

that when there is an allegation against a person he shall be given opportunity to rebut it by conducting a fair inquiry. If the appellant was having persistent reputation of being corrupt even then in accordance with law, he was required to have been provided a chance to rebut it and prove his innocence. It is also pertinent to mention that another inquiry was also initiated against the appellant on the allegation of corruption record of which was also produced by the respondents which reveals that due to the compulsory retirement the same was held in abeyance vide order dated 25.05.2011.

8. As sequel to above discussion, the impugned orders are set aside and appellant is reinstated in service for the purpose of de-novo inquiry with direction to the respondents to conduct de-novo inquiry within a period of 90 days after receipt of copy of this judgment. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14th day of September, 2023.*


(MUHAMMAD AKBAR KHAN)


Member (E)


(RASHIDA BANO)

Member (J)

“Notwithstanding anything contained in Sub-Section 1 & 2 the competent authority, may in the public interest direct that civil servants may retire from service, from such date, as may be determined by the competent authority after he has completed twenty years of service. For pension or other retirement benefits in the manner as may be prescribed. Provided further that no direction under this Sub-section shall be made until the civil servant has been informed in writing of the grounds on which it is proposed to make the direction, and has been given reasonable opportunity of showing cause against the said direction.”

As per proviso mentioned above reasonable opportunity of showing cause is required to be provided to the civil servant before issuance of compulsory retirement order by the authority. Appellant in written reply specifically requested for providing opportunity of self defense for rebutting allegation of corruption but no such opportunity was provided to the appellant for fulfilling requirement of justice. In the show cause notice it is mentioned that Anti Corruption Committee of the respondent department confirmed allegation of having persistent reputation of being corrupt of the appellant in its meeting held on 30.06.2011.



7. Perusal of minutes of the Anti-corruption Committee reveals that appellant was even not summoned to rebut the allegation of having persistent reputation of being corrupt on the basis of which committee firmed an opinion about the character and honesty of the appellant. The accused was required to have been informed about it and chance to rebut the allegation provided to him. It is demand of law and justice

that matter his service record was such that could warrant forced retirement of the appellant. He submitted that inquiry committee did not make any probe neither associated the appellant with any inquiry nor put the appellant for rebuttal.

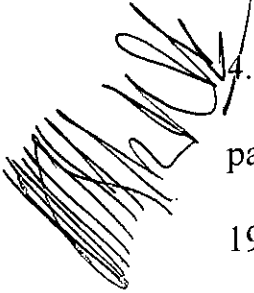
5. Learned District Attorney contended that appellant was an employee of Sessions Court Peshawar and was proceeded departmentally on report of the Anti Corruption Committee in accordance with law on the subject. He further argued that show cause notice was issued to appellant upon which he submitted reply which found unsatisfactory and after fulfillment of all codal formalities appellant was rightly retired from service vide order dated 11.07.2011.

6. Perusal of record reveals that appellant was serving in respondent department as stenographer. He was issued with a show cause notice having persistent reputation of being corrupt by the respondent No. 2 on 01.07.2011 calling upon the appellant to show cause as to why he should not be retired from service in terms of Khyber Pakhtunkhwa Civil Servants Act, 1973 (KP Act No. XVIII of 1973), w.e.f 12.07.2011.

Appellant submitted reply of the said show cause notice on 07.07.2011 which was found unsatisfactory and appellant was compulsorily retired from service vide impugned order dated 11.07.2011. Departmental appeal filed was also dismissed on 04.07.2014. Appellant was given notice under section 13(3) of Khyber Pakhtunkhwa Civil Servants Act, 1973 (KP Act No. XVIII of 1973) which deals with the retirement of civil servant and provides that:

should not be retired from service in terms of clause (a) of Sub-Section (I) of Section 13 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (KP Act No. XVIII of 1973), the appellant was called upon to submit his explanation within seven days. The appellant refuted the allegations and submitted his detailed reply and also applied for the alleged incriminatory material that are used against him. The authority vide order dated 11.07.2011 directed the retirement from service of the appellant w.e.f 12.07.2011. After receipt of impugned order dated 11.07.2011 the appellant applied for the grant of the copies of the record, which was not provided. Feeling aggrieved appellant filed departmental appeal on 20.07.2011 before the august Peshawar High Court, Peshawar, which was dismissed vide impugned order and judgment dated 04.07.2014, hence the instant service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.



4. Learned counsel for the appellant submitted that impugned order passed by the respondents is against the law and in violation of Article 199 of the Constitution of Islamic Republic of Pakistan 1973. He argued that proceedings conducted against the appellant are against the express provision of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 1973 and order of retirement/penalty is nullity in the eyes of law. He further argued that no evidence is available where it could show that the appellant has willfully misconduct himself or for

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1091/2014

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mehboob Ali S/O Noroz Khan Village Dagi Jadeed, Tehsil Pabbi, District Nowshera Ex. Stenographer Sessions Court, Peshawar.

(Appellant)

VERSUS

1. The Hon'ble Administrative Judge through the Hon'ble Registrar of the Peshawar High Court, Peshawar.

2. The Hon'ble District and Sessions Judge, Peshawar.

(Respondents)

Mr. Rooh Ul Ameen
Advocate

... For Appellant

Mr. Muhammad Jan
District Attorney

... For Respondents

Date of Institution.....18.08.2014

Date of Hearing.....31.07.2023

Date of Decision.....14.09.2023

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 copied as below:

“That on acceptance of the instant service appeal, the impugned orders may be set aside and the appellant may please be exonerated from the charges and be reinstated in service with full back benefits and wages of service.”

2. Brief facts of the case are that the appellant while serving as Stenographer at Sessions Court, Peshawar was served with a show cause notice by the learned District & Sessions Judge, Peshawar as to why he