

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWA AT CAMP COURT ABBOTTABAD

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 7347/2021

Ghulam Dastagir, Patwari Halqa Ghazi, District Haripur.
(Appellant)

Versus

The Commissioner Hazara Division, Abbottabad and one another.
(Respondents)

Present:

Mr. Ali Azim Afridi, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

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Date of presentation of Appeal.....26.08.2021
Date of Hearing.....11.12.2023
Date of Decision.....11.12.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: Precise facts forming the background of the instant appeal are that the appellant while posted as Patwari Halqa Ghazi District Haripur, was proceeded against departmentally on the allegations reproduced as below:-

"i. That during the surprise visit of Assistant Commissioner Ghazi on 04.01.2021, a private person namely Sader Shah S/o Mardan Shah was present in your Patwar office personating/working as revenue official & dealing with general public in violation of the standing instructions of the Board of Revenue Khyber Pakhtunkhwa Peshawar.

ii. That in-spite of written as well as verbal warning by Assistant Commissioner, Ghazi you did not bother to comply with the instructions issued by visiting

officer as the said person was again found present with same state during another surprise inspection on 07.01.2021. This act shows gross inefficiency and negligence on your part and tantamount to misconduct."

2. Initially Assistant Commissioner Haripur was appointed as inquiry officer, who submitted his report to the competent Authority. The competent Authority, however order de-novo inquiry and Additional Deputy Commissioner (Relief &HR) was appointed as inquiry officer. On conclusion of the de-novo inquiry, the appellant was awarded minor penalty of withholding of two annual increments vide order dated 28.04.2021 passed by Deputy Commissioner Haripur. The penalty so awarded to the appellant was challenged by him through filing of departmental appeal/representation before the Commissioner Hazara Division Abbottabad, which was rejected during the pendency of instant appeal on 18.03.2022.

3. 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 as well as factual objections.

4. Learned counsel for the appellant contended that private person namely Sader Shah S/O Mardan Shah was not carrying any functions in the office of the appellant and nothing in the shape of documentary evidence was produced during the inquiry in support of the allegations leveled in the charge sheet against the appellant. He next contended that in-spite of de-novo inquiry being conducted in the matter, no opportunity of cross-examination of the witnesses examined during the

inquiry was provided to the appellant, which is blatant violation of sub-rule (1) of Rule-11 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He further contended that as the allegations against the appellant were not proved during the inquiry, therefore, the competent Authority was not justified in awarding him penalty. In the last he requested that as the impugned orders are bereft of any legal sanctity, therefore, the same may be set-aside and the appeal of the appellant may be allowed as prayed for.

5. On the other hand, learned Deputy District Attorney for the respondents contended that Assistant Commissioner Ghazi had made surprise visit to the office of the appellant and had found that one Sader Shah S/O Mardan Shah was working as Revenue Official in the office of the appellant, which was grave misconduct on part of the appellant. He next argued that a regular inquiry was conducted in the matter by complying all legal and codal formalities and the allegations against the appellant stood proved in the inquiry, therefore, he was rightly awarded the impugned penalty. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with costs.

6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. A perusal of the record would show that Additional Deputy Commissioner (Relief & HR) Haripur was appointed as Inquiry Officer for conducting de-novo inquiry into the allegations leveled against the appellant. Copy of the inquiry report so submitted by the inquiry officer is available on the record, which would show that beside statement of appellant, statement of Assistant Commissioner Ghazi, Tehsildar Ghazi

and Sader Shah were also recorded during the inquiry. The appellant has categorically alleged in the memo of appeal that he was not provided any opportunity of cross-examination. The inquiry record does not show that the appellant was provided an opportunity of cross-examination of the witnesses examined during the inquiry. The respondents have thus failed to rebut the stance of the appellant regarding non-providing of opportunity of cross-examination to him. According to sub-rule (1) of Rule-11 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the inquiry officer was bound to provide opportunity cross-examination to the appellant, however the same has not been done, which fact has created material dent in the inquiry proceedings. The inquiry report would show that only Assistant Commissioner Ghazi had recorded statement in support of the allegations leveled against the appellant, however in view of non-providing of opportunity of cross-examination to the appellant, the evidence of Assistant Commissioner Ghazi could not be taken into consideration for awarding penalty to the appellant.

8. According to charge sheet as well as statement of allegations, Assistant Commissioner Ghazi had made surprised visits to the office of appellant twicely and had found that one Sader Shah S/O Mardan Shah was personating him as Revenue Official and was dealing with the general public. The Assistant Commissioner did not take into possession any document which could show that private person namely Sader Shah S/O Mardan Shah was carrying out any Revenue functions in the office of the appellant. Moreover, if Sader Shah S/O Mardan

Shah was depicting himself as Revenue official, his such alleged act was culpable under criminal law but the Assistant Commissioner Ghazi did not make any effort for initiation of criminal proceedings against him. No one from the general public allegedly present in the office of the appellant at the time of visit of Assistant Commissioner Ghazi was examined during the inquiry in support of the allegations leveled against the appellant.

9. Consequently, the appeal in hand is accepted by setting-aside the impugned orders and the two annual increments stand restored to the appellant with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.12.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD



(FARZEHA PAUL)
MEMBER (EXECUTIVE)
CAMP COURT ABBOTTABAD

Naeem Amin



ORDER
11.12.2023

Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is accepted by setting-aside the impugned orders and the two annual increments stand restored to the appellant with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.12.2023

(Fareeha Paul)
Member (Executive)
Camp Court Abbottabad

(Salah-Ud-Din)
Member (Judicial)
Camp Court Abbottabad