

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.2023/2022**

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

**Mr. Dilawar Khan, Assistant Director BPS-17, D.I. Khan Local Government,  
Election & Rural Development Department. ... (Appellant)**

**VERSUS**

1. Government of Khyber Pakhtunkhwa, Chief Secretary Civil Secretariat Peshawar.
2. Secretary Local Government, Election & Rural Development Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Secretary Finance Department, Khyber Pakhtunkhwa Peshawar.
4. Director General, Local Government, Election & Rural Development Department, Government of Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Mr. Noor Muhammad Khattak  
Advocate ... For Appellant

Mr. Muhammad Jan  
District Attorney ... For Respondents

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Date of Institution..... 29.12.2022  
Date of Hearing.....12.10.2023  
Date of Decision.....12.10.2023

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned notification dated 14.07.2022 whereby penalty of reduction to a lower stage for one year was imposed upon the appellant and against the impugned appellate order dated 02.11.2022

whereby the departmental appeal of the appellant has been rejected.



2. Brief facts of the case are that appellant was serving the respondent department as Assistant Director and was performing duty upto the entire satisfaction of his superiors. A show cause notice dated 16.02.2022 was served upon the appellant to which he submitted his reply and denied the allegations levelled against him. Vide impugned notification dated 14.07.2022 penalty of reduction to a lower stage for one year was imposed upon the appellant. Feeling aggrieved appellant filed departmental appeal on 02.08.2022 which was rejected through appellant order dated 02.11.2022, 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 and respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan. . He further argued that impugned notification and appellant order issued by the respondents against the norms of natural justice hence not tenable and liable to be set aside. He submitted that neither charge sheet nor statement of allegation has been served upon the appellant before issuing impugned order. He contended that no chance of personal hearing and defence has been provided to the appellant and he was condemned unheard. Lastly he submitted that appellant was falsely alleged of misconduct and inefficiency because the charges levelled against the appellant relate to the tenure before his charge assumption, 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 being important functionary of the executing agency is facing allegations of misconduct, inefficiency, slackness and indifferent approach towards his duties, which resulted not only in lost public exchequer, but also deprived general public of the benefits of scheme in question. He further contended that show cause notice was served upon the appellant after proper inquiry conducted by the Provincial Inspection Team and after fulfillment of all codal formalities penalty of reduction to a lower stage for one year one was imposed upon the appellant.

6. Perusal of record would reveals that appellant was serving the respondent as Assistant Director from 01.01.2020 to 05.08.2020 during which three schemes of Water Supply Scheme were in progress at three different places i.e (Installation of Pressure Pumps/Hand Pumps at Gandari Dallan, District Hangu costing Rs. 10 million), Water Supply Scheme (Installation of Pressure Pumps/Hand Pumps at Gandari Dallan, District Hangu costing Rs. 10 million) and construction of Sanitation Scheme at Mashti Band Bgatu Costing Rs. 10 million were sanctioned and in progress and all the schemes were awarded to MS Feroz Khan Government Contractor at bid cost Rs. 9.999 million. For scheme Finance Department vide its letter dated 01.01.2019 release fund amounting to Rs. 140.73 million for District Hangu out of 10% gas royalty fund. Deputy Commissioner sanctioned payments of Rs 1.95 million for the scheme of WSS at village Karbogha on 27.02.2019 and Rs. 0.95 million for scheme of sanitation at Banda Bagatu on 01.03.2019 while no payment was made to Gundari Dallan. The physical progress and utilization of funds to the tune of Rs. 25.839million had been lapsed in the financial year 2018-19.




The present appellant was Assistant Director during this period and he was responsible to speed up physical progress and to utilize entire funds allocated for the scheme, therefore, he was held responsible by the enquiry committee vide its report dated 26.04.2021 for the same and misuse of sanctioned amount of Rs. 6.495 million. Record reveals that inquiry committee has not provided proper opportunity to the appellant of self defence and cross examination upon the persons who deposed against the appellant. Record further reveals that in fact no regular inquiry was conducted and on the basis of fact finding inquiry report only show cause notice was issued to the appellant dispensing regular inquiry without showing any plausible reason by the authority.

7. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of '*audi alteram partem*' was always deemed to be imbedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.



8. In view of the above discussion, the impugned orders are set aside and respondents are directed to conduct denovo inquiry within a period of 90 days after receipt of copy of this judgment. Costs shall follow the events. Consign.

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

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah