

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 64/2022

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

Muhammad Yaseen, Ex-Chowkidar, GPS, Ghujarghuni District
Kurram. ... (Appellant)

VERSUS

1. Secretary Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education Department, Peshawar.
3. The District Education Officer (Male), District Kurram.

... (Respondents)

Mr. Adnan Aman
Advocate

... For Appellant

Mr. Muhammad Jan
District Attorney

... For Respondents

Date of Institution..... 27.12.2021
Date of Hearing.....11.10.2023
Date of Decision.....11.10.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:


“On acceptance of this appeal, the impugned order dated 04.08.2021 passed by respondent No. 3 and order of respondent No.2 (departmental appellate authority) dated nil, who did not passed any appropriate order over the

appeal of appellant, may please to aside and consequently the appellant may please be re-instated in service, with all back benefits.”

2. Brief facts of the case are that appellant was appointed as Chowkidar in GPS Ghujarghuni vide order dated 17.07.1999 and was performing duties up to the entire satisfaction of his superiors. That on 04.08.2021 the appellant was with the impugned order passed by respondent No.3 whereby he was compulsorily retired from service on the ground of connection with preparation of two service books, w.e.f 31.07.2021. Feeling aggrieved appellant preferred departmental appeal to the respondent No.3 which was not responded to, 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 appearing on behalf of appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that no regular inquiry has been conducted by the respondent and all the proceeding has been conducted at the back of appellant as the appellant has never been associated with any inquiry proceedings therefore, proceedings conducted by the respondents is nullity in the eyes of law. Lastly, he submitted that appellant has been charged for preparation of two service books which is unfounded and



baseless as it is the job of department to prepare and maintain service book, therefore he requested for acceptance of instant service appeal.

5. Conversely, learned District Attorney argued that appellant has been treated in accordance with law and rules. He contended that appellant has been prepared two service books i.e one from 15.07.1990 and another from 15.07.1999 as per inquiry report and after recommendation of inquiry committee appellant was compulsory retired from service.

6. Perusal of record would reveals that appellant was appointed as Chowkidar (BPS-1) in GPS Ghujarghuni upon nomination of political agent, appellant assumed charge of his post and served for about 20 years without any complaint from any quarter. It was on 04-08-2021 when appellant was surprised as he was served with order dated 04-08-2021 whereby appellant was compulsory retired from his service w.e.f 31.07.2021 on ground of having connection with preparation of two service book. Appellant impugned the order dated 04-08-2021 before this tribunal on ground of arbitrary and unjust without adapting proper procedure and rule. Appellant was compulsory retired from service by the respondents. Section 13(3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (KP Act No. XVIII of 1973) which dealt with the retirement of civil servant and provides that:

“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. In the instant case respondent has even not issued show cause notice in accordance with section 13(3) ibid what to say about providing opportunity of self defense for rebutting allegation of having connection with preparation of two service book. The appellant should have been issued with show cause notice to effect that why he should not be compulsorily retired from service on ground of his involvement in preparation of two service book and after receipt of his reply, appellant be provided with an opportunity to rebut the allegation of having connection with preparation of two service book. But respondent had neither issued show cause notice nor provided an opportunity of self defense to the appellant by conducting proper inquiry for meeting requirement of justice. Therefore it is held that respondent issued impugned order in utter violation of law and rules on the subject.

7. 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 judgment. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 11th day of October, 2023.*



(MUHAMMAD AKBAR KHAN)
Member (E)




(RASHIDA BANO)
Member (J)


*Kaleemullah

ORDER

11th Oct, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, 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 judgment. Cost shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 11th day of October, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)