

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 805/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MS. FAREEHA PAUL ... MEMBER (E)

Dr. Kashif Ud Din Khattak, District Pathologist, THQ Hospital Tangi,
Charsadda. (Appellant)

VERSUS

1. Secretary Health Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Director General Health Service, Government of Khyber Pakhtunkhwa, Health Directorate, Peshawar.
3. Director (HRM) Directorate General Health Services, Government of Khyber Pakhtunkhwa, Peshawar.
4. Section Officer (Budget-I), Government of Khyber Pakhtunkhwa, Health Department, Peshawar.
5. Deputy Director (Accounts), Director General Health Office, Government of Khyber Pakhtunkhwa, Peshawar.
6. Director General Health Officer, Charsadda.
7. District Health Officer, Charsadda.
8. Medical Superintendent, Molvi Ameer Shah Memorial Hospital, Peshawar.

....(Respondents)

Mr. Hamza Amir Gulab
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....13.05.2022

Date of Hearing.....18.12.2023

Date of Decision.....18.12.2023

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:

“By accepting this appeal, salary of the appellant which was stopped on the basis of DAC meeting since December 2021 may graciously be released or Any other order this

Honorable Court may deem just and proper be also passed in favor of appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant while serving as Specialist Pathology (BPS-18) at Molvi Ameer Shah Memorial Hospital, Peshawar vide order dated 31.12.2018 he was transferred to Tangi, District Charsadda and he was also assigned the duty of Medical Superintendent of the said Hospital. That all of a sudden, his salary was stopped in December, 2021. That by inquiring the reason, he was informed that his salary had been stopped due to the DAC meeting held on 28th and 30th July, 2021 on account of unverified/unauthorized receipt of Rs.1.651/- million of the Pathology Department at Molvi Ameer Shah Memorial Hospital, Peshawar. He was further informed that his salary will be stopped till the safe return of the record concerned. Feeling aggrieved, the appellant filed departmental appeal for release of his salaries but fiasco, 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.

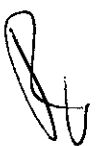
4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that impugned order of respondents to stop the salary of the appellant is void-initio, illegal, void and against the natural justice, hence liable to be set aside. He submitted that the impugned order passed without conducting regular inquiry, therefore, the same has no legal footing to stand upon. He further submitted respondent No.8 is responsible for the supervision of record but malafidely dragged the appellant in the instant case to escape from his own liability. Lastly, he submitted that no show cause notice and opportunity of personal hearing was afforded to the

appellant and appellant was condemned unheard.

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 he was involved in embezzlement of diagnostic kits which was provided by respondent No.2 free of cost to the Molvi Ameer Shah Memorial Hospital, while reports from patients were received on payment of Rs.515 per test. The then Medical Superintendent of the hospital constituted an enquiry, however, the appellant refused to hand over the record, therefore, he was relieved vide order dated 26.08.2017. He further contended that salary of the appellant was stopped by the respondents in light of Departmental Accounts Committee that during audit for the year 2017-18, it was notices by the audit officer that there were mis-appropriation on account of share and other irregularities on the part of the appellant which was endorsed to him but in vain.

6. Perusal of record reveal that appellant was posted at Molvi Ameer Shah Memorial Hospital Peshawar on 05.06.2017 as District Specialist Pathology BPS-18 where from after satisfactory performing of his duties transferred to Tangi, Charsadda on 31.12.2018 as District Pathologist. All of a sudden in December 2021 salary of the appellant was stopped without any notice or reason upon inquiry appellant came to know that it was stopped due to DAC meeting held on 28th and 30th July 2021 on account of unverified/unauthorized receipt of pathology department worth Rs.1,651,000/- and salary was stopped till safe return of the same record.

7. Perusal of audit report/advance para No.465 of Deputy Director Audit reveals that the sum of Rs.1651000/- was shown to be realized on account of pathology department from July 2019 to December 2019, on verification and scrutiny of record, it was disclosed on transfer Dr. Kashif Ud Din Pathologist have taken the following receipt record from the pathology unit of the hospital



and didn't return till date. Audit held that in absence of such valuable and important record and receipt, so realized under his period could not be verified and remained unauthentic. Furthermore audit could not ascertain either receipt so realized deposited in the treasury or not. Salary of the appellant was stopped without giving any notice or conducting regular inquiry by providing chance of hearing and defense which means appellant was condemned unheard which is against the rules and principles of justice. Appellant must be provided with an opportunity of hearing and defense specially cross examination upon all the concerned, who are supposed to be the custodian of the record mentioned in the advance para on the basis of which salary of the appellant was stopped but by not doing so respondent violated law and rules which was not sustainable under the law and rules.

8. For what has been discussed above, we are unison to set-aside impugned order and release the current salaries of the appellant and direct the respondent to conduct regular inquiry into the allegations by providing chance of hearing and defense to the appellant. 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 18th day of December, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)