

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 32/2015

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

Muhammad Ayub S/O Attaullah Khan, R/O Hakeem Topa, Lakki  
Marwat, Ex-Deputy District Education Officer, E&SE Department,  
Peshawar

.... (Appellant)

VERSUS

1. Chief Minister, Government of Khyber Pakhtunkhwa, Peshawar, Through  
Respondent No.2.
2. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar
3. Secretary, Government of Khyber Pakhtunkhwa, E&SE Department,  
Peshawar
4. Director Education, E&SE Department, Peshawar
5. District Education Officer (Male), E&SE Department, Peshawar

.... (Respondents)

Mr. Arbab Saiful Kamal  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

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Date of Institution.....29.12.2014  
Date of Hearing.....15.12.2023  
Date of Decision.....15.12.2023

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:

**“It is therefore most humbly requested, that order  
dated 23.09.2014 or Respondent No.1, be set aside and  
appellant be reinstated in service with all back benefits,**

**with such other relief as may be deemed proper and just in the circumstances of the case.”**

2. Brief facts of the instant case are that appellant was serving in Education Department as District Officer when in the meanwhile, several vacancies were announced by the Education Department. That for the said recruitment process, the appellant was also nominated as member of the recruitment committee. That merit list was prepared and 16 candidates were appointed on 01.10.2012. That over the said recruitment process, complaints were made, in which inquiry was conducted. That the members of the committee were held responsible and they were given different penalties. That appellant was also served with show cause notice, which was replied by him on 01.07.2014. That on 23.09.2014, major penalty of compulsory retirement was imposed upon the appellant. 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 the impugned order is not per the mandate of law, so is based on malafide, hence liable to be set aside. He further argued that the principal accused, DEO (M) was served with charge sheet for illegal appointment of Junior Clerks while appellant was not served with any charge sheet, thus chance of defense was curtailed for no legal reason. One Noor Alam Wazir was only awarded with warning while as per the verdicts of the apex court, on one and the same charge, all shall be dealt with equally and fairly but in the instant case, some were given major punishments while other awarded minor punishments, so



Attaullah Khan Principal RITE, Peshawar after probing the matter mainly held responsible chairman by declaring all appointments illegal. Appellant was issued with only show cause notice dated 25.05.2014 on allegation of inefficiency and misconduct covering letter 18.06.2014. Appellant requested for providing of inquiry report and other documents for submission of reply but same was not provided and appellant submitted reply on 01.07.2014. Appellant was not personally heard by the authority and without providing chance of hearing, major penalty of compulsory retirement was imposed upon appellant by respondent No.1 vide impugned order dated 23.09.2014. Appellant challenged impugned order in a departmental appeal dated 20/10/2014 but same was not decided.

7. Available record would suggest that the appellant attended meeting of a Selection Committee mandated for selection of Junior Clerks in Education Department. The appellant was a member of Section Committee, who signed papers along with other members of the committee and such committee had recruited Junior Clerks, which later on were found as illegal/irregular and to this effect, an inquiry is stated to be conducted, which had held all the members as well as Chairman of the committee guilty for misconduct. Since no charge sheet/statement of allegation is available on record to show as what were the specific allegations and which also strengthen the contention of the appellant that no charge sheet was served upon the appellant. The august Supreme Court of Pakistan in its judgment reported as 2000 SCMR 1743 has held that framing of charge and its communication to civil servant along with statement of allegations was not mere a formality but was a mandatory requisite which was to be followed, but in case of appellant no charge sheet was served upon the appellant, thus skipped a mandatory/pre-requisite requirement and on this score alone, the impugned is liable to be set aside. The



discrimination were done. He submitted that Inquiry Committee made recommendations to declare the appointment order of Junior Clerks to be null and void, being illegal but no action was taken and the beneficiaries of the illegal appointments are working on their posts.

5. Conversely, learned District Attorney for the respondents has contended that the appellant has been treated in accordance with law and rules. He further contended that the appellant has been served with show cause notice containing the statement of allegations regarding in his inefficiency and misconduct with regard to alleged irregularities in the appointment order pertaining to the various teaching cadre/clerical posts in District Lakki Marwat and upon this the appellant was proceeded under (E&D) Rules, 2011 wherein he was found guilty and thus resultantly compulsory retirement order from service was issued on 23.09.2014 after observing all codal formalities.

6. Perusal of record reveal that appellant was appointed as Head Master BPS-17 upon recommendation of Public Service Commission in year 1992 and was promoted to the post of Principle BPS-18 in year 2004. Appellant was posted as District Education Officer in his department in year 2008. The then EDO Lakki Marwat Mr. Abdul Malik advertised posts of Junior Clerk (BPS-07) alongwith other posts of male and female teacher i.e. AT, TT, PST, DM, CT, PET etc. In Daily Mashriq dated 06/10/2011. Departmental Selection Committee was constituted under the chairmanship of Mir Azam Khan DEO, Mr. Shafiullah Khan and appellant beside three members. The committee after fulfillment of formalities and requirements recommended appointees, inquiry was initiated by the department as some of the relative of chairman 3<sup>rd</sup> divisioner were appointed. Inquiry committee comprising of Abdul Ghaffoor Bag, Special Secretary Higher Education Department, Peshawar and Mr.


respondents were directed repeatedly by this Tribunal to produce inquiry report conducted to this effect, but they failed to provide such report, as no such report was available with them. It otherwise is a well settled legal proposition that regular inquiry is must before imposition of major penalty of compulsory retirement, which however was not done in case of the appellant and the appellant was condemned unheard. Reliance is placed on 2009 PLC (CS) 650. The august Supreme Court of Pakistan in another judgment reported as 2008 SCMR 1369 has 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 compulsory retirement would be imposed upon him without adopting the required mandatory procedure, resulting in injustice. Placed on record is a show cause notice dated 25.05.2014, which was served upon the appellant and the appellant responded to the show cause notice denying the allegations leveled against him. Very little information was offered by the respondents regarding disciplinary proceedings, which shows that the appellant has not been treated in accordance with law. What we have gathered from another case title as Mir Azam Vs Education and others in Service Appeal No.1312/2014, which was decided by the Tribunal, vide judgment dated 14.10.2021. Mir Azam was the one, who being District Education Officer was Chairperson of the recruitment committee and who also was proceeded against along with the appellant and was accepted by this Tribunal vide judgment dated 14.10.2021 on the same very grounds that he was not treated in accordance with law.

8. In the instant case too, we are of the considered opinion that disciplinary proceedings against the appellant were conducted in a haphazard



manner, which are replete with deficiencies. The appellant was not treated in accordance with law and the action taken against the appellant was discriminatory, unlawful and based on malafide, which is not tenable in the eye of law, hence is liable to be set at naught. Since the appellant died on 29.07.2015, therefore, he be considered died during service and are entitled for all the benefits of death during service. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15<sup>th</sup> day of December, 2023.*

  
(MOHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**

- 15.12.2023 1. Appellant alongwith his counsel present. Mr. Muhammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, appellant was not treated in accordance with law and the action taken against the appellant was discriminatory, unlawful and based on malafide, which is not tenable in the eye of law, hence is liable to be set at naught. Since the appellant died on 29.07.2015, therefore, he be considered died during service and are entitled for all the benefits of death during service. 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 15<sup>th</sup> day of December, 2023.*



**(Mohammad Akbar Khan)**  
Member (E)



**(Rashida Bano)**  
Member (J)