

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 9405/2020

Date of Institution ... 11.08.2020

Date of Decision... 11.09.2023

Muhammad Ayub Khan S/O Muhammad Umar Khan, Additional Assistant Commissioner, (Rev), Nowshera, Ex-Tehsildar Domel, Bannu.

... (Appellant)

VERSUS

Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and 01 other. ... (Respondents)

MR. SHAH FAISAL ILYAS,
Advocate

--- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

--- For respondents.

SALAH-UD-DIN
FAREEHA PAUL

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts giving rise to filing of the instant appeal are that departmental action was taken against the appellant on the allegations that he while posted as Tehsildar Domel District Bannu had committed the following irregularities:-

"i. As per complaint of Mr. Hayat Ullah a formal inquiry was conducted which shows that mutation number 8349, 8353, 8355, 8257, 8258, 8404 and 8315 of 2011 in Halqa Bizen Khel on which statement of the vendor and vendee alongwith statement of parties and report of the Commission were recorded but due to your negligence the said mutations remained pending, unapproved after their due completion for unknown reasons.

ii. Mutation numbers 8943, 8944, 8945, 8946, 8947, 8948, 8949 entered in 2012 prepared with reference to unapproved, unsanctioned mutation numbers 8349, 8353, 8355, 8257,

8258, 8404 and 8315 of 2011 but due to your negligence/inefficiency you have approved/sanctioned/attested the mutations entered in 2012 prepared with reference to unapproved mutations of 2011 as mentioned above.

iii. This act of your part tantamount to misconduct and liable you to be proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

2. On conclusion of the inquiry, the appellant was awarded minor penalty of withholding of two increments for two years vide Notification dated 09.04.2020. The penalty so awarded to the appellant was challenged by him by way of filing review before the Chief Minister Khyber Pakhtunkhwa Peshawar, which was regretted vide order dated 02.07.2020, hence the instant appeal.

3. 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 way of filing written reply raising therein numerous legal as well as factual objections.

4. Learned counsel for the appellant contended that there was no lapse on part of the appellant as Tehsildar and even the inquiry officer has mentioned in his report that it was not the duty of the appellant to ask about the pending mutations of previous months and years before attestation of new mutations. He further argued that the appellant had performed his duty with zeal and zest and nothing was brought on the record during the inquiry that the appellant was having any hand in keeping pending the previous mutations. He next contended that the appellant was not afforded proper opportunity of self defense and was

not even provided an opportunity of cross-examination of the witnesses examined during the inquiry. In the last he requested that the appeal in hand may be allowed and the penalty so awarded to the appellant may be set-aside.

5. On the other hand, learned Assistant Advocate General for the respondents argued that a regular inquiry was conducted in the matter and the appellant was provided opportunity of personal hearing as well as self defense. He next argued that the appellant could not produce any plausible and cogent evidence in his defense, therefore, he was rightly awarded the minor penalty. He also argued that the mandatory provisions of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 were fully complied with and there exist no dent in the inquiry proceedings. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with costs.


6. We have heard the arguments of learned counsel for the parties and have perused the record.


7. A perusal of the record would show that Mr. Abdul Haseeb, the then Deputy Secretary Finance (BPS-18) was appointed as inquiry officer in the matter. We have gone through the findings recorded by the inquiry officer wherein he has categorically mentioned that the then Patwari Halqa as well as the then Girdawar Circle did not accomplish the mutations of 2011 and never presented the same to the Tehsildar (Appellant) because of the wrong entries in Khasra Nos. 908, 1341, 5303, 1339, 3307, 3304, 3309, 33010, 33011, 33012, 33013, 33014, 33015. It has also been specifically mentioned by the inquiry officer in

his findings that it was not the duty of Tehsildar (Appellant) to ask about the pending mutations of previous months and years before attestation of new mutations. In view of the findings so recorded by the inquiry officer, it cannot be concluded that the allegations against the appellant were proved. Moreover, no evidence was brought on record during the inquiry, which could show that the appellant was having any hand in keeping pending the concerned mutations. In such a situation, the Authority was not justified in imposing the minor penalty of withholding of two increments for two years upon the appellant.

8. Consequent upon the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the two annual increments are restored to the appellant with all consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.09.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)


ORDER
11.09.2023

Learned counsel for the appellant present: Mr. Muhammad Noman, Section Officer alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned orders and the two annual increments are restored to the appellant with all consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.09.2023


(Fareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)