

The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and 02
others.

... (Respondents)

MR. UMER FAROOQ,
Advocate

For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

For respondents.

MR. SALAH-UD-DIN
MS. RASHIDA BANO

MEMBER (JUDICIAL)

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JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts as per memorandum of the appeal are that appellant was initially appointed as PST (BPS-07) now (BPS-12) in the respondent-department. The appellant served the department quite efficiently and was then promoted to the post of SPST. The appellant while posted in GPS Potha District Mansehra, received the impugned order dated 21.06.2019, whereby he had been awarded major penalty of compulsory retirement from service on the allegation that he had remained absent from duty. The penalty so awarded to the appellant was challenged by him through filing of departmental appeal, however the same was rejected vide order dated

30.09.2019, which was communicated to the appellant on 07.10.2019. The appellant then approached this Tribunal by way of filing the instant service appeal for redressal of his grievance.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by filing written reply, raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant argued that the appellant did not remain absent from duty and whole of the proceedings were conducted at his back, without affording him any opportunity of personal hearing or self defense. He next argued that no charge sheet as well as statement of allegations and show-cause notice were issued to the appellant and he was awarded major penalty without holding any regular inquiry. He further argued that rights of the appellant as enshrined in Articles 4 & 25 of the constitution of Islamic Republic of Pakistan were badly violated. He next argued that the appellant was awarded the punishment of compulsory retirement from service on the allegation of absence from duty, however neither specification of dates of absence has been mentioned in the impugned order nor the procedure as provided in Efficiency and Disciplinary Rules, 2011 was adopted, therefore, the impugned orders are liable to be set-aside. Reliance was placed on 2006 PLC (C.S.) 627, 2011 SCMR 1618, 2012 2009 SCMR

339, 2021 PLC (C.S.) 740, 2020 PLC 209 PLC (C.S.) 853, 2023 SCMR 291, 2023 PLC (C.S.) 650 and 2023 SCMR 1135.

4. On the other hand, learned Deputy District Attorney for the respondents argued that the appellant was in habit of remaining absent from duty as well as late coming to school and sleeping during the school time, therefore, a proper inquiry was conducted against the appellant and the allegations against him stood proved during the inquiry. He next argued that the appellant was associated with the inquiry proceedings and he was provided opportunity of self defense as well as personal hearing but he failed to prove his innocence. He further argued that the appellant has been awarded the impugned penalty after fulfilling of all legal and codal formalities, therefore, the appeal in hand may be dismissed with cost.

5. We have heard the arguments of both the parties and have perused the record.

6. The appellant was marked absent on 04.10.2018 and absence report in this respect was forwarded by Sub-Divisional Education Officer (Male) Mansehra to District Education Officer (Male) Mansehra, who issued show-cause notice to the appellant on 10.11.2018. The allegations of smoking inside the school premises as well as sleeping during school timings were also leveled against the appellant in the above-mentioned show-cause notice. The contents of the show-cause notice so issued to the appellant would show that it


was a final show-cause notice, whereby the competent Authority had opted to dispense with conducting of formal inquiry, however the competent Authority then issued another final show-cause notice to the appellant vide office memo bearing No. 18381 dated 13.12.2018 with the same allegations as mentioned in the previous show-cause notice. In his reply to the final show-cause notice, the appellant had though admitted the allegation of one day absence on 04.10.2018, however he had categorically negated rest of the allegations leveled against him. The competent Authority, however awarded him major penalty of compulsory retirement vide the impugned order dated 21.06.2019. According to the final show-cause notice, the appellant had allegedly remained absent only on 04.10.2018, while the impugned order dated 21.06.2019 is showing his absence period as 16 days without disclosing the dates on which the appellant had allegedly remained absent from duty. The impugned order dated 21.06.2019 includes the alleged absence period, regarding which no show-cause notice was issued to the appellant and he was also not even provided any opportunity to defend himself. Moreover, the allegations of smoking in school premises as well as sleeping in the school in duty hours are allegations of such a nature requiring regular inquiry through appointing of an inquiry officer. The competent Authority, however dispensed with formal inquiry without giving any cogent reason for the same. Worthy apex court has held in a number of cases that for awarding major penalty, conducting of

regular inquiry against a civil servant is must. The impugned orders are thus not sustainable in the eye of law and are liable to be set-aside.

7. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant stands reinstated for the purpose of de-novo inquiry. The competent Authority shall conduct de-novo inquiry strictly in accordance with relevant rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that that appellant shall be associated with the inquiry proceedings by providing him fair opportunity of personal hearing as well as self defence. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.07.2023


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD


(RASHIDA BANO)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD