

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR AT CAMP COURT SWAT

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

Service Appeal No. 1289/2022

Mehmood Alam, Ex-Junior Clerk/Muharrar, Civil Judge-IV, District Court Dir Lower at Tangi. (Appellant)

Versus

District & Sessions Judge, Dir Lower at Timergara and 01 other.

(Respondents)

Present:

Mr. Sufyan Khan, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor respondents

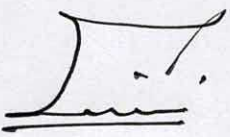
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Date of presentation of Appeal.....23.08.2022
Date of Hearing.....02.01.2024
Date of Decision.....02.01.2024

JUDGMENT

SALAH-UD-DIN, MEMBER: Brief facts giving rise to the instant appeal are that Muhammad Junaid Alam, the then Civil Judge-IV Dir Lower at Timergara had sent complaint bearing No. 13/CJ-IV/TMG dated 12.02.2021 to the then District & Sessions Judge/Zilla Qazi Dir Lower at Timergara, whereby It was reported that the appellant while serving as Muharrar was found guilty of the following charges:-

“1. That the said Mehmood Alam, made several false, bogus and fake signatures of the undersigned i.e Civil Judge-IV, Timergara, Dir Lower, in the forged civil case titled “Mst. Fareeda Bibi VS



NADRA etc”, allegedly registered at No. 189/1, instituted on 29.12.2020.

2. That the said Mehmood Alam issued forged, false and fabricated Court Decree in the above mentioned forged civil case.

3. That the said Mehmood Alam has dishonestly and fraudulently removed, made and tempered the record of the Court in connection with the said forged civil case.

4. That the said Mehmood Alam issued forged, false and fabricated Court Decree in connection with the State department of NADRA.

5. That the said Mehmood Alam gave illegal and fraud based benefits to the Plaintiff of the said civil case.

6. That the said Mehmood Alam has brought disrespect and hatred of the public to the Courts proceedings, Presiding Officer of the Court of Civil Judge-IV, Timergara, Dir Lower, and Judiciary at large, due to his corrupt and fraudulent practices.



2. On receipt of the complaint so submitted by Muhammad Junaid Alam, the then Civil Judge-IV Dir Lower at Timergara, the District & Sessions Judge/Zilla Qazi Dir Lower at Timergara directed Senior Civil Judge (Admin) Aala Illaqa Qazi Dir Lower at Timergara to conduct a fact finding inquiry against the appellant. On conclusion of the fact finding inquiry, the inquiry officer submitted inquiry report dated 20.04.2021 to the District & Sessions Judge/Zilla Qazi Dir Lower at Timergara, where-upon he issued direct show-cause notice to the appellant under Rule-7 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline)

Rules, 2011 on 25.05.2021, whereby holding of regular inquiry under Rule-5 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was dispensed with. The appellant submitted reply to the show-cause notice, however vide order dated 19.06.2021, major penalty of dismissal from service was imposed upon him. The penalty so awarded to him was challenged by the appellant through filing of departmental appeal, however the same was not responded within the statutory period of 90 days, hence in the instant appeal.

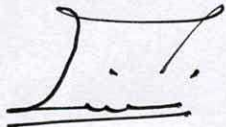
3. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

4. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for respondents has controverted the arguments of learned counsel for the appellant and have supported the comments submitted by the respondents.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that upon receipt of the complaint, submitted by Muhammad Junaid Alam, the then Civil Judge-IV Dir Lower at Timergara against the appellant, who was

serving as Muharrar in his court, the District & Session Judge/Zilla Qazi Dir Lower at Timergara directed Senior Civil Judge (Admin) Aala Illaqa Qazi Dir Lower at Timergara to conduct a fact finding inquiry. On receipt of report of the fact finding inquiry, show-cause notice under Rule-7 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was issued to the appellant by dispensing with formal inquiry under Rule-5 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. While going through para-8 of the show-cause notice issued to the appellant, it can be observed that holding of regular inquiry was dispensed with merely on the ground that evidence and material collected in the fact finding inquiry was sufficient for establishing the allegations of gross mis-conduct, corruptions and corrupt practices against the appellant. The competent Authority can though dispense with the inquiry and can issue direct show-cause notice under Rule-7 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 but where the factual account of allegations require pro & contra evidence, dispensing with the inquiry is likely to infringe the right of fair trial of an accused as provided in Article 10-A of the Constitution of Islamic Republic of Pakistan. August Supreme Court of Pakistan in its judgment reported as 2004 SCMR 316 has held that in case of imposing of major penalty, the principle of natural justice requires that a regular inquiry be conducted in the matter and opportunity of personal hearing and defense be provided



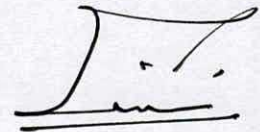
to the civil servant proceeded against. The imposing of major penalty upon the appellant without conducting a formal inquiry is not maintainable.

7. Consequently, without touching the merits of the case, the impugned penalty awarded to the appellant stands set-aside. The appellant is reinstated only for the purpose of inquiry and the case is remitted back to the competent Authority with the directions to conduct regular inquiry in the matter as prescribed under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall be subject to outcome of regular inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.01.2024



(RASHIDA BANO)
MEMBER (JUDICIAL)
CAMP COURT SWAT



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT SWAT

Naeem Amin

ORDER
02.01.2024

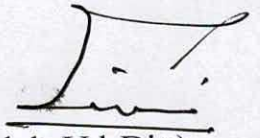
Appellant alongwith his counsel present. Mr. Zubair Shah, Superintendent alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, without touching the merits of the case, the impugned penalty awarded to the appellant stands set-aside. The appellant is reinstated only for the purpose of inquiry and the case is remitted back to the competent Authority with the directions to conduct regular inquiry in the matter as prescribed under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall be subject to outcome of regular inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.01.2024



(Rashida Bano)
Member (Judicial)
Camp Court Swat



(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat