

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR AT CAMP COURT SWAT**

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN  
SALAH-UD-DIN ... MEMBER (Judicial)

*Service Appeal No. 1722/2022*

Nisar Khan S/O Amir Dost Khan, R/O Gogdara, Tehsil Babozai,  
District Swat, Ex-Driver, Establishment Sessions Division, Swat.  
(Appellant)

Versus

The District & Sessions Judge/Zila Qazi, Swat and 02 others.  
(Respondents)

Present:

Mr. Arshad Khan, Advocate.....For the appellant  
Mr. Asad Ali Khan, Assistant Advocate General .....For respondents

.....  
Date of presentation of Appeal.....30.11.2022  
Date of Hearing.....04.01.2024  
Date of Decision.....04.01.2024

**JUDGMENT**

**SALAH-UD-DIN, MEMBER:** Brief facts giving rise to the instant appeal are that the appellant was serving as Driver with Additional District & Sessions Judge/Izafi Zilla Qazi Matta, Swat. Vide letter No. 97/ADSJ-Matta dated 21.04.2022, addressed by the Additional District & Sessions Judge/Izafi Zilla Qazi Matta, Swat to the District & Sessions Judge/Zilla Qazi, Swat a request was made for transfer of the appellant. The said letter/complaint is reproduced as below:-

“To:  
The Honorable District & Sessions Judge/  
Zilla Qazi, Swat.

Subject: CHANGE/TRANSFER OF OFFICIAL DRIVER

Respected Sir,

*With all humbleness it is submitted that undersigned has requested many times for the transfer of the official driver. I again requested that the driver may please be*

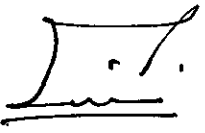
changed/transferred and any other driver may be posted for the official vehicle on the grounds that the current driver do not care for the directions given to him. He is unable to properly taken care of the vehicle and his conduct is not of an official. He is argumentative and does not take care of the directions given, arrogant in his conduct as driver. He can be best disclosed as "Ghomundi" (گھمڑی). His conduct is nuisance and unbearable.

It is requested that he may be changed/transferred and any alternative may be provided for the peace of mind of undersigned, so that I can concentrate on my work which needs more attention than correction of driver.

I shall be obliged.

Yours Obediently,  
Abdul Majid  
Additional District & Sessions Judge/  
I.Z.Q, Matta, Swat."

2. On receipt of the letter/complaint reproduced above, the District & Sessions Judge/Zilla Qazi Swat issued show-cause notice to the appellant under Rule-7 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 on 26.09.2022, whereby conducting of formal inquiry was dispensed with. The appellant submitted reply to the show-cause notice where-after final show-cause notice bearing No. 963/E.B dated 26.05.2022 was issued to the appellant by the District & Sessions Judge/Zilla Qazi, Swat. The appellant submitted reply to the final show-cause notice and after providing opportunity of personal hearing to the appellant, major penalty of removal from service was imposed upon him vide order dated 15.07.2022 passed by the District & Sessions Judge/Zilla Qazi Swat. The penalty so awarded to the appellant was challenged by him



through filing of departmental appeal, however the same was not responded within the statutory period, hence 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. We have heard the arguments of learned counsel for the parties and have perused the record.

5. A perusal of the record would show that disciplinary action was taken against the appellant on the basis of letter/complaint bearing No. 97/ADSJ-Matta dated 21.04.2022 sent by Additional District & Sessions Judge/Izafi Zilla Qazi Matta, Swat to District & Sessions

Judge/Zilla Qazi, Swat containing the allegations against the appellant that he does not care for the directions given to him; that he was unable to properly take care of the vehicle and his conduct is not of an official; that he was argumentative and did not take care of the directions given and was arrogant in his conduct as driver; that he could be best disclosed as "Ghomundi" (گھومندی) and his conduct was nuisance and unbearable.

The disciplinary action against the appellant commenced from issuing of show-cause notice dated 26.04.2022 to him, whereby holding of formal inquiry was dispensed with. Needles to mention that dispensing with the inquiry and taking disciplinary action by issuing direct show-cause notice under Rule-7 of Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 is permitted under the law but where the factual account of allegations require pro & contra



evidence, dispensing with the inquiry is likely to infringe the right of accused official for fair trial.

6. The departmental action against the appellant culminating into imposition of major penalty of removal from service was outcome of a complaint lodged against him by Additional District & Sessions Judge/Izafi Zilla Qazi Matta, Swat. Obviously the appellant had got the right to contest the allegations mentioned in the complaint filed against him and it was only possible, if a formal inquiry had been conducted. The non-conducting of formal inquiry in the matter obviously resulted into infringement of fundamental right of the appellant for fair trial within the meaning of 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.

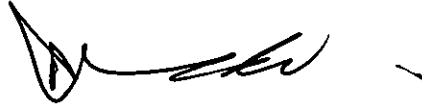
7. Consequently, without touching the merits of the case, the impugned penalty awarded to the appellant stands set-aside. The appellant is reinstated in service only for the purpose of inquiry and the case is remitted back to the competent Authority with the directions to conduct regular inquiry in the 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 the outcome of

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

ANNOUNCED  
04.01.2024



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



(KALIM ARSHAD KHAN)  
CHAIRMAN  
CAMP COURT SWAT

*\*Naeem Amin\**

ORDER  
04.01.2024

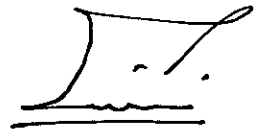
Learned counsel for the appellant present. Mr. Shahid Sangam, Superintendent alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

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 in service 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 the outcome of regular inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
04.01.2024



(Kalim Arshad Khan)  
Chairman  
Camp Court Swat



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