

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1407/2022

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

Eid Badshah S/o Din Hasan Driver at District Judiciary, District Orakzai.
.... (Appellant)

VERSUS

1. District & Sessions Judge, Orakzai.
2. Registrar, Peshawar High Court, Peshawar.

.... (Respondents)

Mr. Syed Shahid Shah
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....29.09.2022
Date of Hearing.....28.11.2023
Date of Decision.....28.11.2023

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 impugned order dated 30.04.2022 issued by respondent No.1, please be set aside and the appellant may be reinstated with full back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was inducted as Driver in the District Judiciary and served the department with due care. Initially appellant was posted with Senior Civil Judge Orakzai as Driver and during service with the Senior Civil Judge the



appellant perform his duties with full dedication which was incorporated in his ACRs. Later on he was deputed to serve with Additional District Judge, Orakzai. On 08.03.2022 an explanation was called from the appellant reply of which was submitted which was found unsatisfactory by the authority, who issued final show cause notice on 26.03.2022 and finally dismissed him from service vide order dated 30.04.2022 which was communicated to the appellant on 01.06.2022. Feeling aggrieved, he filed departmental appeal on 14.06.2022 which was not responded to, hence, the present 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 appellant has not been treated in accordance with law and rules. He further argued that the impugned order has been passed without adopting legal procedure and no opportunity of personal hearing has been afforded to the appellant, hence the impugned order is illegal and unlawful. He further argued that no proper inquiry has been conducted by the respondent, hence the impugned order passed in violation of law and rules. He submitted that first explanation letter was issued and then suddenly final show cause notice was issued with first show cause notice thus respondents transgressed the law and rules. He further submitted that no inquiry committee has been constituted and no regular inquiry has been conducted hence the rules of service has been violated and order passed in haste.

5. Conversely, learned District Attorney contended that the appellant has been treated in accordance with law and rules as he was habitual absentee

as number of time he willfully absented himself without intimation and permission, hence he was rightly given explanation. He further contended that due to his discourteous and aggressive attitude with Judicial Officers as well as with general public he was placed at the disposal of incharge conference room in order to mend his ways and behavior. He further contended that appellant has categorically admitted his absence in his written reply to explanation and the laws and rules made there under have fully been complied with while conducting proceedings against the appellant. He submitted that after fulfillment of all codal formalities he was rightly dismissed from service.

6. Perusal of record reveals that appellant was serving as Driver in respondent department who served with zeal and responsibility to the entire satisfaction of his superiors. It was on 08.03.2022 when appellant received explanation about his un-authorized absence. Appellant submitted reply of the explanation with contention that he was on duty and not absent from duty. It is mentioned in reply of explanation that there are two drivers who performed duties on rotation and from 25.02.2022 till 08.03.2022 was turn of Habib, Driver because appellant performed duties of his turn till 25.02.2022. The reply of the appellant was found unsatisfactory and authority dispensed with inquiry and issued final show cause notice on 26.03.2022. The competent authority after receiving reply of final show cause notice found it unsatisfactory and vide impugned order dated 30/04/2022 dismissed appellant from service with further direction to recover salaries of absent period, if any received by the appellant.

7. It is specifically mentioned by the appellant in his reply that there are two drivers who performed duties on rotation and from 25.02.2022 till



08.03.2022 was the turn of Habib, Driver and he performed his part/turn till 25.02.2022. Then in such a situation it was duty of the authority to record statement of Habib, Driver and provides proper opportunity of hearing to the appellant. But competent authority without conducting proper regular inquiry by providing chance of hearing, cross examination and self-defense without showing any valid reason for dispensing with formal inquiry passed impugned order which is not in accordance with law on the subject and appellant was condemned unheard.

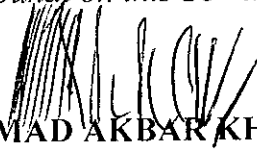
8. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing 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.


9. For what has been discussed above, we are unison to set aside impugned order dated 30.04.2022 and reinstate the appellant for purpose of



de-novo inquiry with direction to respondents to conduct regular inquiry by providing proper opportunity of hearing and cross examination to the appellant. Costs shall follow the event. Consign.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 28th day of November, 2023.*


(MUAHAMMAD AKBAR KHAN)
Member (M)


(RASHIDA BANO)
Member (J)

*Kaleemullah

ORDER

28.11.2023 1. Learned counsel for the appellant present. Mr. Mohammad Jan

learned District Attorney alongwith Syed Mohammad Ali Shah Superintendent for the respondents present..

2. Vide our detailed judgement of today placed on file, we are unison to set aside impugned order dated 30.04.2022 and reinstate the appellant for purpose of de-novo inquiry with direction to respondents to conduct regular inquiry by providing proper opportunity of hearing and cross examination to the appellant. Costs shall follow the event. Consign.

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


(MUAHAMMAD AKBAR KHAN)
Member (M)


(RASHIDA BANO)
Member (J)

*Kaleemullah