

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 5792/2021

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

Mst. Bibi Razia Ex-District Education Officer (F) Bannu presently Principal,
Government Girls Higher Secondary School Chowkara District Karak.
..... (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar.
3. Director Elementary & Secondary Education Directorate, Khyber Pakhtunkhwa, Peshawar. (*Respondents*)

Mr. Farmanullah Khattak,
Advocate

...

For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

...

For respondents

Date of Institution..... 19.05.2021
Date of Hearing..... 08.08.2023
Date of Decision..... 08.08.2023

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 the order dated 04.11.2020 vide which minor penalty of stoppage of one increment for one year had been imposed upon the appellant and against which her departmental appeal/review petition had been regretted vide order dated 16.04.2021. It has been prayed that on acceptance of the instant appeal, the impugned order dated 04.11.2020 and subsequent



order of rejection of departmental appeal might be set aside alongwith any other remedy which the Tribunal deemed appropriate.


2. Brief facts of the case, as given in the memorandum of appeal, are that enquiry proceedings were initiated against the appellant on the basis of complaint by one Khan Zada S/O Muhammad Sher Khan R/O Domel District Bannu, wherein allegations were leveled that in recruitment process, rules were violated in appointment of class-IV employees against the posts of Naib Qasid and Chowkidar in the office of SDEO (Female) Domel, Bannu. On the basis of aforesaid complaint, Secretary Elementary and Secondary Education vide endorsement No. 7893-96 dated 27.02.2017 appointed one Imtiazul Haq, the then District Education Officer (Male) Bannu to conduct preliminary enquiry, who conducted the enquiry and submitted report that one of the appointed candidates was non-local; although he belonged to District Bannu but was not from Tehsil Domel. Thereafter formal regular inquiry was initiated and appellant was formally proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet and statement of allegations. Proceedings of the enquiry committee finally culminated with the recommendation that recruitment rules in the appointment of Class-IV had been violated and the charge stood proved against the appellant. It was also recommended that disciplinary action might also be taken against one Sher Daraz Khan, the then Deputy Director (P&D) serving in the Directorate of E&SE, under E&D Rules 2011, as his role was doubtful; on one hand he signed the minutes of the DPC on the same date and venue, while on the other, he had denied attending the



meeting of Selection Committee for appointment of Class-IV employees. On the basis of recommendation in the enquiry report, appellant was served with a final show cause notice dated 10.12.2019 which was duly replied by her. She also requested for personal hearing, which was granted to her on 24.09.2020 by the Secretary Relief, Rehabilitation & Settlement Department, on behalf of the competent authority. The competent authority, after considering the charge sheet and statement of allegations and reply to the show cause notice, imposed minor penalty of stoppage of one increment for one year vide impugned order dated 04.11.2020. Feeling aggrieved, the appellant filed review petition/departmental appeal on 20.11.2020 which was finally regretted vide order dated 16.04.2021 issued and signed on 22.04.2021; hence the instant service appeal on 19.05.2021.

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 Deputy District Attorney 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 inquiry committee neither collected any evidence nor brought on record any documents in support of the charges, irrespective of the fact that the appellant was neither confronted with any documentary evidence nor opportunity of cross examination was afforded to her. He further argued that the report of the enquiry committee was based on assumption and presumption. There was nothing on record which could suggest that charges of violation of rules of Class-IV appointment had been proved against the



appellant, while on the other hand, the appellant submitted sufficient material covering the convening of meeting of DPC and DSC on the same date and venue. He further argued that the complainant was neither called by any of the enquiry officer nor her statement was ever recorded during the inquiry proceedings in order to put forth her point of view. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that a complaint was received alleging violation of rules in appointment of class-IV in the office of the SDEO (F) Domel, District Bannu. The competent authority constituted a fact finding inquiry into the matter and on the recommendation of the inquiry officer, formal inquiry was initiated and the appellant was served with charge sheet and statement allegations. He contended that the appellant was afforded proper opportunity to defend herself but she failed to prove her innocence and hence the inquiry officer submitted report and recommended the appellant for imposition of minor penalty as prescribed under Rule 4 (a)(ii) of the Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011. He requested that the appeal might be dismissed.

6. The appellant has been awarded minor penalty of stoppage of one increment for one year as a result of inquiry conducted against her on the allegation that she, while posted as District Education Officer (F), Domel Bannu, violated the recruitment rules in the appointment of Class-IV and deprived the eligible candidates from their due right. Perusal of inquiry



report attached with the service appeal shows that the inquiry committee in its findings stated as follows:

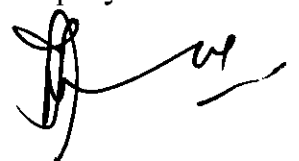
"From perusal of the record, reply of the accused, statements of the members of the DSC, cross examination and discussion, the following findings/conclusions were arrived:

- i. *The charge regarding violation of the recruitment rules in the appointments of class-IV and depriving the eligible candidates from their due rights "stands proved" against the accused officer as no proper procedure according to the recruitment policy of the Provincial Government has been adopted. No call letters were issued to the candidates, nor the DSC meeting held for the recruitments as all the members of the DSC denied their presence and declared their signatures as fake."*

7. It has been noted that the Inquiry Committee did not clarify the procedure that had not been adopted by the appellant while recruitment of the Class-IV employees. As stated by the learned counsel of the appellant, she followed the rules as given in the ESTA Code and read out the relevant portion as follows:-

"Provided further that the appointment in Basic Pay Scale 1-4 shall be made on the recommendations of the Departmental Selection Committee through the District Employment Exchange concerned, or, where in a district the office of the Employment Exchange does not exist, after advertising the posts in the leading newspapers."

8. According to the learned counsel for the appellant, she advertised the posts but he could not clarify the point regarding newspapers in which the advertisement appeared. While referring to the Employment



Exchange, he could not provide any documentary evidence including any letter addressed to the Employment Exchange and their response. Perusal of Inquiry Report indicates that the report is silent on the above points. On the point of cross examination, it was noted that the report is silent on any opportunity provided to the appellant to cross examine the members of Departmental Selection Committee, who have been interviewed by the Inquiry Committee, which is against the spirit of fair trial.

9. In view of the above discussion, the service appeal in hand is partially allowed with the direction to the respondent department to conduct denovo inquiry in the matter by giving opportunity of cross examination to the appellant in order to fulfill the requirements of a fair trial. The respondent department is further directed to complete the process and firm up its report within sixty days of the receipt of this order. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 8th day of August, 2023.*


(FARIEHA PAUL)
Member (I)

Fazle Subhan, P.S


(RASHIDA BANO)
Member (J)

SA 5792/2021


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5 AUG 2023

08th Aug. 2023 01. Mr. Farmanullah Khattak, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the service appeal in hand is partially allowed with the direction to the respondent department to conduct denovo inquiry in the matter by giving opportunity of cross examination to the appellant in order to fulfill the requirements of a fair trial. The respondent department is further directed to complete the process and firm up its report within sixty days of the receipt of this order. Costs shall follow the event. Consign.

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(FAREEHA PAUL)
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(RASHIDA BANO)
Member (J)

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