

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 5963/2021

Mushtaq Ali S/O Abdul Ghani, R/O Musazai, Gul Abad, Inqilab Road,
Peshawar, Senior Clerk GHSS Jabbi, District Nowshera.

(Appellant)

Versus

Government of Khyber Pakhtunkhwa through Secretary Elementary &
Secondary Education, Khyber Pakhtunkhwa, Peshawar R/O Civil
Secretariat, Peshawar and 04 others.

(Respondents)

Present:

Mr. Pervaiz Khan, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

Date of presentation of Appeal.....00.00.0000
Date of Hearing.....08.01.2024
Date of Decision.....10.01.2024

JUDGMENT

SALAH-UD-DIN, MEMBER: Brief facts giving rise to filing of the instant appeal are that the appellant while serving as Senior Clerk in Education Department, was proceeded against departmentally on the allegations of absence from duty and was awarded major penalty of compulsory retirement from service vide order dated 05.09.2014 passed by the then District Education Officer (Male) Peshawar. The appellant challenged the same by way of filing departmental appeal followed by filing of service appeal before this Tribunal, which was decided vide judgment dated 10.07.2018 by issuing directions to the respondents to decide the departmental appeal of the appellant within two months. The



departmental appeal of the appellant was rejected vide order dated 18.09.2018, therefore, the appellant again approached this Tribunal by way of filing Service Appeal No. 1228/2018, which was decided vide judgment dated 25.10.2019, whereby the appeal was partially allowed and the respondent-department was directed to conduct de-novo inquiry in the mode and manner prescribed under Government Servants (Efficiency & Discipline) Rules, 2011 within a period of 90 days of receipt of copy of the judgment. Vide Notification dated 24.12.2019, Mr. Naveed Akhtar, Principal GHS Nanak Pura Peshawar City was appointed as inquiry officer for conducting de-novo inquiry in the matter. The said inquiry officer submitted his inquiry report to the District Education Officer (Male) Peshawar vide letter No. 452 dated 06.01.2020. The same was, however not agreed to by the competent Authority and a committee comprising of Mr. Israil Khan Principal (BPS-19) GHSS Doaba Hangu and Mr. Shakir Ahmad Khan Principal (BPS-19) GHSS No. 2 Hangu was constituted vide Notification dated 12.05.2020 for conducting of de-novo inquiry. However, vide subsequent Notification dated 15.10.2020, Mr. Sajjad Akhtar Iqbal District Education Officer (Male) Nowshera was then nominated as inquiry officer for conducting of de-novo inquiry, who submitted inquiry report, where upon Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar issued the impugned Notification dated 23.12.2020, whereby the appellant was not held entitled for grant of back benefits with effect from 01.10.2014 to 30.06.2020. The appellant challenged the same by way of filing departmental appeal before the Director Elementary & Secondary

Education Khyber Pakhtunkhwa Peshawar on 26.02.2021, however the same was not responded within the statutory period, hence the instant appeal.

2. 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.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellants in his appeal. On the other hand, learned Deputy District Attorney for respondents has controverted the arguments of learned counsel for the appellant and have supported the comments submitted by the respondents.

4. Arguments have already been heard and record perused.

5. A perusal of the record would show that disciplinary action was taken against the appellant on the allegations of absence from duty and he was awarded major penalty of compulsory retirement from service vide order dated 15.09.2014 passed by District Education Officer (Male) Peshawar. The departmental appeal of the appellant remained unfruitful, therefore, he approached this Tribunal by way of filing Service Appeal No. 1228/2018, which was partially accepted vide judgment dated 25.10.2019 with the observations reproduced as below:-

" As such, we partially accept the appeal, set-aside the impugned order, reinstate the appellant into service and direct the respondents-department to conduct de-novo inquiry in the mode and manners prescribed under Government Servants (Efficiency & Discipline) Rules, 2011 strictly in accordance with law within a period of 90 days from the date of receipt of copy of this judgment. The issue of back benefits will be subject to the outcome of de-novo

inquiry. Parties are left to bear their own costs. File be consigned to the record room."


6. While going through the said judgment dated 25.10.2019 passed by this Tribunal in pervious Service Appeal bearing No. 1228/2018, it can be seen that this Tribunal had observed that charge sheet as well as statement of allegations were not issued to the appellant and no proper inquiry was conducted in the matter, therefore, respondents were directed to conduct de-novo inquiry in the mode and manner prescribed under Government Servants (Efficiency & Discipline) Rules, 2011. Vide Notification dated 24.12.2019, Mr. Naveed Akhtar Principal GHS Nanak Pura Peshawar City was appointed as inquiry officer for conducting de-novo inquiry in light of the judgment dated 25.10.2019 passed by this Tribunal. The said inquiry officer submitted his report to the District Education Officer (Male) Peshawar vide letter No. 452 dated 06.01.2020, however it appears that the same was not agreed to by the competent Authority and an inquiry committee comprising of Mr. Israil Khan Principal (BPS-19) GHSS Doaba Hangu and Mr. Shakir Ahmad Khan Principal (BPS-19) GHSS No. 2 Hangu was constituted for conducting inquiry in the matter. Subsequently, another Notification dated 15.10.2020 was issued whereby Mr. Sajjad Akhtar Iqbal the then District Education Officer (Male) Nowshera was nominated as inquiry officer for conducting of de-novo inquiry in compliance of the judgment of this Tribunal. The said inquiry officer submitted his report which resulted in the issuing of impugned Notification dated 23.12.2020 passed by Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar, whereby it was held that the appellant was not entitled for back benefits with effect from 01.10.2014 to 30.06.2020. The available




record does not show that charge sheet as well as statement of allegations were issued to the appellant. The appellant has filed the instant appeal for grant of back benefits from 01.10.2014 to 30.06.2020, however on our query, neither learned counsel for the appellant nor Deputy District Attorney could show any order whereby the appellant has formally been reinstated in service by exonerating him from the charges. Although a Notification dated 06.03.2020 passed by Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar regarding reinstatement of the appellant is available on the record, however the same was till completion of de-novo inquiry. In such situation, where any formal order of reinstatement of the appellant is not available on the record, this Tribunal is not in a position to adjudicate the issue of grant of back benefits of the appellant.

7. Consequently, it is held that the appeal in hand is premature at this stage. In case any order of reinstatement of the appellant is passed by the competent Authority without allowing him back benefits he would be at liberty to agitate the issue of non-granting of back benefits before the relevant forum, which of course would be decided in accordance with relevant law/rules. With these observations, the appeal in hand is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
10.01.2024


(FAREEHA PAUL)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)


ORDER
10.01.2024

Appellant in person present. Mr. Asif Masood Ali Shah,
Deputy District Attorney for the respondents present. Arguments
have already been heard and record perused.

Vide our detailed judgment of today, separately placed on
file, it is held that the appeal in hand is premature at this stage. In
case any order of reinstatement of the appellant is passed by the
competent Authority without allowing him back benefits, he would
be at liberty to agitate the issue of non-granting of back benefits
before the relevant forum, which of course would be decided in
accordance with relevant law/rules. With these observations, the
appeal in hand is disposed of accordingly. Parties are left to bear
their own costs. File be consigned to the record room.

ANNOUNCED
10.01.2024


(Fareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)

Naeem Amin