

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR, AT  
CAMP COURT SWAT

Service Appeal No. 1793/2019

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

Umar Rehman S/O Said Manan Ex. Chowkidar Government Primary  
School Sabar Shah Batkhela District Malakand.  
.... (Appellant)

VERSUS

1. District Education Officer (Male), Malakand.
2. Director, Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. Secretary, Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar. .... (Respondents)

Mr. Mir Zaman Safi  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

Date of Institution.....16.12.2019  
Date of Hearing.....06.12.2023  
Date of Decision.....06.12.2023

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 service appeal, the impugned order dated 20.11.2019 and 06.11.2019 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits.**

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Class-IV vide order dated 21.11.1996 in Education



Department. While he was posted as Chowkidar at Primary School Sabar Shah Batkhela, was involved in a criminal case on the basis of which, he was issued a charge sheet and statement of allegations on 26.08.2019, reply of which was given by the appellant, which was found unsatisfactory and enquiry officer submitted his report on 10.08.2019. Final show cause notice was issued to the appellant on 03.10.2021, reply of which was also found unsatisfactory and appellant was dismissed from service vide impugned order 06.11.2019. Feeling aggrieved, appellant filed departmental appeal, which was regretted vide impugned order dated 20.11.2019. Hence, the instant 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 impugned orders are illegal, unlawful and void ab-initio, hence liable to be set aside. He further argued that no proper inquiry was conducted and the appellant was never provided opportunity of cross examination nor any evidence was collected during inquiry. He submitted that appellant was suspended so the respondents were required to have waited till the decision of court but they in haste issued impugned orders which is against the norms of natural justice. He further submitted that appellant was proceeded on the allegations of being involved in criminal case from which he has been acquitted and he was treated in accordance with law.

5. Learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that the



appellant was involved in immoral activities/alleged harassment of two minor girls of the area, on the basis of which appellant was suspended. Inquiry committee was constituted by appointing Mr. Fida Mohammad, Principal and Mr. Fazal Ahad Khan, Principal. During inquiry charge sheet and statement of allegation was issued to the appellant. After fulfillment of all codal formalities, the appellant was rightly dismissed from service.

6. Record reveals that allegation in a criminal case and in statement of allegation are that appellant attempted sexual harassment with two minor girls namely Manahil d/o Alamzeb, aged 5 years and Manahil Deeni d/o Amjad aged about 9 years. Appellant was arrested on 27.05.2019 and was behind the bar at the time of inquiry which is evident from the reply and final show cause notice as same was sent from judicial lock up. Appellant was acquitted from the said charges by the court of SCJ/Judge Model Trial Magistrate Court vide order dated 25.10.2019. Inquiry officer although recorded statement of Manahil Deeni victim girl, Nazim and locals of the vicinity but no chance of cross examination was provided to the appellant, as he was in judicial lockup which means that he was departmentally condemned unheard.


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. For what has been discuss above, we are unanimous to set aside the impugned order and reinstate the appellant into service for the purpose of de-novo inquiry with direction to respondent to provide opportunity of self-defense hearing and most importantly cross examination upon all whose statement recorded during inquiry. Costs shall follow the event. Consign.

9. *Pronounced in open court at camp court swat and given under our hands and seal of the Tribunal on this 6<sup>th</sup> day of December, 2023.*

  
(MUAHAMMAD AKBAR KHAN)  
Member (M)

  
(RASHIDA BANO)  
Member (J)

\*Kalecmullah


**ORDER**

06.12.2023 1. Learned counsel for the appellant present. Mr. Mohammad Jan

learned District Attorney for the respondents present..

2. Vide our detailed judgement of today placed on file, we are unison that to set side impugned orders and reinstate the appellant into service for the purpose of denovo inquiry by providing opportunity of self-defense, personal hearing and cross-examination to the appellant which is requirement of a fair trial. Respondents are directed to conduct denovo inquiry within 90 days after receipt of copy of this judgment. Costs shall follow the events. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6<sup>th</sup> day of December, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)