

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 448/2018

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

Asad Ali Ex-Primary School Teacher, Rustam Mardan.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education Department Peshawar.
3. District Education Officer (Male), Mardan.

.... (Respondents)

Mr. Muhammad Asif Yousafzai
 Advocate

...

For appellant

Mr. Muhammad Jan
 District Attorney

...

For respondents

Date of Institution.....04.04.2018

Date of Hearing.....03.11.2023

Date of Decision.....03.11.2023

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 orders dated 27.02.2018 and 13.12.2017 may be set aside and the appellant may be reinstated into service with all back and consequential benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was earlier removed from service on 05.01.2010 on the charges of immoral activities. That against the removal order appellant filed an appeal in this Tribunal, which was partially accepted and appellant was



reinstated and was placed under suspension to face de-novo inquiry. After conclusion of inquiry, major penalty of compulsory retirement from service was imposed upon the appellant as a consequence of inquiry report vide order dated 30.08.2014. On the basis of judgment of this Tribunal, the appellant was reinstated on 18.01.2017 and denovo enquiry was conducted against the appellant as in which neither statement was recorded in the presence of the appellant nor the appellant was given the opportunity of cross examination and appellant was held responsible by the inquiry officer and again major penalty of compulsory retirement from service was imposed upon the appellant vide order dated 13.12.2017. Feeling aggrieved he preferred departmental appeal on 28.12.2017 which was rejected on 27.02.2018, 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 and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that impugned orders are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside. He contended that no proper/regular inquiry was conducted by the respondents and even no opportunity of self-defence was provided to him. He further contended neither the appellant was associated with the inquiry proceedings nor statement was recorded in the presence of appellant and even the chance of cross examination was not provided to the appellant which was clear violation of the norms of justice

5. Learned District Attorney contended that the appellant was treated in accordance with law and rules. He further contended that respondents fully



obeyed the directions of this Tribunal in true letter and spirit, conducted another enquiry about the subject matter, and after conducting proper denovo enquiry, the allegations were proved and the appellant again declared to be compulsory retired after fulfillment of all codal formalities.

6. Perusal of earlier judgments transpires that earlier the appellant was removed from service vide order 05.01.2010 on the basis of preliminary inquiry without conducting a regular inquiry and it was held that major penalty of removal from service could not be imposed without regular inquiry. Thereafter, two members inquiry committee was constituted, who after recording statements of different connected people held the accused official guilty on 16.07.2014 and show cause notices were issued, into compulsory retirement. This inquiry was conducted prior to issuance of show cause notice to the appellant. No proper opportunity of defense was provided, in shape of cross-examination in this inquiry. It could be safely assumed that appellant was not associated with inquiry proceedings. In show cause notice it was held by the authority that he had sufficient documentary evidence against appellant, so he dispensed with the inquiry. This dispensation with of inquiry and taking action on the basis of inquiry report, without proper opportunity of cross examination are against the direction of this Tribunal rather it has brought the judgment of this Tribunal to naught.


7. We note it with great concern, that despite giving direction twice by this tribunal respondents dispensed with inquiry which is amounts to set upon the order/direction of this tribunal and falls within definition of non compliance. This behavior/attitude of the respondents are arbitrary in nature, showing disregard to orders of this




tribunal. Respondents are warned to remain careful in future and obey order of this Tribunal in its true letter and spirit.

8. As a sequel to above discussion, we are unison to set aside the impugned orders and reinstate the appellant into service for the purpose of denovo inquiry with direction to provide opportunity of cross examination and self defense to the appellant with further direction to conclude the inquiry within 90 days after receipt of copy of this judgment. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 3rd day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)


ORDER3rd Nov, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Jamil Ahmad, ADEO for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to set aside the impugned orders and reinstate the appellant into service for the purpose of denovo inquiry with direction to provide opportunity of cross examination and self defense to the appellant with further direction to conclude the inquiry within 90 days after receipt of copy of this judgment. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 3rd day of November, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)