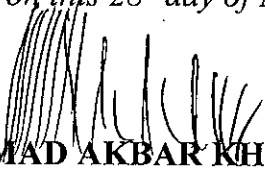


unheard, whereas the principle of '*audi alteram partem*' was always deemed to be imbedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to 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 28th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)

*Kaleemullah


(RASHIDA BANO)
Member (J)

against the staff of DPO/Khyber in order to obtain desired posting. Due to your 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 29.08.2017, Competent Authority for initiating and taking disciplinary action against ministerial staff is Additional IG/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 Stenographers (BPS-14). So appellant was not proceeded by the proper competent authority as provided in the relevant rules. Moreover, other proceeding specially 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

grouping with convenience of another Senior Clerk. 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 is a clerical mistake.

6. Perusal of record reveals that appellant was serving as junior scale stenographer in police department Peshawar with dedication and devotion upto the entire satisfaction of his high ups. Appellant in the year 2018 was transferred to the office of respondent No. 3 DPO, Khyber and after serving for 4 to 5 months there, he again transferred back to the office of respondent No.1. When appellant posted 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 assuming duties at CCPO Peshawar, which was put by appellant to his high ups who send the same to CCPO as result of which SSP Co-ordination suspended said constable Adnan No. 42 but reinstated him on a very next day. Appellant alongwith one Sibghat Ullah, Senior Clerk were just after two days of above mentioned episode proceeded departmentally by issuing charge sheet and statement of allegation, charge sheet which read as;

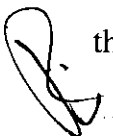
"It has been reported by DPO Khyber vide his letter No. 1050/PSO dated 02.04.2021 that you while posted in the office of DPO Khyber (now in CPC), was found indulged in grouping with the convenience of Sibghat Ullah, SC making interference in the affairs of everyone to extort gratification/money. You also filed anonymous complaints.

appellant joined police the police department in the year 2016 who was performing duty upto the entire satisfaction of his superiors. During posting at Khyber, charge sheet alongwith statement of allegations were issued to the appellant by respondent No.2 which was replied on 26.04.2021. 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 before respondent No.1 on 28.09.2021 and appellant was reinstated in service and major penalty of removal from service was converted into forfeiture of approved service for two years 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 an opportunity of cross-examination 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



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 157/2022

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

Syed Sajid Ali Shah, Junior Scale Stenographer, 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.....03.02.2022
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 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, that the

SA 157/22

10th August, 2023

01. Appellant present in person. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

02. On previous date, appellant requested for adjournment in order to engage another counsel but today he again requested for adjournment. Granted. He is directed to engage counsel in the meantime and case to come up for arguments on 28.11.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(FAREEHA PAUL)
Member(E)


(RASHIDA BANO)
Member (J)

ORDER

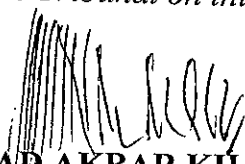
28.11.2023 1

Fazle Subhan, P.S

Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Zahoor Khan, S.I 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 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.

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


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)