

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No.1521/2022

Date of presentation of Appeal.....20.10.2022

Date of Hearing.....28.11.2023

Date of Decision.....28.11.2023

Hafeez ur Rehman Son of Abdul Lateef Khan, Ex-Constable belt No.113 Investigation Wing Abbottabad resident of Village Dhodial P.O Box Nawashehr Tehsil & District Abbottabad.....(Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Home Khyber Pakhtunkhwa Peshawar.
2. **Inspector General of Police (PPO)** Khyber Pakhtunkhwa.
3. **Deputy Inspector General of Police (RPO)** of Police Hazra Region Abbottabad.
4. **District Police Officer** Abbottabad.....(**Respondents**)

Present:

M/S Muhammad Masood Khan and

Muhammad Naveed Khan, Advocates.....For the appellant

Mr. Asad Ali Khan, Assistant Advocate GeneralFor the respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST ILLEGAL AND MALAFIDE DISMISSAL FROM SERVICE ORDER DATED 21.09.2022.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The appellant was dismissed from service vide order dated 07.04.2022, against which, he filed appeal to the Regional Police Officer, Hazara Region Abbottabad. The RPO vide order dated 28.07.2022 reinstated the appellant for the purpose of de-novo inquiry. After

conducting the de-novo inquiry, the RPO rejected the appeal vide impugned order dated 21.09.2022, hence, this appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

04. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

05. The appellant was proceeded on the following charges:

"1. The foul and avaricious play which you deceitfully did had come into the notice of Senior Officer as well as undersigned that you while posted as Incharge Technical Unite at Regional Police Office, Abbottabad for the sole aim to extend assistance to Hazara Polie in detection of high profile criminal cases and also to toe die hard criminals. You misused the official system and betrayingly started illicit and unlawful business of selling CDRs to vested interests in lieu of heavy bargaining. The standing precedence accordingly is quoted as under:-

a) Reportedly one CDR which was provided to irrelevant person who misused it, came into the notice of Worthy Regional Police Officer Hazara Region, PSO was directed to probe into the matter as to whether who and how the CDR was procured.

b) During initial enquiry you denied the spirit of allegations and took plea that due to gazette holiday on 25th December 2021 you did not attended office on that day. Subsequently, during discreet probe it was proved that you remained present in your office on 25th December, 2021 for 03 hours. You also pretended that



once your email ID was hacked few years ago which you changed.

c) On 2nd February 2022 you were called by PSO to RPO where you verbally confessed that you requested for the provision of CDR and sold out the same to one of his contact person. You absented yourself from 3rd February 2022 till date.

d) On 4th February 2022 at about 18:15 hours you went to the house of Enquiry Officer and offered him an illegal gratification/bribe of R.50,000/-."

06. Two departmental enquiries were conducted in this matter. One was conducted initially on the basis of which the DPO ordered dismissal of the appellant. On appeal the RPO, reinstating the appellant, ordered de-novo enquiry. First inquiry was conducted jointly by the Superintendent of Police Investigation, Abbottabad and Additional SP Abbottabad, wherein the appellant was recommended for major punishment. The de-novo inquiry was conducted by the SP Investigation Mansehra, who, too, found the appellant guilty and recommended him for major punishment.

07. It is alleged that the appellant was posted in the Technical Unit and indulged into selling of CDR (Call Detail Record) for illegal consideration. First charge against him was that he had provided one CDR to irrelevant person, who had misused that and the fact came into the notice of the RPO Hazara who directed the PSO to probe into the matter as to whether, who and how was CDR procured? In the inquiry and de-novo inquiry the name of that alleged irrelevant person was never disclosed nor statement of any such irrelevant person appears to have been recorded. The allegation of misusing the CDR was found correct by the inquiry officer but in what manner and how that was misused, was also nether known nor clarified so much so it was not explained as to whose was the CDR i.e. the details of calls made and received, by whom and to whom is not clear. The appellant had



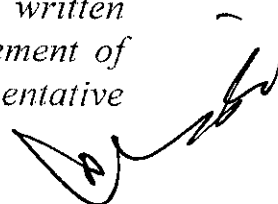
denied selling of the CDR rather he had contended that whenever need the CDR was given to the source for seeking guidance and help in discharging of official duties. Therefore, the allegation of selling or providing CDR to unknown irrelevant person could not have been proved during the inquiry. The charges "b & c" were also not found proved nor those appear to be of serious nature so that any punishment could be awarded on the basis of such allegations. Yes, charge "d" regarding offering illegal gratification appears to be a serious charge but in that respect too, there is a statement of one Khair Muhammad, PSO/DSP recorded by the Additional SP Abbottabad, wherein, he had stated that on 04.02.2022 after Maghrib prayer, the appellant had gone to his home and left Rs.50,000/-, but there is no cross-examination of the appellant on this officer nor the report shows that any opportunity of cross-examination was given to the appellant, which shows that the appellant was not associated with the enquiry proceedings. Right of cross examination is an inalienable right duly universally recognized and established. In the reply to the final show cause notice, the appellant had described that for conduct of his inquiry, the PSO had to go to Islamabad, therefore, he had paid the said amount to the PSO to RPO for expenditure. This allegation of illegal gratification ought to have been properly inquired into and a finding with concrete reasons was to be given for the alleged giving illegal gratification by the appellant to the PSO to RPO. But it appears that the allegation was dealt with in a slipshod manner and truth could not be extracted. Looking at the fact from another angle, whether the PSO to RPO had retained that money or had returned or produced before the inquiry officer(s) or where did that go, are the questions not answered by either of the enquiries. Therefore, mere statement of PSO to RPO or of the



appellant narrating two different stories, could not be considered sufficient to prove the charges against the appellant. Thus without ascertaining the truth and guilt of the appellant, the punishment awarded to him could hardly be sustained. Reliance is placed on a judgment of the Supreme Court of Pakistan reported as 2023 SCMR 603 titled "*Federation of Pakistan through Chairman Federal Board of Revenue FBR House, Islamabad and others versus Zahid Malik*". In the judgment the Supreme Court held as under:

"8. The primary objective of conducting departmental inquiry is to grasp whether a clear-cut case of misconduct is made out against the accused or not. The guilt or innocence is founded on the end result of the inquiry. The learned Service Tribunal may observe whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). In a regular inquiry, it is a precondition that an evenhanded and fair opportunity should be provided to the accused and if any witness is examined against him then a fair opportunity should also be afforded to cross-examine the witnesses. In a departmental inquiry on the charges of misconduct, the standard of proof is that of balance of probabilities or preponderance of evidence. Where any authority regulates and performs its affairs under a statute which requires the compliance of the principles of natural justice then it should have been adhered to inflexibly.

9. Despite the handiness and accessibility of well guided procedure for conducting the inquiry under the E&D Rules, the inquiry officer did not adhere to it religiously and conducted the inquiry in a slipshod manner. The Inquiry Report dated 18.7.2014 reflects that Shaikh Zahid Masood, Additional Director, Intelligence and Investigation, Inland Revenue, Karachi was appointed as an Inquiry Officer, whereas Mr. Abdul Qadeer Abbasi, Deputy Commissioner (H.Qs) Zone-II, Regional Tax Office, Karachi was appointed as Departmental Representative in the inquiry. In paragraph No.7 of the Inquiry Report, it is pointed out that the respondent/accused Zahid Malik submitted his written defence in response to the charge sheet and statement of allegations on which the departmental representative



submitted his comments on 29.1.2014, but the inquiry report does not depict that any witness including any assessee/tax payer was called for recording evidence in support of the allegations levelled against the accused officer. On the contrary, the inquiry report put on view that against each charge only the defence of the accused officer is mentioned along with the rebuttal of the departmental representative and thereafter the finding of the inquiry officer is recorded and finally, the accused officer was found guilty of inefficiency, misconduct and corruption on account of charges. Mere reproduction of charge with defence submitted in writing by the accused and then the rebuttal submitted by the departmental representative in the inquiry report was not sufficient to prove the accused's guilt as there was no evidentiary value except two statements on record and allegations vice versa (words against words) which could only be proved one way or the other. Had the evidence been recorded, both the statements would have subjected to the cross-examination accompanied by other oral and documentary evidence for sifting the grain from the chaff. Without exploring and finding guilt of accused into the charges of misconduct, neither the inquiry report can be construed as fair and impartial, nor is it commensurate to the procedure provided under the E&D Rules for conducting an inquiry into allegations of misconduct. It is undoubtedly revealing from the inquiry report that no opportunity was provided to the accused to conduct cross-examination even on the departmental representative who allegedly rebutted the defence of the accused in writing before the inquiry officer and also produced evidence against the accused; at least he should have been subjected to the cross-examination by the accused officer, particularly when no other witness was called for recording evidence. The learned Tribunal has judiciously scanned the inquiry report and also discussed all factual aspects in Paragraphs 6 to 10 of the impugned judgment and rightly reached the conclusion that the inquiry was conducted in violation of Rule 6 of the 1973 E&D Rules.

10. The scrutiny and analysis of the aforesaid Rules and the procedure set forth therein (present or repealed) unambiguously divulge that the right of proper defence and cross-examination of witnesses by the accused is a vested right. Whether the evidence is trustworthy or inspiring confidence could only be determined with the tool and measure of cross-examination. The purpose of the cross-examination is to check the credibility of witnesses to elicit truth or expose falsehood. When the statement of a witness



is not subjected to the cross-examination, its evidentiary value cannot be equated and synchronized with such statement that was made subject to cross-examination, which is not a mere formality, but is a valuable right to bring the truth out. If the inquiry officer or inquiry committee is appointed for conducting inquiry in the disciplinary proceedings, it is an onerous duty of such Inquiry Officer or Inquiry Committee to explore every avenue so that the inquiry may be conducted in a fair and impartial manner and should avoid razing and annihilating the principle of natural justice which may ensue in the miscarriage of justice. The possibility cannot be ruled out in the inquiry that the witness may raise untrue and dishonest allegations due to some animosity against the accused which cannot be accepted unless he undergoes the test of cross-examination which indeed helps to expose the truth and veracity of allegations. The whys and wherefores of cross-examination lead to a pathway which may dismantle and impeach the accurateness and trustworthiness of the testimony given against the accused and also uncovers the contradictions and discrepancies. Not providing an ample opportunity of defence and depriving the accused officer from right of cross-examination to departmental representative who lead evidence and produced documents against the accused is also against Article 10-A of the Constitution in which the right to a fair trial is a fundamental right. What is more, the principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, give explanation and contest it before he is found guilty and condemned. The doctrine of natural justice is destined to safeguard individuals and whenever the civil rights, human rights, Constitutional rights and other guaranteed rights under any law are found to be at stake, it is the religious duty of the Court to act promptly to shield and protect such fundamental rights of every citizen of this country. The principle of natural justice and fair-mindedness is grounded in the philosophy of affording a right of audience before any detrimental action is taken, in tandem with its ensuing constituent that the foundation of any adjudication or order of a quasi-judicial authority, statutory body or any departmental authority regulated under some law must be rational and impartial and the decision maker has an adequate amount of decision making independence and the reasons of the decision arrived at should be amply well-defined, just, right and understandable, therefore it is incumbent that all judicial, quasi-judicial and administrative authorities should carry out their powers

with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principle of natural justice. (Ref: Sohail Ahmad v. Government of Pakistan through Secretary of Interior Ministry, Islamabad and others (2022 SCMR 1387) and Inspector General of Police, Quetta and another v. Fida Muhammad and others (2022 SCMR 1583).

11. In the case of Deputy Director Food and 2 others v. Akhtar Ali, Food Grains Inspector (1997 SCMR 343), this Court observed that the Tribunal, besides invoking the principle enunciated in the case of Bilquis Nargis, had granted the relief to the respondent on the additional grounds, firstly, that the respondent having been not only disallowed to cross-examine the AFC who had appeared against him, but also that the statement of said AFC qua the respondent was devoid of any evidentiary value and finally held that the two grounds being well founded were per se enough to vitiate the consequential penalty imposed as a result of the inquiry proceedings. Likewise, in the case of Secretary to Government of N.W.F.P, and 2 others v. Saifur Rehman (1997 SCMR 1073). this Court again held that a person facing enquiry has a right to be associated with its proceedings and is entitled to impeach the credibility of witnesses produced against him through cross-examination. While in the case of Muhammad Zaheer Khan v. Government of Pakistan through Secretary, Establishment and others (2010 PLC (C.S.) 559), this Court held that nothing could be a better example of condemnation unheard where no witness was examined and cross-examined by the inquiry officer before arriving at such a serious conclusion relating to extensive questions of fact. Whereas in the case of Union of India and another v. Tulsiram Patel and others (AIR 1985 SC 1416), the Court held that the audi alteram partem rule in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence.

12. As a fall back argument, the learned counsel for the appellant insisted that if the learned Tribunal had detected



some discrepancy or lacuna in the inquiry proceedings due to non-recording of evidence or not affording the right of cross-examination to the respondent, then the right avenue was to remand the matter to the competent authority to conduct de novo inquiry, rather than granting the relief of reinstatement with conversion of major penalty into minor penalty. In our considerate insight, the remand of a case to the lower fora cannot be claimed as a vested right, but it is always the province of the Court or Tribunal to first figure out whether any material error or defect was committed by the Court in the order or judgment which really and adversely affected the corpus of the case and caused serious prejudice or injustice to the party requesting remand on some essential questions of law or fact which was ignored by the courts below while deciding the lis. In our analysis, we have not found any error on the part of the learned Tribunal, rather it is the inquiry officer who had committed grave procedural errors. We are sanguine that the inquiry officer cannot be expected to be trained as a judicial officer, but when the inquiry is conducted under some statute or enabling rules, then it is the onerous duty and responsibility of the inquiry officer that he should be conversant with the applicable rules before accepting and performing the task of an inquiry officer and should also observe the principle of natural justice and due process of law. Due to the defective inquiry (deliberately or undeliberately), the ultimate sufferer would be the department which initiated the departmental proceedings on the charges of misconduct. Sometimes by dint of patent faults, blunders and/or procedural lapses, the accused is exonerated with the blessing of benefit of doubt. While conducting the inquiry, the procedure and parameters provided under E&D Rules should have been followed. The purpose of remand is not to provide an opportunity to rectify the lacunas or deliberate omissions or violations in the inquiry despite availability of unequivocal rules enumerating the procedure for guidance of inquiry officer. However, we feel it appropriate to note down that the matter of a departmental inquiry should not be conducted in a cursory or perfunctory manner and in order to improvise the norms and standards of departmental inquiry under the Civil Servants Act, 1973 and E&D Rules or in other enabling Rules, it would be advantageous that a "Handbook" of inquiry procedure be compiled by the appellant with the excerpts of all relevant Rules including the rule of natural justice and due process of law enshrined under Article 10-A of the Constitution for the step-by-step help and assistance of inquiry officers or inquiry

Service Appeal No.1521/2022 titled "Hafeez Ur Rehman versus Government of Khyber Pakhtunkhwa through Secretary Home Khyber Pakhtunkhwa & others", decided on 28.11.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Salah-Ud-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

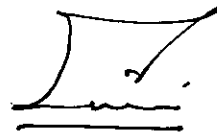
committees so that in future, they may be well conversant with the precise procedure before embarking on the task of an inquiry and conduct the inquiry proceedings without ambiguities."

08. Therefore, we allow this appeal and set aside the impugned orders, thereby, direct that appellant be reinstated into service with all back benefits. Consign.

09. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 28th day of November, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH-UD-DIN
Member (Judicial)

Muazem Shah

27th Nov. 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Learned counsel for the appellant requested that because of death of a senior member of the bar, the bar is on strike and no lawyer was arguing any matter before any court. He requested that let this matter might be adjourned to tomorrow. On the request, this case is adjourned for tomorrow i.e. 28.11.2023 before D.B at Camp Court, Abbottabad. P.P given to the parties.



(Salah-Ud-Din)
Member (J)

*Adnan Shah *



(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

S.A #. 1521/2022

ORDER

28th Nov. 2023

1. Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.


2. Vide our detailed judgment of today placed on file, we allow this appeal and set aside the impugned orders, thereby, direct that appellant be reinstated into service with all back benefits. Consign.

3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 28th day of November, 2023.*



(Salah-ud-Din)
Member (J)

Muazem Shah



(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad