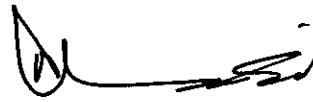


08. In view of above discussion we allow the appeal and direct the respondents to conduct *de-novo* inquiry associating the appellant with the proceedings and affording him opportunity of self defense at every stage of the proceedings as per law. The orders dated 02.08.2021 and 27.09.2021 are set aside and the appellant is reinstated into service for the purpose of *de-novo* inquiry. The matter of back benefits shall be subject to the outcome of *de-novo* inquiry. Costs shall follow the event. Consign.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 12<sup>th</sup> day of September, 2023.*



(Kalim Arshad Khan)  
Chairman



(Muhammad Akbar Khan)  
Member (E)

recommended for forensic analysis of the cell phone. The aforementioned episode led to initiation of disciplinary proceedings by the competent authority against the appellant labeled guilty of misconduct under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 on the following grounds as narrated in the charge sheet/statement of allegations;

*(a) That during screening test for the posts of Tehsildar/Naib Tehsildar held on 27.11.2020, he tried to take the question paper out of the examination hall several times which was foiled by the supervisory staff.*

*(b) During the same test, he took snaps of question paper and rushed out of the hall the examination.*

07. Legal scrutiny of the inquiry proceedings reveals that the findings of the inquiry report are entirely based on the statement of supervisory staff of exam center Kohat who are otherwise complainants in the case. Their statements have not been recorded in presence of the appellant nor the appellant granted opportunity to cross examine them. The report conveyed by the Chief Supervisor of the exam center Kohat dated 27.11.2020 clearly recommended for forensic analysis of cell phone of the appellant. Similarly the inquiry officer also recommended that mobile camera data of the cell phone of the appellant be retrieved and analyzed with help of professional service provides or get it probed through specialized investigation agency. Therefore, we believe that without authentication of the charge imposition of major penalty of removal from service imposed upon the appellant does not seem fair and just.

pictures of the question papers and forwarded to other people; that the inquiry officer in her inquiry report confirmed the presence of pictures of certain MCQs paper readable on the screen. Moreover, a hand written answer key was also noticed in his mobile phone and the appellant did not cooperate with the inquiry officer regarding the provision of security codes of his mobile phone. He further contended that the appellant was provided with the opportunities of cross examination of the witnesses and personal hearing under the rules but he failed to prove himself innocent. He further contended that the penalty was awarded after fulfilling all the codal and legal formalities as laid down in the Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011.

06. The appellant, as is evident from record available on case file, has 24 years service to his credit in the Khyber Pakhtunkhwa Public Service Commission. He was being deputed for exams duty on various occasions. On 26.11.2020 he was deputed as Deputy Supervisor at examination center in Kohat City. The next date i.e. 27.11.2020 he was deputed as Driver with Inspection Supervisor of the Commission namely Mr. Abdul Bari, Assistant Director, I.T on the date of the screening test for the post of Tehsildar/Naib Tehsildar at Kohat. The Principal/Chief Supervisor of the exam center, vide letter dated 27.11.2020, addressed to Director Examination Khyber Pakhtunkhwa Public Service Commission, reported that the appellant tried to take out question paper from the examination hall. He took picture of the question paper from his mobile phone, which was confiscated and handed over to Mr. Abdul Bari, Inspection Supervisor, with whom the appellant was performing duty as a driver, for that particular day. The Chief Supervisor

04. Learned counsel for the appellant contended that the impugned orders dated 02.08.2021 and 27.09.2021, are against the law, rules and material on record, therefore, liable to be set aside. That the appellant has been condemned unheard and has not been treated according to law and rules. He further contended that no codal formalities were fulfilled by the department before imposing the penalty which is violation of Article 10-A of the Constitution of Islamic Republic of Pakistan; that the inquiry was not conducted as per mandate of law, as no opportunity of defense was afforded to the appellant; that neither statement of witnesses were recorded in presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses, which is violation of law and rule; that no report of the inquiry and other documents related to the case were given to the appellant by the department even after repeated requests before imposing major punishment of removal from service which is also violation of law and rules. In the last, learned counsel for the appellant argued that the penalty of removal from service is very harsh because the appellant have along considerable service about 24 years which is passed in violation of law and rules, therefore, the same is not sustainable in the eyes of law.

05. Learned Additional Advocate General on the other hand contended that the appellant was deputed as driver with Inspection Supervisor vide order dated 19.11.2020 and he was found involved taking snap of the question papers during the screening test on 27.11.2020 for the post of Tehsildar/Naib Tehsildar. Therefore, his mobile phone was checked by the Inspection Supervisor of the examination hall; That the inquiry was conducted into the matter has duly proved that the appellant had taken

*back and consequential benefits. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of the appellant.”*

02. Brief facts of the case are that the appellant was serving as Junior Clerk in the Khyber Pakhtunkhwa Public Service Commission. That during the month of November, 2020 he was attached with the Inspection Supervisor as staff driver at the examination center Kohat and allegation was leveled against him regarding taking snap of the question papers during the screening test on 27.11.2020 for the post of Tehsildar/Naib Tehsildar. His mobile phone was checked by the Inspection Supervisor of the examination hall; that the appellant's phone after being checked, no pictures of any sort of the said test/examination were found in his mobile phone; that the Chief Supervisor reported against the appellant to the Director Examination. That he was charge sheeted on the basis of aforementioned allegations which he denied in the reply. That an inquiry was conducted and a show cause notice was issued to the appellant. Resultantly, the appellant was removed from service vide order dated 02.08.2021. Feeling aggrieved, the appellant filed departmental appeal which was rejected on 27.09.2021, hence preferred the instant service appeal.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Additional Advocate General and have gone through the record with their valuable assistance.

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

**Service Appeal No. 7751/2021**

**BEFORE:** KALIM ARSHAD KHAN --- MEMBER (J)  
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Muhammad Hamayun Ex-Junior Clerk (BPS-11) Khyber  
Pakhtunkhwa Public Service Commission, Peshawar.....(*Appellant*)

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chairman, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
3. The Secretary, Khyber Pakhtunkhwa Public Service Commission Peshawar.
4. The Assistant Director (Admn), Khyber Pakhtunkhwa Public Service Commission, Peshawar.
5. The Accountant General Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

**Present:-**

MUHAMMAD ASIF YOUSAFZAI,  
Advocate --- For Appellant

FAZAL SHAH MOHMAND,  
Additional Advocate General --- For respondents.

Date of Institution.....12.11.2021  
Date of Hearing.....12.09.2023  
Date of Decision..... 12.09.2023

**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 under;

*“That on acceptance of this appeal the impugned order dated 02.08.2021 and rejection order dated 27.09.2021 may be set aside and the appellant may be reinstated into service with all*