

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR, AT
CAMP COURT SWAT

Service Appeal No. 1641/2023

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

Gul Rahim Nāib Qasid S/O Gul Mohammad R/O Talash China, District
Lower Dir.

.... (Appellant)

VERSUS

1. Registrar Peshawar High Court, Peshawar.
2. District & Sessions Judge, Dir Upper.
3. Senior Civil Judge, Admn. Dir Lower.

.... (Respondents)

Mr. Muhammad Jamshaid Kundi
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....16.12.2019
Date of Hearing.....05.12.2023
Date of Decision.....05.12.2023

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:

“On acceptance of this service appeal, the impugned order dated 14.03.2023 and 24.06.2023 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits. Any other remedy which deems fit by this Tribunal may also be granted in favour of the appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that



appellant was appointed as Naib Qasid in the District Judiciary on 31.03.2005 and was performing his duties upto the entire satisfaction of his superiors. During service appellant fell ill and was unable to attend the office for two days. Learned Civil Judge called explanation from the appellant on 20.10.2023. Reply of which was submitted on 21.01.2023 which was found unsatisfactory and he report the matter to the learned District & Sessions Judge. Thereafter, the appellant was suspended and departmental proceeding was initiated against him which culminated into dismissal from service vide order dated 14.03.2023. Feeling aggrieved, appellant filed departmental appeal on 16.03.2023, which was rejected vide impugned order dated 24.06.2023, hence the instant 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.

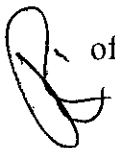
4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and the impugned orders are illegal and void ab-initio because it has been passed without observing the existing law on the subject besides non fulfillment of the mandatory codal formalities. He further contended that no regular inquiry has been conducted by the respondent No.3 and no chance of personal hearing or recording evidence in defence has been provided to the appellant. The respondent No.3 in his capacity of competent authority was so biased that he did not appoint representative for participation in inquiry proceedings on behalf of department and even statement of departmental representative is missing which is requirement of law under rule 11(4) of the E&D Rules 2011. He submitted that the impugned dismissal order is void and illegal and liable to be set aside on the sole ground that the inquiry against the appellant has been conducted by the



competent authority as inquiry officer. Reliance is placed on 2008 SCMR 678, 2008 SCMR 1369.

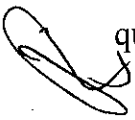
5. Learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that the appellant absented himself from duty without any prior permission of the competent authority. Moreover, the appellant was in the habit of arriving late and leaving the court before closing hours without permission of the concerned presiding officer and he was several time orally warned to mend his ways but the said official always neglected the directions and his behavior towards his officers was also below the mark. He further contended that appellant was dismissed from service due to inefficiency, misconduct and habitual absence by the competent authority in accordance with law.

6. Perusal of record reveals that appellant was serving the respondent department as Naib Qasid from 31.03.2005. Appellant fell ill due to which he was unable to attend his office for two days as doctor advised him for bed rest. When appellant on 3rd day attend his office for performing of his duties, the presiding officer i.e. his immediate boss called explanation from the appellant on 20.10.2023. Appellant submitted reply of the explanation on very next day i.e 21.01.2023 which was found unsatisfactory by the learned Presiding Officer and he sent the matter to the learned District & Sessions Judge, respondent No.2 vide letter No.96 dated 23.01.2023. The respondent No.2 directed respondent No.3 for taking necessary action against the appellant in accordance with law vide order dated 26.01.2023. Appellant submitted reply on 06.12.2023 which was found unsatisfactory and the enquiry officer proceed with inquiry, recorded statement of the presiding officer as IW-I and appellant. Respondent No.3 after issuing final show cause



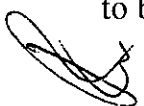
notice on 07.03.2023 reply of which was also submitted by the appellant but respondent without taking into consideration plea of the appellant, dismissed him from service vide impugned order dated 14.03.2023. Appellant filed departmental appeal to respondent No.2 which was rejected vide impugned order dated 24.06.2023.

7. Record further reveals that main allegation against the appellant as per charge sheet and statement of allegation was of two days absence without submitting any application for leave. Appellant in his reply categorically mentioned about his illness and check up by doctor he also annexed copy of OPD receipt of the hospital when he was absent where he went for his medical check-up. It is duty of the inquiry officer to get verified the medical receipt/prescription from the concerned hospital to know about the genuineness of the illness of the appellant or otherwise but no such effort was made by the inquiry officer. Otherwise too, when a person is ill how can he came to the office for submitting application for grant of leave. So far as the other allegation as to arrive late and leave early his office without permission of his immediate boss is concerned, there is nothing avail on record in black and white before his two days absence except oral statement of the IW-1 if infact appellant was in the habit of coming late and leave early then in such a situation there must be something at least explanation called from him by his immediate boss, so its non-availability speak otherwise. Appellant in his reply clearly mentioned that he belong to Talash and daily he first went to headquarter Timergara for collecting letters and record pertaining to Laal Qillah Tehsil and upon return from office, at instruction of concern presiding officer used to take summons/notice envelopes and fine receipts to the head quarter, if needed.



8. Appellant annexed certificate of his immediate boss about his visits. The most astonishing thing is that the lawyers complaining during visit of the respondent No.1 to Tehsil was made basis in charge sheet, which is not justified as lawyers had nothing to do with a civil servant who is not their subordinate. It is pertinent to mention here that although inquiry officer recorded statement of civil judge Laal Qillah as IW-1 and mentioned at the bottom of statement that appellant do want to cross examine him. In our humble view how as a Naib Qasid will cross examine his Presiding Officer knowing the fact that witness will write his ACR and appellant will served under his control. Moreover statement of the Civil Judge was not recorded on oath which make it doubtful and is not in accordance with Qanoon Shahadat Order 1984. So allegation of come late and leave early not proved on record.


9. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of dismissal from service, 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 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.

10. In our humble view, opportunity of fair trial was not provided to the appellant and dismissal from service upon absence of two days is injustice and does not commensurate with the misconduct committed by him. Therefore, we are unison to accept the instant appeal by setting aside the impugned orders and reinstate the appellant into service by converting major punishment of dismissal from service into minor punishment of stoppage of two annual increments and treat intervening period as leave without pay. Costs shall follow the events. Consign.

11. *Pronounced in open court at Swat given under our hands and seal of the Tribunal on this 5th day of December, 2023.*


(MUAHAMMAD AKBAR KHAN)
Member (M)
Camp Court, Swat


(RASHIDA BANO)
Member (J)
Camp Court, Swat

ORDER

05.12.2023 1 Learned counsel for the appellant present. Mr. Muhammad Jan

learned District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to accept the instant appeal by setting aside the impugned orders and reinstate the appellant into service by converting major punishment of dismissal from service into minor punishment of stoppage of two annual increments and treat intervening period as leave without pay. Costs shall follow the events. Consign.

3. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 5th day of December, 2023.*



(MUAHAMMAD AKBAR KHAN)
Member (A)
Camp Court, Swat



(RASHIDA BANO)
Member (J)
Camp Court, Swat