

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 913/2022

Date of Institution ... 14.06.2022

Date of Decision... 21.09.2023

Mujahid Ali (Ex-Senior Clerk/Reader CJ XVII Peshawar) S/O Muhammad Yousaf, R/O Mohallah Mama Khel, Kalu Khan Tehsil Razzar District Swabi.  
... (Appellant)

**VERSUS**

District & Session Judge, Peshawar at Judicial Complex Peshawar and 03 others. ... (Respondents)

MR. AMJAD ALI,  
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,  
Deputy District Attorney

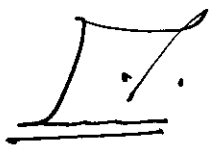
--- For respondents.

SALAH-UD-DIN  
FAREEHA PAUL

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

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Brief facts forming the background of the instant appeal are that Civil Suit No.141/1 of 2019 titled "Mst. Sabeeha and others Versus Assistant Director Land, DHA and others" was shown to have been instituted in the court of the then Senior Civil Judge Peshawar namely Mst. Mahjabeen Shabbir and marked to the court of the then Civil Judge-XVII namely Nosheen Nisar on 02.05.2019, which was show to have been decreed ex-parte vide judgment dated 02.02.2020. The date on which the judgment was shown to have been passed was falling on non-working day i.e Sunday. The matter was brought into the notice of Chief Justice Peshawar High Court, Peshawar, who directed to look into the matter. After preliminary discreet probe and scrutiny of order sheets as well as judgment dated 02.02.2020, Member Inspection Team Peshawar High Court, Peshawar addressed letter



dated 06.04.2021 to the District & Sessions Judge Peshawar for conducting of an open inquiry in the matter. Vide order dated 09.04.2021, the District & Sessions Judge Peshawar appointed Muhammad Sajid, the then learned Additional District & Sessions Judge-XIII for conducting open inquiry in the matter. The inquiry officer conducted open inquiry in the matter and submitted his report to the District & Sessions Judge Peshawar, wherein it was held that one Qaisar Khan, the then Muharrar to the court of learned Civil Judge-XVII was prima-facie involved in the matter, while the appellant, who was serving as Reader to the court of learned Civil Judge-XVII was held liable for negligence. The inquiry report was forwarded by District & Sessions Judge Peshawar to Peshawar High Court, Peshawar. Vide letter No. 735/MIT dated 22.09.2021 Peshawar High Court, Peshawar directed the District & Sessions Judge Peshawar to proceed against the identified delinquent officials under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 as well as to initiate criminal proceedings against the beneficiaries of fake judgment and other accomplices. The appellant was thus proceeded against by issuing him charge sheet as well as statement of allegations and Mr. Fazal Nasir Shah, the then Senior Civil Judge (Judicial) was appointed as Inquiry Officer. On conclusion of the inquiry, the appellant was awarded major penalty of compulsory retirement from service vide order dated 17.02.2022 passed by the then District and Sessions Judge Peshawar. The penalty so awarded to the appellant was challenged by him through filing of departmental appeal before the Senior



Puisne Judge Peshawar High Court, Peshawar, however the same was not responded within the statutory period of 90 days; hence the instant appeal.

2. 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 and factual objections.

3. Learned counsel for the appellant has argued that the appellant is quite innocent and was not at all involved in any foul play. He further argued that the entry in the *Faisla Bahi* was not at all recorded by him rather the same was recorded by someone else for justification of the false and concocted judgment and decree dated 02.02.2020. He next contended that the false entry recorded in *Faisla Bahi* is not in the hand writing of the appellant. He also argued that the inquiry officer had held liable the appellant only for negligence and thus the major penalty of compulsory retirement so awarded to the appellant was not justified. He further argued that being Reader of the court, it was his duty to maintain register *peshi* and to prepare cause lists also and as no entry of the concerned Civil Suit was recorded in cause list as well as register *peshi*, which fact by itself proves innocence of the appellant. In the last he requested that the impugned order may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned Deputy District Attorney for the respondents has argued that the appellant being Reader of the court

was responsible for keeping *Faisla Bahi* Register in safe custody, however he failed to do so and the inquiry officer thus held him liable for negligence. He next argued that the appellant was custodian of *Faisla Bahi* Register, wherein fake entry regarding the fake civil suit was made but he never reported the same to the then learned Civil Judge-XVII or District & Sessions Judge Peshawar. He further contended that a regular inquiry was conducted in the matter and the appellant was provided opportunity of personal hearing as well as self defense. In the last he requested that the impugned order may be kept intact and the appeal in hand may be dismissed with costs.

5. Arguments have already been heard and record perused.

6. The appellant was serving as Reader to the court of learned Civil Judge-XVII during the relevant days and was custodian of *Faisla Bahi* Register, wherein the entry of fake decree was made. In para-11 of his report, the inquiry officer has observed as below:-

*“In the cross examination the accused official has also admitted that he has not given any information in writing to the learned Judge regarding the bogus entry in his register. He has further explained that he informed the learned Judge orally after the fake entry was detected. The charge against the accused official is proved to the extent that the entry of the fake decree is there in the Register. However, from the attending circumstance and evidence recorded in both the cases (case No. 13/6 of 2021 and case No. 14/6 of 2021) it can be gathered that the accused official has not made*

*the entry himself. It has been made by someone else to make a ground for the genuineness of the said decree.”*

7. The appellant was custodian of *Faisla Bahi* Register, however he had failed to keep it in safe custody and thus provided an opportunity to the beneficiaries of the fake decree to record entry of the same in *Faisla Bahi* Register. The negligence of the appellant stood proved in the inquiry proceedings.


8. In his report, the inquiry officer has categorically held that the appellant had not made the entry of fake decree in *Faisla Bahi* Register himself rather the same was made by someone else to make a ground for genuineness of the fake decree. Moreover, the inquiry officer has held the appellant liable only for negligence. In such a situation, we are of the view that the penalty so awarded to the appellant is too harsh. Supreme Court of Pakistan in its judgment reported as 2006 SCMR 60 has observed as below:-

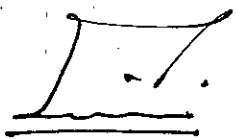
*“The carelessness is definitely an act of negligence which may not strictly fall with the ambit of misconduct as defined in section 2 of the Government Servants (E&D) Rules, 1975 but it is definitely a valid ground on the basis of which a Government servant can be awarded penalty as provided in rule 3 of the above rules. The element of bad faith and willfulness may bring an act of negligence within the purview of misconduct but lack of proper care and vigilance may not always be willful to make it a case of grave negligence inviting severe punishment. The philosophy of punishment is based on the concept of retribution, which may be either through the method of deterrence or reformation. The purpose of deterrent punishment is*

*not only to maintain balance with the gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society, whereas the concept of minor punishment in the law is to make an attempt to reform the individual wrong doer."*

9. Consequent upon the above discussion, the appeal in hand is partially allowed and the impugned order of compulsory retirement of the appellant from service is converted into minor penalty of stoppage of three annual increments for a period of three years. The appellant stands reinstated into service from the date of his compulsory retirement from service, however the intervening period shall be treated as extra-ordinary leave without pay for bridging up service gap of the appellant. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
21.09.2023

  
(FAREEHA PAUL)  
MEMBER (EXECUTIVE)


  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)


ORDER  
21.09.2023

Appellant in person present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is partially allowed and the impugned order of compulsory retirement of the appellant from service is converted into minor penalty of stoppage of three annual increments for a period of three years. The appellant stands reinstated into service from the date of his compulsory retirement from service, however the intervening period shall be treated as extra-ordinary leave without pay for bridging up service gap of the appellant. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
21.09.2023

  
(Fareeha Paul)  
Member (Executive)

  
(Salah-Ud-Din)  
Member (Judicial)