

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 116/2022

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

Sibghat Ullah, Senior Clerk, Capital City Police Officer, Peshawar.
.... (Appellant)

VERSUS

1. Capital City Police Officer, Peshawar.
2. Superintendent of Police Co-Ordination, Peshawar.
3. District Police Officer, Khyber.
4. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
.... (Respondents)

Mr. Fazal Shah Mohmand
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....26.01.2022
Date of Hearing.....13.12.2023
Date of Decision.....13.12.2023

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 instant appeal, the impugned dated 05.01.2022 to the extent of appellant may kindly be varied/modified to the extent thereby reinstating the appellant in 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 police department vide order dated 20.05.2006 and was promoted to the post of Senior Clerk in the year 2019, who

was performing duty upto the entire satisfaction of his superiors. During posting at Khyber, charge sheet alongwith statement of allegations was issued to the appellant by respondent No.2 on 19.04.2021, which was replied by denying the allegations leveled against him. Thereafter, inquiry was conducted and after fulfillment of all codal formalities, he was awarded major penalty of removal from service vide order dated 24.09.2021. Feeling aggrieved, he filed departmental appeal on 28.09.2021 which was partially accepted by converting major penalty of removal from service into minor penalty of forfeiture of two years approved service and no benefits were granted for the intervening period vide order dated 05.01.2022, 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 appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that impugned order passed by the respondents is against the law, facts and norms of natural justice, hence void ab-initio. He contended that show cause notice was issued to the appellant under Police Rules 1975 while penalty awarded under (E & D) Rules 2011, thus the impugned order is liable to be modified. He further contended that during denovo inquiry no one was examined in presence of appellant nor he was provided with opportunity of cross-examination and self-defence and the appellant was condemned unheard.

5. Conversely, learned Deputy District Attorney for the respondents contended that the appellant indulge himself in various corrupt practices and also found in grouping with convenience of another Stenotypist. Both the officials were found




interfering in affairs of everyone to extort gratification/money. The appellant also filed false/anonymous complaints against the staff in order to obtain desired posting which badly hampered the official work of the department. He contended that inquiry was conducted against him and during the course of enquiry, he failed to rebut the charges and enquiry officer found him guilty of the charges. He further contended that mentioning of Police Rules 1975 in the final show cause notice was a clerical mistake.

6. Perusal of record reveals that appellant is serving as Senior Clerk in police department upto the entire satisfaction of his high-ups. During posting at the office of respondent No.3, a complaint upon citizen portal was lodge against one constable Adnan No.42, who was also posted at the office of respondent No.3 and was transferred to CCPO Peshawar in respect of not relinquishing charge at DPO Khyber office and assumes duty at CPC Peshawar which was put by appellant to his highups, who send the same to CCPO as result of which SSP/Coordination suspended said constable Adnan No. 42 but reinstated him on the very next day. Appellant alongwith one Syed Sajid Ali Shah, Stenotypist just after two days of above mentioned episode proceeded departmentally by issuing charge sheet and statement of allegation which read as;

"DPO Khyber vide his letter No. 1050/PSO dated 02.04.2021 that he (Sibghat Ullah, SC) while posted in the office of DPO Khyber (now in CPC), was found indulged in grouping with the convenience of Syed Sajid Ali Shah, P.A making interference in the affairs of everyone to extort gratification/money. He also filed anonymous complaints against the staff of DPO/Khyber in order to obtain desired posting. Due to his malicious practice staff of DPO & official work has badly suffered and the complaints filed through PMDU through bad name for police.

7. It is admitted fact that appellant was Junior Scale Stenographer which came under definition of ministerial staff and in accordance with addendum dated



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29.08.2017, Competent Authority for initiating and taking disciplinary action against ministerial staff is Additional Kisp/DIG while charge sheet to appellant was issued by SSP who as per addendum is competent authority for lower scale ministerial staff and not for Senior Clerk (BPS-14). So appellant was not proceeded by the proper authority as provided in the relevant rules. Moreover, other proceeding especially final show cause notice was issued under Police Rules, 1975 as appellant being a ministerial staff will have to be dealt with under (E&D) Rules, 2011. This is also dent in proceeding initiated against the appellant. Appellant in his reply specifically mentioned that constable Adnan No.42 was behind all these things but neither his statement recorded nor opportunity of cross examination was provided to appellant, which is against the rules and principle of natural justice.

8. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty, 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 that to set side impugned orders and reinstate the appellant into service for the purpose of denovo inquiry providing opportunity of self-defense, personal hearing and cross-examination to the appellant which is requirement of fair trial. Respondents are directed to conduct inquiry by the competent authority under the relevant rules and conclude it within 60 days of receipt of copy of this judgment. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of December, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)

*Kaleemullah


(RASHIDA BANO)
Member (J)