

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT ABBOTTABAD

Service Appeal No. 1603/2022

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

Mst. Ayesha Zeb, Ex-Computer Operator Mohallah Jilalabad Sheik-Ul-Bandi Tehsil & District Abbottabad.

.... (Appellant)

VERSUS

1. Chief Justice Peshawar High Court through Registrar Peshawar High Court.
2. District & Session Judge, Abbottabad
3. Senior Civil Judge, Abbottabad.

.... (Respondents)

Mr. Muhammad Arshad Khan Tanoli
Advocate ... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondents

Date of Institution10.11.2022
Date of Hearing 25.01.2024
Date of Decision25.01.2024

JUDGMENT

Rashida Bano, Member (J): The instant appeal instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of service appeal of the appellant, the impugned dismissal order from service order dated 01.07.2022 may graciously be set aside and respondents may be directed to reinstate the appellant in service with all service back benefits. Any other relief which this




Tribunal deem appropriate in the circumstances of the case may also be granted to the appellant.”

2. Brief facts of the case are that appellant was appointed as Junior Clerk and later on appointed as Computer Operator vide order dated 06.11.2018 in the District Judiciary, Abbottabad. During service, she got married on 17.10.2021 and on 14.12.2021, she was divorced by her husband. That due to the said shock, she became psycho due to which she was unable to join duties and applied for two months leave through her mother but her application was not entertained and later on she was transferred to different courts time and again. That due to time and again transfers, her depression was increased. In the meanwhile, show cause notice was issued, which was not allegedly received to her. That resultantly, she was dismissed from service vide order dated 01.07.2022. Feeling aggrieved, she filed departmental appeal on 16.07.2022, which was not responded, hence, the instant service appeal

3. We have heard learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant argued that the impugned order was malafide, discriminatory, against law and was based on whims and wishes of the respondent No.2. He submitted that no show cause notice/statement of allegations or charge sheet had been issued to the appellant. Further submitted that the appellant had not been granted any opportunity of personal hearing/defense which was mandatory under the law; that the appellant was innocent as she was suffering



from acute depression due to her divorce and was under treatment. Lastly, he concluded that the appellant has been recovered and is fit for job, therefore, requested for acceptance of the instant service appeal


5. Conversely, learned Deputy District Attorney argued that the impugned order was neither malafide nor discriminatory or against law and rules. He submitted that the appellant had been served thrice with show cause notices but she had failed to reply; that the appellant had not joined fact finding inquiry proceedings and explanation issued to her had also not been replied. Therefore, he requested for dismissal of the instant service appeal.

6. Perusal of record reveals that appellant was serving in the respondent department as Computer Operator in BPS-16 after her appointment on 06.11.2018 with full dedication, zeal and zest. Appellant got married on 17.10.2021 but due to unfortunate husband of appellant divorced her on 14.12.2021. Appellant's mental condition was badly affected due to the sudden shock of divorce and she became a Psycho patient. Appellant started treatment from Psychiatry Physician and during this period appellant was transferred thrice but due to her depression she was unable to perform well and to obey the orders of authority. Respondents issued final show cause notice on 23.06.2022 by dispensing with regular inquiry on the ground of willful disobedience and misconduct as appellant failed to comply with transfer order and finally she was dismissed from service vide impugned order dated 01.07.2022 by the authority.



7. It is admitted position on record that appellant was divorced within two months of her marriage due to which she went into acute depression and became a Psycho patient. No doubt authority tried to accommodate her by posting her to scanning branch but mental condition of the appellant was not good due to severe depression that's why she was not able to understand and comprehend the order of her superiors and even of her mother then in such a situation in our humble view some more time should have been given to her to recover from illness i.e depression but authority instated of giving her time, dismissed her from service without adopting proper procedure of conducting regular inquiry which is not warranted in a peculiar situation of appellant. Appellant was awarded with major punishment of dismissal from service despite her Psycho condition, which is against the settled norms of justice and Rules.


8. 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 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 alterm 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 discussed above, we are unison to set aside the impugned order dated 01.07.2022 and reinstate the appellant into service for the purpose of de-novo inquiry with direction to the respondents to conduct regular inquiry by providing a chance of hearing and self-defense and conclude the inquiry within 60 days after receipt of copy of this order. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

10. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 25th day of January, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Abbottabad



(RASHIDA BANO)
Member (J)
Camp Court Abbottabad


ORDER

25.01.2024 1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Mr. Rizwan Pervez, Superintendent for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to set aside the impugned order dated 01.07.2022 and reinstate the appellant into service for the purpose of de-novo inquiry with direction to the respondents to conduct regular inquiry by providing a chance of hearing and self-defense and conclude the inquiry within 60 days after receipt of copy of this order. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

3. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 25th day of January, 2024.*


(Muhammad Akbar Khan)
Member (E)
Camp Court Abbottabad


(Rashida Bano)
Member (J)
Camp Court Abbottabad