

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Service Appeal No: 1287/2023


Ihsan ul Haq,CT BPS-15 GHSS Drosh District Chitral LowerAppellant.

VERSUS

Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa
&
others.....Respondents.

INDEX SHEET

S/#	Description of document	Annexure	Page No.
1	Joint para wise comments along with affidavit		1-4
2	Copy of the notification dated 30-01-2019	A	5
3	Copy of the notification Dated 30-06-2022, inquiry report & revise notification dated 30-01-2019	B,C&D	6-11
4	Copy of the judgement dated 11-04-2022	E	17
5	Copy of personal Hearing regarding departmental appeal dated 16-02-2023	F	18
6	Authority Letter		19


Asstt: Director (Lit: II)
E&SE Department, Khyber
Pakhtunkhwa, Peshawar.

(1)

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA
SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 1287/2023

Ihsan ul Haq, CT BPS-15 GHSS, Darosh Chitral LowerAppellant

VERSUS

Secretary E&SE Department Khyber Pakhtunkhwa & others..... Respondents

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No: 1-3.

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

- 8058
3/10/23
- 1 That the Appellant has got no cause of action/locus standi to file instant appeal.
 - 2 That the appellant is not an aggrieved person within the meaning of Section-4 Khyber Pakhtunkhwa Service Tribunal Act 1974 read with Article-212 of the constitution of Islamic Republic of Pakistan 1973.
 - 3 That the appellant has concealed material facts from the ambit of this Honorable Tribunal.
 - 4 That the appellant has not come to this Honorable Tribunal with clean hands.
 - 5 That the appeal in hand is based on mala fide intentions for gaining illegal service benefits from the Department to the extent of his restoration against the SCT in BPS-16 post in violation of the spirit of the Notification dated 30-01-2019 of the Department.
 - 6 That the appeal in hand is barred by law and limitation.
 - 7 That the appeal in hand is bad for mis-joinder and non-joinder of the necessary parties.
 - 8 That the matter in question already been disposed of vide judgment dated 11-04-2022 passed by this Honorable Tribunal in service appeal No. 748/2019 under the above said titled appeal by the Department.
 - 9 That the Notification dated 30-01-2019 of the Respondent Department is within legal parameter.
 - 10 That the appellant is not entitled for the grant of back service benefits against the SCT in BPS-16 post in terms of his reversion to the post of CT (M) in BPS-15 vide Notification dated 30-01-2019 of the Department.
 - 11 That in compliance of the judgment, dated 11-04-2022, the Department has already conducted De-Novo enquiry vide Notification dated 30-06-2022, whereby, the Notification dated 30-01-2019 has been modified to the extent of mentioning the maximum period of five (05) years of the reversion of the appellant.

12 That aggrieved from the Notification dated 30-01-2019, the appellant has filed a time bared Departmental appeal to the Respondents which was seen & filed on the grounds of limitation as well as violative of the Law & Rules.

ON FACTS.

1 That Para-1 is correct that the appellant was serving in the Department against the SCT in BPS-16 post & was downgraded/reverted to the CT in BPS-15 post on account of his mis conduct, mischievous act as a regular Civil Servant in District Chitral vide Notification No. 7972-75/File No. 62/Vol. II. PST (Male Chitral dated 30-01-2019 issued by the Respondent No. 2 after due process of Law, Rules & procedure under the provision of E&D Rules 2011 *attached as Annex-A.*

2 That Para-2 is correct that aggrieved from the afore mentioned Notification dated 30-01-2019, the appellant has filed a time bared Departmental appeal to the Respondents which was seen & filed on the grounds of time limitation as well as violative of the Law & Rules.

However, he then approached this Honorable Tribunal under section-4 of KP Service Tribunal Act 1974 read with Article, 212 of the constitution of the 1973 against the Notification dated 30-01-2019 which was heard & decided vide judgment dated 11-04-2022 with the observation that the impugned Notification dated 30-1-2019 is suffering from legal infirmity, & is set aside by restoring the appellant as SCT with further direction to the Department for conducting De-Nove Enquiry in the mode & manner under the Law & Rules.

Therefore, in compliance of the judgment dated 11-04-2022 the Department has conducted De-Nove Enquiry vide Notification dated 30-06-2022 through the Deputy Director Legal & Assistant Director (Lit-II) E&SE KP Peshawar who submitted their enquiry report with the recommendation of maintaining the Notification dated 30-01-2019 against the appellant with the insertion of maximum period of five years as evident from the modified Notification substituted with even No & Date under the Rules specified in Rule (4) (1) (b) (i) of E&D Rules, 2011 which are *attached as Annex- B, C & D.*

3 That Para-3 is correct to the extent of the submission of the revised/modified Notification of even No & date with modification of the insertion of maximum period of five years of the reversion of the appellant notified vide Notification dated 30-01-2019 submitted by the Department before this Honorable Tribunal in compliance of the judgment dated 11-04-2022 in E.P No. 03/2023 filed by the appellant under the said titled which was heard & consigned by this Honorable Tribunal. *Copy of the judgment dated 11-04-2022 is Annex-E.*

4 That Para-4 is also correct that aggrieved from the revised Notification dated 30-01-2019, the appellant has filed a Departmental appeal to the Respondent No. 1 on the 15-02-2023 which was fixed for personal hearing of the appellant on dated 20-02-2023 at 11 AM in the office of the Additional Secretary (Estt) E&SE KP Peshawar. *attached as Annex F.*

5 That Para-5 is incorrect as the Departmental appeal of the appellant has been examined under the Rules by the Respondent No. 1 & has been which has been seen & filed under the Law & Rules.

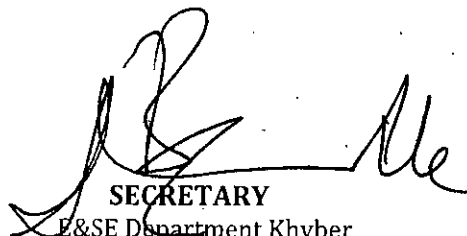
6 That Para-6 is correct to the extent of Departmental appeal against the Notification dated 30-01-2019 of the Respondent No. 2, where against the appellant approached to the Respondent No. 1 who has heard the appellant


in person on 20-02-2022 & resultantly his appeal was seen & filed on merits of the case, hence, the titled appeal is liable to be dismissed on the following grounds inter alia: -

ON GROUNDS.

- A. **Incorrect & not admitted.** the appellant has been treated as per law & rules vide Notification dated 30-01-2019.
- B. **Incorrect & not admitted.** The stand of the appellant is against the facts & legal proposition made by the Respondents in the fore going paras of the present reply, hence, liable to be rejected.
- C. **Incorrect & not admitted.** The appellant is not entitled for restoration as SCT in BPS-16 in terms of the substituted with even No. & date Notification dated 30-01-2019 in the Respondent Department.
- D. **Incorrect & not admitted.** The act of the Department with regard to the said Notification is legal as it was adopted by the Department in compliance of the judgment dated 11-04-2022 of this Honorable Tribunal.
- E. **Incorrect & not admitted.** The Notification dated 30-01-2019 is the result of legal process of Law, Rules & policy in vogue.
- F. **Incorrect & not admitted.** The plea of the appellant is illegal as the Notification dated 30-01-2019 regarding the reversion of the appellant from the SCT to CT post for the period of five years is legal & liable to be maintained.
- G. **Incorrect & not admitted.** the appellant is not entitled for restoration as SCT in BPS-16 on the grounds that the appellant is not an aggrieved person within the meaning of Section-4 Khyber Pakhtunkhwa Service Tribunal Act 1974 read with Article-212 of the constitution of Islamic Republic of Pakistan 1973. However, the Respondents also seek leave to this Learned Bench to submit additional grounds record & case law at the time on date of hearing.

Therefore, in view of the above made submissions, the appeal in hand may kindly be rejected in favor of the Department in the interest of justice.


SECRETARY
 E&SE Department Khyber
 Pakhtunkhwa, Peshawar.
 (Respondent No: 1)


DIRECTOR
 E&SE Department Khyber
 Pakhtunkhwa, Peshawar.
 (Respondents No: 2 & 3)

4

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA
SERVICE TRIBUNAL PESHAWAR.**

Service Appeal No: 1287/2023

Ihsan ul Haq, CT BPS-15 GHSS, Darosh Chitral LowerAppellant

VERSUS

Secretary E&SE Department Khyber Pakhtunkhwa & others..... Respondents

AFFIDAVIT

I, Dr. Hayat Khan Assistant Director (Litigation-II) E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments are true & correct to the best of my knowledge & belief. It is further stated on oath that in this appeal the answering Respondents have neither been placed Ex-Parte nor their defense has been struck off/cost.

Deponent

ATTESTED



10.10.2023

5

Registered.
DIRECTORATE OF ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA

NOTIFICATION.

Consequent upon the approval of competent authority Mr. Ihsan-ul-Haq SCT GHSS Droesh, District Chitral is hereby downgraded from SCT (BPS-16) to CT (BPS-15) on account of his involvement mischievous act.

Necessary entry to this effect should be made in the relevant record.


DIRECTOR.

Endst: No. 7972-25 /F.No. 62/Vol: II/PST (M) Chitral.

Dated Peshawar the 30/1 / 2019.

Copy forwarded for information and necessary action to the:-

- 123
1. District Education Officer (M) Chitral w/r to his letter No.168 dated 02.01.2019.
 2. District Accounts Officer Chitral.
 3. Mr. Ihsan-ui-Haq SCT GHSS Droesh Chitral.
 4. P.A to Director Elementary & Secondary Education Local Office.
 5. Master Files.


Deputy Director (Est.)
Elementary & Secondary Edu.



(6)

Annexure - A

**DIRECTORATE ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR.**

NOTIFICATION

In pursuance of the Judgement Dated 11-04-2022, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 748/2019 under case titled Ihsan Ul Haq SCT (BPS-16) GHSS Drosh Chitral Vs Govt: of KP through Secretary & Others, the competent authority is pleased to constitute the following inquiry committee to conduct DE-NOVO inquiry in the mode & manners under the law and rules.

1. Mr. Abdus Samad, Deputy Director (Legal).....Chairman
2. Dr. Hayat Khan, Assistant Director (Litigation-II).....Member

Moreover, Mr. Muhammad Sohail Hussain, Junior Clerk Directorate E&SE is hereby directed to assist the inquiry committee with regard to the arrangement & provision of relevant case record. The inquiry committee is further directed to submit the inquiry report with clear cut findings & *recommendations within 10 days positively* to this Directorate so as to proceed further into the matter as per Law & Rules in filed please.

/

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endst: No: 4901-7 /F.No. 748/19/Notification Inquiry Officer/2022

Dated Peshawar the: 30/01/2022.

Copy forwarded for information to the:-

1. Registrar Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. District Education Officer (Male) Lower Chitral.
3. Deputy Director (Legal) E&SE Khyber Pakhtunkhwa Peshawar.
4. Deputy Director (Estab/M-I) E&SE Khyber Pakhtunkhwa Peshawar.
5. Assistant Director (Lit-II) E&SE Khyber Pakhtunkhwa Peshawar
6. Mr. Muhammad Sohail Hussain Junior Clerk (Lit-II) Local Directorate.
7. PA to Director, E&SE Khyber Pakhtunkhwa Peshawar.
8. ✓Office copy.

30/01/2022

ASSISTANT DIRECTOR (LIT-I)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

9/2/23
disposed 7A

INQUIRY REPORT

1. BACKGROUND OF THE INQUIRY

The instant inquiry has been constituted vide Director E&SE Khyber Pakhtunkhwa Notification bearing Endst: No. 4901-7 dated 30-6-2022 in pursuance of the Judgment dated 11-04-2022 of the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar rendered in Service Appeal No. 448/2019 under case titled Ihsan Ul Haq Ex-SCT (BPS-16) GHSS Drosh District Chitral Lower VS Director E&SE Khyber Pakhtunkhwa Peshawar & others for conducting DE-NOVO inquiry against Mr. Ihsan-Ul-Haq SCT (BPS-16) in mode in manner under the Law & Rules to investigate/examine the matter in issue pertaining to the Notification dated 30-01-2019, whereby, the appellant was downgraded from SCT (BPS-16) to CT (BPS-15) on the grounds of submission of fake & forged ACR/PERS for the year 2012 & 2013 to the DPC for promotion from CT (BS-15) to SCT (BS-16) . Hence, the inquiry committee comprised the following officers:

- 1) Mr. Abdus Samad, Deputy Director (Legal) Directorate E & SE.....Chairman
 - 2) Dr. Hayat Khan, Assistant Director (Lit-II) Directorate E & SE Member
- (Copy of the Notification dated 30-6-2022 is attached as Annexures-A).

2. PROCEDURE OF INQUIRY

In pursuance of the Notification bearing Endstt No. 4901-7 dated 30-6-2022 the inquiry committee visited to the office of DEO (M) Chitral Lower on dated 17-6-2022, wherein, the DEO (M) Chitral Lower, Ex-Principal GHSS Drosh/EX-DEO Chitral Lower & the accused namely Mr. Ihsan Ul Haq Ex-SCT (BS-16) were cross-examined. The committee conducted meetings with all the stake holders including the accused in two phases. In the first phase of meeting, statements of all the stake holders including the setting DEO (M) Chitral Lower, EX-DEO (M) Chitral/EX-Principal GHSS Drosh & ADEO (Estab) were recorded. In second phase of meeting an opportunity of personal hearing was afforded to the appellant, wherein, questionnaire was also served upon the him, moreover, his statement was also recorded by the committee & he was also thoroughly examined and cross questioned as well therein.

03. FACTS OF THE CASE

Precise facts forming background of the case are arrayed as under:

- I. The Appellant joined E&SE Department as CT Teacher in BPS-15 vide order dated 20-03-2004 & subsequently, the appellant was upgraded to BPS-16 vide order dated 30-6-2015, thereafter, he was promoted from CT (BPS-15) to SCT (BPS-16) vide order dated 28-07-2017 on the basis of his service record & on the strength of his qualification.
- II. That during course of service, the appellant while posted at GHSS Drosh was served a charge sheet for submission of ACR/PER for the year 2012 signed by another Reporting Officer and that of the year 2013 having fake signatures of the Reporting Officer, inquiry was conducted into the matter by the Respondent Department through the following inquiry committee vide order dated 29-09-2018.
 - a. Mr. Kamal Ud Din Head Master GHS Hone Chitral Lower.....Chairman
 - b. Mr. Sharif Ur Rehman SST (General) GHS Kujju Chitral Lower.....Member
- III. That the inquiry committee submitted its report to the Department on dated 22-10-2018, wherein, the allegations pertaining to the signatures of irrelevant authority/Reporting Officer on ACR/PER for the year 2012 & fake signatures of the Reporting Officer on ACR/PER for the

7 

07/11/22

year 2013 was duly proved against the accused, whereupon, the inquiry committee recommended that proper disciplinary action may be taken against the accused.

IV. That in view thereof, the major penalty of downgrading from SCT (BS-16) to CT (BS-15) was imposed upon the accused within the meaning of Rule 4(1)(b)(i) of Government Servants (Efficiency and Discipline) Rules, 2011 vide Notification bearing Endst: No. 7972-75 dated 30-01-2019. However, the said penalty was imposed upon the accused for indefinite period i.e. without time limit. The Rule 4(1) of the Rules ibid is hereby reproduced hereinbelow for ready reference:

4. Penalties. (1) The following are the minor & major penalties, namely:

(a) Minor penalties:

(i) censure;

(ii) withholding, for a specific period, promotion or increment subject to a maximum of three years, otherwise than for unfitness for promotion or financial advancement, in accordance with the rules or orders pertaining to the service or post:

Provided that the penalty of withholding increments shall not be imposed on a Government servant who has reached the maximum of his pay scale:

(iii) recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order;

(b) Major penalties:

(i) reduction to a lower post or pay scale or to a lower stage in a timescale for a maximum period of five years:

Provided that on a restoration to original pay scale or post, the penalized Government servant will be placed below his erstwhile juniors promoted to higher posts during subsistence of the period of penalty

(ii) compulsory retirement;

(iii) removal from service; and

Handwritten signature and date: 07/11/22

V. That the above quoted rules clearly transpire that the penalty under the provision of Rule 4(1)(b)(i) of Government Servants (Efficiency and Discipline) Rules, 2011 shall be awarded for maximum period of 5-years, however, in the present case, the penalty in question was not awarded as per the afore-noted rules, hence needs to be modified through corrigendum in the Notification bearing Endst: No. 7972-75 dated 30-01-2019 with regard to period of penalty.

VI. That during the time of cross-examination, Mr. Nasr-Ud-Din, the then In-charge Head Master GHS Sweer apprised the committee that his signature as Reporting Officer on the ACR/PER of the accused for the year 2013 is not genuine rather it is fake & forged. He submitted his statement to the inquiry committee on dated 17-09-2022 in this regard, wherein, he disowned the signature in question categorically. *(Copy of the statement is attached as Annexure-B).*

VII. That Mr. Muhammad Zaman the then ADEO (M) at the office of DEO (M) Chairal (now SS) also apprised the committee that his signatures as counter-signing authority upon the ACR/PER of the accused are also fake & forged, moreover, he also submitted written statement to the committee in this regard, wherein, he has disowned the signatures in question categorically. *(Copy of the statement is attached as Annexure-C).*

9

VIII. The judgement dated 11-04-2022 was passed by the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service appeal-No. 748/2019, wherein, vide para-03 of the judgement ibid, it was held that "*Notices were issued to the parties to submit reply/para wise comments along with connected documents. Respondents having failed to submit written replies/comments even during the extended period, their right of defense was struck off vide order sheet sated 16-09-2021*". Meaning thereby, the case was neither properly pursued by the Legal Representative concerned on behalf of the Respondents nor Honorable court was properly assisted with regard to the stance of the Responded Department.

IX. That when asked the Legal Representative concerned about the casual & unprofessional attitude for non-pursuance and non-submission of joint para wise comments before the court, however, his reply in this regard was found unsatisfactory. Moreover, he was found unaware about the order sheet dated 16-09-2021 of the court, whereby, right of defense of the Respondent Department was struck off on the grounds of non-submission of the reply before the court in spite of the repeated directions.

04 FINDINGS: -

In view of the afore-narrated facts/circumstances of the case & bare perusal of the relevant record, it has been found:

- 47/11/22
- (a) That the appellant namely Mr. Ihsan-Ul-Haq Ex-SCT BS-16 (now CT-15) submitted ACRs/PERs for the year 2013 with fake & forged signatures of the authority as "Reporting Officer" to the Department, whereupon, he got himself promoted to the post of SCT(BS-16) vide Notification bearing Endst: No. 438-43/File No.2/promotion Senior CT BS-16: Dated 20-07-2017, issued by the Directorate E&SE Khyber Pakhtunkhwa Peshawar, moreover, ACR/PER for the year 2012 was not signed by the authority concerned/Reporting Officer, rather it was signed by an irrelevant authority. Furthermore, counter signatures upon ACRs/PERs were also found fictitious.
 - (b) That the major penalty of downgrading from SCT (BS-16) to CT (BS-15) was imposed upon the accused within the meaning of Rule 4(1)(b)(i) of Government Servants (Efficiency and Discipline) Rules, 2011 vide Notification bearing Endst: No. 7972-75 dated 30-01-2019. However, the said penalty was imposed upon the accused for indefinite period i.e. without time limit. The competent authority was required to award the aforementioned penalty for a specific period of time i.e. up to maximum period of 5-years.
 - (c) That the right of defense of the Respondent Department was struck off vide order sheet dated 16-09-2021 by the Honorable Service Tribunal, Peshawar on the grounds of non-submission of reply/comments inspite of the repeated direction of the Honorable Court which shows that the case was neither properly pursued nor the court was assisted in this regard by the Legal Presentative on half of the Respondents. This all was happened due to the casual and unprofessional attitude of the legal representative concerned.

05. RECOMMENDATIONS

In view of the above narrated facts of the case & bare perusal of findings of the instant report, the inquiry committee recommends that:

- 1) The Notification bearing Endst: No. 7972-75 dated 30-01-2019, whereby, major penalty of "**Reduction to Lower Post**" was imposed upon the accused in terms Rule 4(1)(b)(i) of Government Servants (Efficiency & Discipline) Rules, 2011 but without time limit, hence needs to be modified in light of the rules ibid with regard to the period of penalty up to maximum of 5-years. However, in view of the allegations in question leveled against the accused, the committee is of the considered opinion that lenient action/period of penalty be awarded to the accused by modifying the Notification ibid up to period of 3-years.

- 10
- 2) The Mr. Farid Ahmad SST (G) GCMHS Chitral, presently working as ADEO (Litigation) in the office of DEO (M) Chitral Lower be repatriated to his school on administrative grounds forthwith on account of his casual and unprofessional attitude toward his assigned duties as legal representative with the advice to the DEO concerned for nomination of another suitable teacher/officer of BPS-17 as Litigation Officer having relevant experience & legal expertise please.

Dated: 07-11-2022.



Chairman
Mr. Abdus Samad,
Deputy Director (Legal)
Directorate E & SE KP Peshawar



Member
Dr. Hayat Khan
Assistant Director (Lit-II)
Directorate E & SE KP Peshawar



Registered

DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR

Substituted with even No., & date

REVISED NOTIFICATION

Consequent upon the approval of the Competent Authority Mr. Ihsan Ul Haq SCT GHSS Drosh, District Chitral is hereby downgraded from SCT (BPS-16) to CT (BPS-15) "for a period of maximum five (05) years" as specified in Rule (4) (1) (b) (i) of E&D Rules, 2011, on account of his involvement in mischievous act.

- (i) This revised Notification is issued under section-21, General Clauses Act, 1897, further amended in 1956.
- (ii) Necessary entry to this effect should be made in the relevant record.

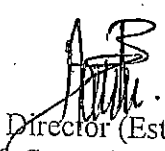
Dr. Hafiz Muhammad Ibrahim
(DIRECTOR)
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endstt: No. 7972-75/F.No. 62/Vol-II/PST (M) Chitral

Dated Peshawar the: 30/01/2019

Copy of the above for information is forwarded to the:

1. District Education Officer (Male) Chitral w/r to his letter NO. 168 dated 02-01-2019.
2. District Accounts Officer Chitral.
3. Mr. Ihsan Ul Haq SCT GHSS Drosh Chitral.
4. P.A to Director Elementary & Secondary Education Local Office.
5. Focal Person Pakistan Citizen Portal, Office of Additional Director (Estt: Male) Local Directorate for necessary actions, please.
6. Master File.


Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Hamza "B"

Amir (B)

12

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

Service Appeal No. 748/2019

BEFORE: SALAH UD DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)



Ihsan Ul Haq SCT Teacher, GHSS Drosh Chitral..... (Appellant)

VERSUS

1. **Director** Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
2. **Secretary** Education, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
3. **District Education Officer (DEO) (Male)** Chitral..... **(Respondents)**

Present:

NASIR MAHMOOD,
Advocate --- For Appellant.

SYED NASEER UD DIN SHAH,
Assistant Advocate General --- For official respondents.

Date of Institution.....19.09.2019
Date of Hearing.....11.04.2022
Date of Decision11.04.2022

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The service appeal has been instituted against the impugned notification dated 30.01.2019 whereby the appellant was downgraded from SCT (BS-16) to CT (BS-15) and his departmental appeal dated 20.02.2019 was not responded within the statutory period. Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 has therefore been invoked and the case is under scrutiny for adjudication before this Bench.

02. Brief facts, as per contents of the memorandum of appeal, are that the appellant while posted at GHSS Darosh was charge sheeted

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

for submission of ACR for the year 2012 signed by another reporting officer and that of the year 2013 having fake signature of the reporting officer. An enquiry committee was constituted and in the light of findings of enquiry committee, the impugned notification imposing the penalty of downgrading the appellant from SCT (BS-16) to CT (BS-15) was issued on 30.01.2019. His departmental appeal submitted on 20.02.2019 against the impugned notification, was however, not responded within the statutory period where-after the service appeal was instituted in the Service Tribunal on 19.06.2019.

03. Notices were issued to the parties to submit reply/para wise comments alongwith connected documents. Respondents having failed to submit written replies/comments even during extended period, their right of defense was struck off vide order sheet dated 16.09.2021. We have heard learned counsel for the appellant as well as Assistant Advocate General and perused the case file with connected documents thoroughly.

04. Learned counsel for the appellant contended that respondent No.3 had personal grudges against the appellant. First, an explanation of appellant was sought on 03.09.2018 that he had submitted fake ACR for 2012 because at that time respondent No.3 was himself the Principal GHSS Darosh and the signature of reporting officer on ACR for the year 2013 was also fake. His reply dated 19.09.2018 was not considered and an Inquiry Committee was constituted on 29.09.2018 when charge sheet/statement of allegations was issued by respondent No.3. On the submission of enquiry report on 22.10.2018, the

ATTESTED
 BY
 M. A. KHAN
 MEMBER
 Service Tribunal

⑤

impugned notification was issued by respondent No.1. It was further argued that Competent Authority in respect of the appellant was respondent No.1 as per "Job Description and Competencies (November, 2014)" whereas the enquiry was initiated against the appellant by respondent No.3 who had been declared Competent Authority for officials in BS-01 to 15 whereas the appellant was SCT in BS-16 and as such respondent No.3 was not Competent Authority for the appellant. Only the impugned notification was issued by respondent No.1 who was neither privy to the initiation of enquiry nor associated with the entire enquiry proceedings including appointment of the members of enquiry committee and issuance of charge sheet/statement of allegations. He relied on 2018 PLC (CS) 475.

05. It was vehemently argued that the penalty of downgrading from SCT (BS-16) to CT (BS-15) was imposed for indefinite period as there is no specific period mentioned in the impugned notification. To strengthen his arguments, learned counsel for appellant relied on 2017 PLC (C.S) Note-2. While concluding his arguments, learned counsel for appellant contended that the appellant has not been treated in accordance with law and the whole proceedings initiated against the appellant are illegal, unlawful and in violation of the rights guaranteed under Article-25 of the constitution. The impugned notification dated 30.01.2019 being arbitrary, malafide, discriminatory and whimsical is therefore liable to be set aside and the appellant be restored in original pay scale of SCT (BS-16).

ATTESTED

EXAMINER
 State Public Service Tribunal
 Colombo

(LS) (40)

(6)

06. Learned Asst: AG conversely argued that all codal formalities have been fulfilled before imposition of the impugned penalty. Notification has legal firmity as it has been issued after due process and recourse to the relevant law and rules. He therefore requested that the appeal may graciously be dismissed.

07. It transpires from record that respondent No.1 was the declared Competent Authority for the appellant whereas the inquiry proceedings were initiated by respondent No.3. The Inquiry Committee was constituted by respondent No.3 on 29.09.2018. Similarly, charge sheet/statement of allegations was issued by respondent No.3. Only the final impugned order dated 30.01.2019 was issued by respondent No.1. The entire enquiry proceedings have been initiated and conducted by "corum non iudice". Interestingly, on submission of the enquiry report, no show cause notice was issued to the appellant under Rule-14(4) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Moreover, Rule-4(b)(i) of the Rules ibid puts a restriction of maximum 05 years in case the major penalty of reduction to a lower post or pay scale or a lower stage in a time scale, is imposed on a government servant, however, no such period is mentioned in the impugned order dated 30.01.2019. Imposing of such a penalty for indefinite period is also in violation and total disregard to the spirit and logic behind F.R-29.

08. As a sequel to the above, the impugned notification dated 30.01.2019 suffering from legal infirmity, is set aside. The appellant is

(SIGNED)
LEARNED
Justice P. M. Khan
Service Tribunal
Gardiner

17

entitled to be restored to his original post of SCT (BS-16) with consequential benefits. The respondent --department would however be at liberty to conduct de-novo enquiry in the mode and manner under the law and rules, if they so desire. In case of de-novo enquiry, the issue of back benefits shall be subject to outcome of the de-novo enquiry. Costs shall follow the event. Consign.

09. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11th day of April, 2022.



[Signature]
(SALAH UD DIN)
MEMBER (J)

[Signature]
(MIAN MUHAMMAD)
MEMBER (E)

Certified to be true copy
[Signature]
MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 14-9-22
Number of Words 2000
Copying Fee 22/-
Urgent 22/-
Total 22/-
Name of Applicant _____
Date of Completion of Copy 16/9/22
Date of Delivery of Copy 16/9/22

Annex "C"

(117)



E.P. No. 3/2023
Ihsan ul Haq vs Govt

09th Feb. 2023

Mr. Saadul Hassan, Advocate, junior to learned counsel for the appellant present. Mr. Uzair Azam Khan, Addl. Advocate General alongwith Bahramand Khan, Assistant Director for the respondents present.

Substituted/revised notification dated 30.01.2019 has been submitted vide which the petitioner has been downgraded from SCT(BPS-16) to CT (BPS-15) for a period of maximum five years, which is placed on file and a copy whereof handed over to junior to learned counsel for the petitioner, who is satisfied. The judgment of the Tribunal stands implemented and the petition in hand is consigned.

Pronounced in open Court at Peshawar and given under my hand and the seal of the Tribunal on this 09th day of February, 2023.


(FARZHA PAUL)
Member(E)

Certified to be true copy

FARZHA PAUL
Member(E)
Peshawar Chapter
Federal Public Service Commission
Peshawar

Date of Presentation of Application 13/2/23
Number of ~~Words~~ Page 2
Copying Fee 10/-
Urgent 5/-
Total 15/-
Name of Co: _____
Date of Completion of Copy 13/2/23
Date of Delivery of Copy 13/2/23



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(PHONE NO. 091-9223587)

(18)

Annex "F"

No.SO(Primary-Male)/E&SED/5-19/Re-Instatement/2023
Dated Peshawar the 16 .02.2023

To

Mr. Ihsan Ul Haq,
SCT, GHSS Drosh,
District Chitral Lower.

Subject: - **PERSONAL HEARING REGARDING DEPARTMENTAL APPEAL AGAINST THE SUBSTITUTED/REVISED NOTIFICATION ISSUED UNDER ENDORSEMENT NO. 7972-75/F/NO.62/VOL-II/PST (M) CHITRAL, DATED PESHAWAR TE 30.01.2019, WHEREBY THE APPELLANT HAS BEEN PENALIZED 30.01.2019, WHEREBY THE APPELLANT HAS BEEN PELANIZED WITH DOWNGRADING FROM SCT (BPS-16) TO CT (BPS-15) FOR A PERIOD OF MAXIMUM FIVE (05) YEARS, ON PRETEXT OF A SO-CALLED DISCIPLINARY ACTION.**

I am directed to refer to this department letter No.& dated even on the subject noted above and to state that your personal hearing is re-scheduled to be held on 20.02.2023 at 11:00 AM with Additional Secretary (Estt.), Elementary & Secondary Education Department Khyber Pakhtunkhwa in his office.

2. You are, therefore, directed to appear before Additional Secretary (Estt.) Elementary & Secondary Education Department Khyber Pakhtunkhwa for a personal hearing along with complete documents, on the date, time and venue mentioned above.

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY-MALE)

Endst: No & date even

Copy forwarded to the :-

1. Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar, with the request to depute a well conversant representative to attend the personal hearing as mentioned above, along with complete record pertaining to the case.
2. District Education Officer (M) Chitral Lower, with the direction to attend the aforementioned personal hearing along with all relevant documents on the date, time and venue mentioned above.
3. PS to Secretary E&SE Department Khyber Pakhtunkhwa.
4. PA to Additional Secretary (Establishment) Elementary & Secondary Education Department Khyber Pakhtunkhwa.
5. Master File.

SECTION OFFICER (PRIMARY-MALE)

16/2/23