

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15918/2020

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

Mr. Liaqat, Subject Specialist, GGHS Jamra, Tehsil Ghazi,
District Haripur. (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat, Peshawar.
2. Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Chief Minister, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
4. Inquiry Committee through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

.... (*Respondents*)

Mr. Amjad Ali
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....19.11.2020
Date of Hearing.....12.12.2023
Date of Decision.....12.12.2023

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 appeal, the impugned removal from service order dated 15.01.2020 and appellate order dated 29.10.2020 may please be set-aside and appellant may please be reinstated in service with all back monetary and service benefits. It is, further prayed that KP E&D Rules,



2011 may be declared as ultra-vires. Any other relief, deemed fit may also be graciously granted.”

2. Facts gathered from the memorandum of appeal are that appellant was initially appointed as Trained PTC Teacher in the year 1992. That later on, vide order dated 30.05.2017 he was appointed as Subject Specialist. While serving, FIR No.178 dated 14.09.2017 was lodged against him in which he was acquitted by the Court. That during the Examination of B.Ed, appellant and one lady S.S namely Mst. Zahida Parveen were charge sheeted on the round of cheating and committing illegalities. An inquiry was conducted by the Secretary Education and Mst. Zahida Parveen (Superintendent) and Mst. Yasmeen Habib (Deputy Superintendent) were found guilty as per inquiry report. That the same inquiry committee conducted separate inquiry in the case of appellant. Resultantly, those ladies were given *censure* while appellant was served with show cause notice which was replied by him. That vide order dated 15.01.2020 the appellant was removed from service by the Secretary Elementary & Secondary Education Khyber Pakhtunkhwa. That feeling aggrieved, he filed departmental appeal which was rejected vide order dated 29.10.2020. Hence, he filed 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 for the respondents 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 procedure adopted by the respondent is illegal as per Rule 2(f) II proviso of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011, all accused are to be tried jointly and separate trial of all accused of same issue of examination hall is



illegal. He further argued that on same charge appellant has been acquitted by competent criminal court and on that very charge he was held guilty by respondent and appellant was awarded major penalty of removal from service while Mst. Zahida Parveen and Mst. Yasmeen Habib was given minor penalty of censure which is violation of Article 27 of the Constitution of Islamic Republic of Pakistan. Lastly, he submitted that neither regular inquiry was conducted nor any opportunity of cross-examination was provided to the appellant.

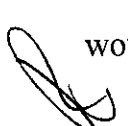
5. Conversely, learned District Attorney for the respondents has contended that appellant was treated in accordance with law and rules. He further contended that the appellant rendered himself liable to be proceeded against under E&D Rules 2011 for the charges of misconduct and therefore, disciplinary proceedings were initiated against him under the rules and after fulfilling all codal formalities the major penalty of removal from service was imposed upon the appellant. He submitted that departmental appeal of the appellant is time barred, hence instant appeal might be dismissed.

6. Perusal of record reveal that appellant was appointed as trained PTC teacher vide order dated 21/03/2019 and was appointed as CT teacher on 04/02/1999. Appellant was promoted as SET General BPS-16 vide order dated 24/07/2003. Appellant was appointed as Subject Specialist BPS-17 vide order dated 30/05/2017, one Tariq Khan lodged FIR No.178 dated 14/09/2017 under section 377, 354, 352, 500 and 507 PPC against the appellant in Police Station Ghazi Haripur. Appellant was acquitted from said charges on 04/01/2020. Respondent/department issued charge sheet to appellant as well Mst. Zahida Parveen S.S for allowing cheating openly by taking bribes and subjecting students to sexual abuse by appointing Mr. Shahid Khan and Abdul Saeed as inquiry committee members vide order dated 07/09/2018. Inquiry committee submitted report on 01/04/2019. Authority issued final show cause notice to the

appellant on 3rd October 2019 which was replied but vide impugned order dated 15/01/2022 respondent No 1 awarded major penalty of removal from service to the appellant and minor punishment of censure was imposed upon Mst. Zahida Parveen S.S who was superintendent of the examination hall.

7. Perusal of inquiry committee report reveals that statement of Mst. Samiya victim Mr. Rehmat Chowkidar of the examination center. Mst. Zahida Parveen Superintendent and Yasmeen Habib, Deputy Superintendent of examination center, Hall Mst. Faqrat Bibi invigilator but opportunity of cross examination was not provided to the appellant even these statements were not recorded in presence of the appellant. Moreover admittedly appellant was acquitted from the charges by the court of law vide order dated 04/01/2020. Then in such a situation it is incumbent upon respondent to provide proper opportunity of cross examination to the appellant upon all the witnesses mentioned above and consider acquittal from the same charge upon which inquiry was initiated.


8. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has 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.

9. For what has been discuss above, we are unison to set-aside impugned order, reinstate appellant for the purpose of cross examination upon all the witnesses whose statement recorded during inquiry.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER

12.12.2023 1

Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Mr. Alamzeb Khan, Computer Operator for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to set-aside impugned order, reinstate appellant for the purpose of cross examination upon all the witnesses whose statement recorded during inquiry.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)

14.11.2023

Learned counsel for the appellant present.


Mr. Sifatullah, Assistant alongwith Mr. Muhammad Jan,

SCANNED
KFST
Peshawar

District Attorney for the respondents present and requested that as complete inquiry record has not been submitted, therefore, an opportunity may be granted for production of the same. The availability of complete inquiry record before the Tribunal is necessary for just and right decision of the appeal in hand, therefore, representative of the respondents shall positively submit the same within 07 days and to come up for arguments on 12.12.2023 before the D.B. Parcha Peshi given to the parties.



(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)