

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5774/2020

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

Aman Ullah, Senior Clerk Government Degree College Palae Malakand.
.... (Appellant)

VERSUS

1. Provincial Government through Secretary, Higher Education Department, Secretariat Peshawar.
2. The Director Higher Education Colleges Khyber Pakhtunkhwa, Peshawar.
3. The Principal Government Degree College, Kabal, Swat.
.... (Respondents)

Mr. Yasir Saleem
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....15.06.2020
Date of Hearing.....30.11.2023
Date of Decision.....30.11.2023

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 order dated 24.12.2019, may kindly be set aside and the increments may be restored to the appellant and the alleged embezzled amount may not be recovered from him and he may be allowed all consequential and back benefits of the intervening period.”



2. Brief facts of the case, as given in the memorandum of appeal, that the appellant was initially appointed as Junior Clerk on 01.11.1984 in Education Department and was posted at Government High School Besham Mera. While posted at Government Degree College Kabal appellant was charged in case FIR No. 3 dated 05.05.2008 U/S 409, 468, 471, PPC/5(2) P.C Police Station Kabal. After trial by the Special Judge Anti Corruption, Khyber Pakhtunkhwa punishment of imprisonment alongwith recovery of embezzled amount to the tune of Rs. 1913786/- was awarded to him. The appellant assailed the said judgment through an appeal in Peshawar High Court, Mingora Bench (Daar-Ul-Qaza) Swat and vide judgment dated 29.04.2014, he was acquitted of the charges and released from jail on 14.05.2014. The Peshawar High Court, Mingora Bench had also given directions for constituting an enquiry committee to probe the issue of embezzled government funds. However, the respondents conducted a partial inquiry after removing him from service. The issue of his removal from service was not brought to the notice of the inquiry committee. He preferred an application dated 22.05.2014 for release of salary but no response from the respondents was given. The respondents challenged the judgment of the Peshawar High Court, Mingora Bench, Swat in the august Supreme Court of Pakistan, which was dismissed vide judgment dated 24.11.2015. As a sequel to the aforementioned judgment he again approached the department for adjustment and release of salary but to no avail. Appellant further contended that circumstances compelled him to again knock the door of High Court/Daar-Ul-Qaza, Swat through constitution petition no. 195-M/2016. When the respondents filed comments the appellant came to know that he had already been removed from service vide order dated 02.05.2014, which was never communicated to him. After obtaining a copy of the parawise comments filed by the respondents he submitted an application before the Peshawar High Court, Mingora Bench for



withdrawal of his writ petition, so as to agitate his grievances at an appropriate forum. Vide order dated 13.12.2016 his writ petition was dismissed as withdrawn. Thereafter he filed service appeal No. 439/2017 before this Tribunal which was partially allowed and case was remanded back to the respondents for denovo enquiry vide order dated 09.01.2019. Partial enquiry was conducted and the inquiry committee without associating the appellant with the inquiry proceedings submitted report wherein charges leveled against the appellant were proved. Thereafter, appellant was awarded minor punishment of withholding of two annual increments and recovery of alleged embezzled amount vide order dated 24.12.2019. Feeling aggrieved, he filed departmental appeal which was not responded, 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. He further argued that inquiry committee did not associate the appellant in enquiry proceedings. Not a single witness has been examined during enquiry in his presence nor he has been given opportunity of to cross examine those who may have deposed anything against him during the enquiry. He further argued that the charges leveled against the appellant were neither proved during the inquiry proceedings, nor any independent and convincing proof/evidence has been brought against him. Reliance is placed on case law reported as 2002 SCMR 57, 2001 SCMR 566, 2000 SCMR 1321, 1994 PLC(CS) 1717 and 1993 SCMR 603.

5. Learned District Attorney argued that the then Principal, Govt: Degree College, Kabal, Swat had assigned duties pertaining to the financial/accounts

matters to the applicant. When internal audit conducted in 2008, it unearthed misappropriation/embezzlement in college funds. On the complaint of the Principal, Director Higher Education lodged FIR against the appellant and subsequently arrested by the police. The matter referred to the Director Anti Corruption Establishment, Khyber Pakhtunkhwa for investigation. During investigation, it came to light that Rs. 1913768/- had been embezzled/misappropriated by the appellant. The case was referred to the Special Judge Anti Corruption and after trial the appellant was awarded punishment of imprisonment and fine. In pursuance of the above judgment he was removed from service with effect from 04.09.2013 vide order dated 02.05.2014. He was further directed to deposit the misappropriated funds. Though he was acquitted by the Peshawar High Court, Mingora Bench but directions for holding inquiry were also contained in the said judgment. In pursuance of the said judgment fact finding enquiry was conducted by the respondents. All codal formalities were observed before passing the impugned order. The appellant has treated according to law and rules.

6. Perusal of record reveals that appellant was found guilty of embezzlement of the government funds to the tune of Rs. 1913786/- and awarded punishment of imprisonment/fine by Special Judge Anti Corruption vide judgment dated 05.09.2013. On the strength of Section-8(a) of E&D Rules 2011, the appellant was removed from service w.e.f 04.09.2013 vide order dated 02.05.2013. For the sake of transparency and fairness, we observed that the appellant was acquitted by the Peshawar High Court, Mingora Bech on 29.04.2014, while order of removal from service was issued on 02.05.2014. It clearly manifested malafide, ill will and bias of respondents against the appellant. We could not get any satisfactory response from the official respondents that's why judgment of Special Judge Anti Corruption dated 05.09.2013 was implemented after a lapse of

seven months? The record further revealed that after his acquittal, time and again he approached the respondents for adjustment and release of salary but did not get any positive response. We were unable to comprehend as to what stopped the respondents from communicating the impugned removal order to the appellant? The only justification we inferred was that they were hell bent to get rid of him by hook or crook.

7. The Peshawar High Court, Mingora Bench in concluding para of all the judgment gave directions to the respondents to constitute an enquiry committee for recovery of embezzled funds from all those responsible including the appellant, complaint, employee of the college and concerned Bank within a period of two months. Here again we noticed that instead of conducting formal enquiry under E&D Rules 2011 a fact finding enquiry was conducted by the respondents for the reasons best known to them. The record was silent whether any action was taken by the respondents on the findings of the above enquiry or otherwise? It is worth mentioning that the respondents were cognizant of the fact that no action could be taken on the findings of the fact finding enquiry. Our stance is further substantiated by para-4 of the specific recommendations of the fact finding enquiry report which is reproduced below:-

"The competent authority to initiate proper formal disciplinary proceedings against the responsible person i.e Mr. Amanullah, the then dealing clerk of accounts, under the clause of misconduct, the then audit party of the Directorate of Higher Education for negligence and"


Whatever has been stated above is sufficient to prove inefficiency, indifference criminal negligence on the part of the respondents in sorting out


sensitive and important issue in accordance with law and rules. The respondents owe an explanation for lapses/blunders.

8. Admittedly this Tribunal sent the matter for conducting denovo/formal inquiry strictly in accordance with law, rules and direction of Peshawar High Court order but inquiry officer only recorded statement of Ex-Principal Mohammad Iqbal and complainant and complete the enquiry process in one day i.e 04.08.2019. Again chance of hearing, self-defence specially cross examination upon Mr. Mohammad Iqbal Ex. Principal and all other relevant who depose against him was not provided to the appellant besides no one else held responsible or even associated with inquiry proceedings by the inquiry committee which render inquiry proceeding against the rules. Therefore, it is held that inquiry was not conducted in accordance with direction of this Tribunal given vide order dated 09.01.2019.

9. As a sequel to above, the impugned order dated 24.12.2019 is set aside and the appellant is reinstated in service for the purpose of denovo enquiry. The respondents are directed to conduct formal enquiry under E&D Rules 2011 strictly in accordance with the directions of the Peshawar High Court, Mingora Bench, Swat referred to above within a period of sixty days from the date of receipt of this judgment in accordance with order dated 09.01.2019. The issue of back benefits shall be subject to the outcome of the formal enquiry. Costs shall follow the events. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

ORDER

30.11.2023 1 Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Mr. Sohrab Khan, Law Officer for the respondents present.

2. Vide our detailed judgement of today placed on file, the impugned order dated 24.12.2019 is set aside and the appellant is reinstated in service for the purpose of denovo enquiry. The respondents are directed to conduct formal enquiry under E&D Rules 2011 strictly in accordance with the directions of the Peshawar High Court, Mingora Bench, Swat referred to above within a period of sixty days from the date of receipt of this judgment in accordance with order dated 09.01.2019. The issue of back benefits shall be subject to the outcome of the formal enquiry. 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 30th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

15.11.2023

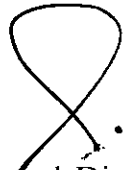
Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney for the respondents present.

SCANNED
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Peshawar

Learned counsel for the appellant seeks adjournment for preparation of arguments. Adjourned. To come up for arguments on 30.11.2023 before the D.B. Appellant is directed to provide second member copy of the instant appeal on or before the next date of hearing. Parcha Peshi given to the parties.



(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)