

ORDER

01.01.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan,
District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to set aside impugned order dated 03.06.2013 and reinstate the appellant for purpose of inquiry with direction to respondents to conduct regular inquiry by providing proper opportunity of hearing, defence and cross examination to the appellant. Respondents are further directed to conclude inquiry within sixty days of receipt of copy this judgment. The issue of back benefits shall be subject to the outcome of inquiry. Costs shall follow the event. Consign.

3. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 1st day of January, 2024.*



(SALAH UD DIN)

Member (J)

Camp Court, Swat

*Kaleemullah



(RASHIDA BANO)

Member (J)

Camp Court, Swat

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 03.06.2013 and reinstate the appellant for purpose of inquiry with direction to respondents to conduct regular inquiry by providing proper opportunity of hearing, defence and cross examination to the appellant. Respondents are further directed to conclude inquiry within sixty days of receipt of copy this judgment. The issue of back benefits shall be subject to the outcome of inquiry. Costs shall follow the event. Consign.

10. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 1st day of January, 2024.*



(SALAH UD DIN)
Member (J)
Camp Court, Swat



(RASHIDA BANO)
Member (J)
Camp Court, Swat

Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet and statement of allegation”

Respondents, despite directions failed to produce said charge sheet and statement of allegation, which were allegedly issued to the appellant. It is also pertinent to mention here that inquiry was initiated against one Mohammad Shakoor S.S/DDO GHSS Palai by the authority wherein Mr. Hayat Mohammad was appointed as Enquiry Officer who conducted inquiry against said Muhammad Shakoor and submitted his report. As a result of which, show cause notice was issued to the appellant which means that no regular inquiry was conducted against the appellant by providing chance of personal hearing and self-defence. Moreover, it is also evident from record that appellant was in the judicial lockup and was behind the bar at the time of issuing show cause notice which fact is mentioned at the bottom of show cause notice which is read as:

“Mr. Altaf Abdul Nasir, Junior Clerk (impersonated as Shah-e-Mulk) Ex-SET (BPS-16) GHSS Palai Malakand Agency, (Now in Judicial Lockup, Malakand, at Malakand)”

7. Appellant was awarded major penalty of removal from service without conducting regular inquiry as it is established on record that appellant was not afforded with an opportunity of personal hearing and self-defence and was condemned unheard which is against the settled norms and rules on the subject.

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 has held that in case of

imposing major penalty, the principles of natural justice required that a

5. Conversely, learned District Attorney for the respondent contended that the appellant has been treated in accordance with law and rules. He further contended that appellant was charged in two FIRs dated 25.09.2012 and 25.03.2013 on the charges of illegal, fake and bogus appointments against various posts has thus found guilty of causing huge financial losses to the government exchequer, on the basis of which he was arrested by the local police and was sent behind the bars. He further contended that departmental proceeding were initiated against the appellant under (E&D) Rules, 2011 by nominating Hayat Mohammad, Principal as enquiry officer who conducted inquiry against the appellant and had found the appellant guilty of charges, hence, show cause notice was issued to the appellant which was not at all replied by the appellant resultantly impugned order was issued.

6. Perusal of record reveals that appellant was appointed as junior clerk in respondent department on 23.06.1997. During the course of his service, the appellant was charged in criminal case bearing FIR No. 1 dated 25.09.2012 as well as FIR No. 1 dated 25.03.2013 and after arrest, he was sent behind the bars. Respondent department initiated departmental proceedings against the appellant and he was removed from service vide order dated 03.06.2013. Appellant was acquitted from the charges levelled against him in both the FIRs. Respondents have alleged that regular inquiry has been conducted against the appellant, which is also mentioned in the impugned order dated 03.06.2013 as under:


“Whereas Mr. Altaf Abdul Nasir, Junior Clerk (Impersonated as Shah-e-Mulk), Ex-SET (BS-16) GHSS Palai Malakand Agency (Now in judicial lockup Malakand at Malakand) proceeded against under the Khyber Pakhtunkwa Government



entire satisfaction of his superiors. During service appellant was charged in case FIR No. 1 dated 25.09.2012 under section 409/419/420/468/471/472 PPC and in FIR No.1 dated 25.03.2013 under section PPC 409/419/420/468/471/5(2) PC Act. The appellant was sent behind the bar in the above mentioned FIRs and remained there from the date of his arrest in criminal cases. Respondents without fulfilling the codal formalities and waiting for final decision of the court remove the appellant from service vide order dated 03.06.2013. After removal from service, competent court of law acquitted the appellant vide judgment dated 26.02.2019. Feeling aggrieved from order of removal, appellant filed departmental appeal which, which was not responded to, 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 the appellant has not been treated in accordance with law and rules and respondents violated Article 4 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. He further argued that order passed by the respondents is against the law, facts and norms of natural justice and material on the record hence not tenable and liable to be set aside. He further argued that no charge sheet, statement of allegation, show cause notice has been issued to the appellant nor chance of personal hearing has been provided to the appellant. He further argued that no regular inquiry has been conducted against him. He submitted that respondents removed the appellant in a hasty manner without waiting for the outcome of the trial which was pending before the competent court of law at that relevant time.



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT SWAT

Service Appeal No. 871/2019

BEFORE:MR. SALAH UD DIN ... MEMBER (Judicial)
MRS. RASHIDA BANO ... MEMBER(Judicial)

Mr. Altaf Abdul Nasir, Ex: Junior Clerk, GHSS Palai, District
Malakand. (*Appellant*)

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar.
3. Director Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar.
4. District Education Officer (Male) Swat.

.... (*Respondents*)

Mr. Umar Farooq Mohmand
Advocate ... For appellant

Mr.Muhammad Jan
District Attorney ... For respondents

Date of Institution.....02.07.2019
Date of Hearing.....01.01.2024
Date of Decision.....01.01.2024

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 instant appeal the impugned order dated 03.06.2013 may very kindly be set aside and the appellant may be reinstated into service with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Junior Clerk in the respondent department vide order dated 23.06.1997 and served the department quite efficiently up to the