

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

**Service Appeal No. 1452/2013**

BEFORE: **MRS RASHIDA BANO** ... **MEMBER (J)**  
**MISS FAREEHA PAUL** ... **MEMBER (E)**

Sher Adam Khan S/O Gul Nawaz Khan R/O Hayatabad, Peshawar Ex-Electric Inspector Government of Khyber Pakhtunkhwa, Irrigation Department, Peshawar..... (*Appellant*)

Versus

1. Secretary, Government of Khyber Pakhtunkhwa, Energy & Power Department.
2. Secretary, Government of Khyber Pakhtunkhwa, Irrigation Department, Peshawar.
3. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.  
.....(*Respondents*)

Arbab Saif-ul-Kamal,  
Advocate ... For appellant

Mr. Fazal Shah Mohmand,  
Addl. Advocate General ... For respondents

Date of Institution..... 22.10.2013  
Date of Hearing..... 03.08.2023  
Date of Decision..... 03.08.2023

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against office order dated 05.08.2013 of respondent No. 1, received by the appellant through letter dated 26.09.2013 whereby move- over to BS-20 on 1.12.1995 was rejected. It has been prayed that on acceptance of the appeal, order dated 05.08.2013 be set aside and the appellant be allowed move-over to BS-20 with all monetary benefits till the date of his retirement.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant submitted an application before respondent No. 1 on 31.10.1995 that he had crossed the maximum of the scale of B-19 and was due for moveover to B-20 on 01.12.1995. The case for the aforesaid purpose was under process when in the meantime he was taken into custody on 13.07.2000 by the NAB authorities. He was released from the custody of NAB on 03.11.2000, on the basis of plea bargain. Disciplinary action was initiated against him on 13.04.2001, he was served with show cause notice on 19.07.2001, and without conducting regular enquiry, was dismissed from service on 20.08.2001. The appellant filed service appeal No. 1173/2001, on 01.12.2001 before the Service Tribunal which was accepted on 17.12.2008 with all back benefits as no enquiry was conducted in the matter. On 22.07.2009, respondent No. 1 issued notification whereby the appellant was reinstated in service with back benefits i.e. w.e.f. 20.08.2001, the date of dismissal from service, till date of his retirement on superannuation on 06.03.2005. On 20.02.2012, appellant submitted subsequent application before respondent No. 1 for award of move-over to BS-20 but no heed was paid to the same. On 11.09.2013, he gave reminder for disposal of pending representation which was finally regretted on 05.08.2013, hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant



as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant was entitled for grant of move over to BS-20 with effect from 01.12.1995 as he had crossed the maximum scale of B-19. The case of the appellant could not be finalized as he was taken in to the custody by the NAB. He contended that the appellant submitted subsequent representation which was not honoured. He argued that by not giving him move over to B-20 at the relevant time, the appellant could not be held responsible as it was the department who intentionally delayed the case on malafide intention. He requested that the appeal might be accepted as prayed for.

5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that move-over to next higher pay scale was the right of government servant with clean and unblemished service record whereas the service record of the appellant was tainted with endorsement of corruption charges by entering into plea bargain with NAB and surrendering Rs. 11.5 million, against the assets acquired by him through acts of corruption and corrupt practices. He further argued that the appellant had already availed the technical benefits of law. According to him Service Tribunal's order of conducting inquiry against him stood infructuous because of his superannuation much before the Tribunal's judgment, hence he availed reinstatement with all back benefits which otherwise



could not have been possible. He further argued that the appellant was not entitled to move-over with effect from 01.12.1995 because for the move over, submission of five ACRs was a pre-requisite which was not fulfilled. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it is found that the appellant is seeking move-over from BS-19 to BS-20 from 1995 under a policy that was in vogue at that time, and later on discontinued in 2001, as stated by the departmental representative. The grounds presented by learned counsel for the appellant were that the appellant could not pursue the application he had forwarded to the Secretary Power Department as he was taken into custody by the NAB authorities. It was noted from the arguments and record that the appellant was arrested by NAB on charges of corruption on 13.07.2000 and because of plea bargain, he was released on 03.11.2000. He was proceeded against departmentally and dismissed from service on 20.08.2001. Later on, through a consolidated judgment dated 17.12.2008 of this Tribunal, he was reinstated in service with all back benefits. Paras 20, 21, 22 and 23 of the judgment are reproduced as follows:-

*"20. In the light of the above, we have come to the conclusion that due to withdrawal of provision regarding inquiry proceedings from section 3 on 23.05.2021 retrospectively, which was applicable to the appellants, the appellants could not be deprived of their right to defend themselves in detailed inquiry before the Inquiry Committee,*

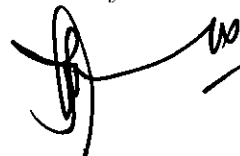


*in cases in which major penalty could be expected to be imposed. Insertion of sub-section (5) of section 5 also could not so deprive them of their right to a certain procedure which had provided facility to them to properly defend themselves, specially when the legislature itself further modified section 3 through the N.W.F.P Ordinance No. VIII of 2002.*

21. *We, therefore, hold that the respondents have not properly acted upon the law then available and in force, and have adopted a procedure which was against the law in force. The retrospectivity of Ordinance No. V of 2001 was against the accrued right of the appellants. Though the respondents have taken the plea that the appeals are time-barred. But they have not produced their record showing that when the impinged orders of dismissal from service and the rejection of departmental appeal order were actually communicated to the appellants. As the order is based on mis-interpretation and misapplication of the law, we deem it in the interest of justice to condone the delay.*

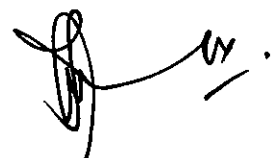
22. *A major penalty of any kind, including the extreme penalty of dismissal from service, could not be imposed against the appellants, unless a fair chance was provided to the appellants to defend themselves during a detailed inquiry to scrutinize their the conduct, in accordance with all the established principles of law, justice and equity, and a reasonable opportunity of hearing was given to them before recording a finding as well as before issuing final order of imposition of penalty. The appellants could not be punished except in accordance with law, and they could not be condemned unheard.*

23. *We, therefore, accept the present appeals, set aside the impugned orders dated 20.08.2001 and 29.06.2001 of*



*dismissal of the appellants from service, and we direct the official respondents to reinstate the appellants into their service immediately w.e.f. the dates of their dismissal from service. The respondents may initiate and conduct disciplinary proceedings against the appellants, urgently, if they may so like, in accordance with the law prevailing and in force on the date of plea bargaining of the appellants, in the light of the judgments of the August Supreme Court of Pakistan and the High Courts. For the purposes of the inquiry, the appellants shall be deemed to be at the stage of service before 23.05.2001. The issues of payment of salary etc. of the appellants for the period from the dates of dismissal till the dates of their reinstatement as a consequence of this judgment, and of their back benefits, shall follow the result of the disciplinary proceedings. Parties are, however, left to bear their own costs.”*

7. The above mentioned judgment indicates that the appellant was reinstated because of the fact that the department failed to follow the procedure while awarding the penalty of dismissal from service while passing the order dated 20.08.2001, therefore, respondents were given the liberty through the above judgment that they may initiate and conduct disciplinary proceedings against the appellant, if they so desired, in accordance with law. When confronted with the question that why it was not done, the learned AAG informed that the appellant had already retired on 06.03.2005 well before the judgment of this Tribunal and hence could not be proceeded against under the prevailing government rules. He invited the attention to the reinstatement order dated 22.07.2009, issued in pursuance of the judgment of this Tribunal,



vide which the appellant was reinstated in service with effect from the date of dismissal i.e. 20 August 2001 till the date of his superannuation and retirement on 6<sup>th</sup> March, 2005, with all back benefits.

8. Record presented before us indicates that moveover was allowed to the civil servants under the policy which clearly mentioned as follows:-

*“(ix) In allowing move-overs, the competent authority should ensure that the confidential reports of the concerned employees are:-*

*a) Free from adverse remarks for the last five years.*

*In case an employee fails to fulfill this condition, he shall wait at the maximum of the pay scale till he has earned in succession the requisite number of reports without adverse entry and his move-over shall take effect from 1st December of the year in which the last such report is earned.*


*d) at least good or above for move-over to BPS-20.*

*It will also be assured that no penalty under the relevant rules has not been imposed on the employee being allowed to move-over, during the last five years.”*

9. In case of appellant, it is noted that he did not fulfill the above mentioned criteria for move-over as his service record became tainted with the charges of corruption and he was taken into NAB custody on those charges and later on released by them after plea bargain of Rs. 11.5 Million. As his release was not honourable, he was, therefore, not entitled for the moveover which he is claiming from his competent authority.

10. In view of the above discussion, the appeal in hand is dismissed being groundless. Costs shall follow the event. Consign.

11. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 3<sup>rd</sup> day of August, 2023.*

  
**(FAREEHA PAUL)**  
Member (E)

*\*Fazle Subhan, P.S\**

  
**(RASHIDA BANO)**  
Member (J)





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03<sup>rd</sup> Aug. 2023 01. Arbab Saif-ul-Kamal, Advocate for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 08 pages, the appeal in hand is dismissed being groundless. Costs shall follow the event. Consign. .

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 03<sup>rd</sup> day of August, 2023.*

  
(FARIMA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Fazal Subhan PS\*