

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 53/2022

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

Muhammad Khayyam S/O Adam Khan (Dental Technician) at Type D  
Hospital Katlang District Mardan.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health Civil Secretariat, Peshawar.
  2. Director General, Health Department, Warsak Road, Peshawar.
  3. District Health Officer, Mardan.
- ... (Respondents)

Mr. Zartaj Anwar  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

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Date of Institution.....07.01.2022  
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:

**“On acceptance of this appeal the order dated 08.08.2021 may please be set aside and the appellant may kindly be reinstated into service with all back benefits.”**

2. Brief facts of the instant case are that appellant was appointed as Dental Technician (BPS-09) vide order dated 02.02.2009. That while serving in the said capacity, he was transferred to Type-D Hospital Katlang District Mardan vide



order dated 21.05.2021. That after serving for ten years, he received charge sheet dated 18.12.2020 containing the allegations that he had been appointed through fake appointment order. That the same was replied by the appellant. That a show cause notice was also served upon the appellant and lastly, the impugned order of removal from service dated 06.08.2021 was issued. Feeling aggrieved, he filed departmental appeal on 08.09.2021, which was not responded, 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 Deputy 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 rules. He further argued that he served the department for more than ten years with zeal and zest but despite this the respondents awarded the major penalty of removal from service on the basis of fake appointment order, which is illegal, unlawful and without lawful authority. He further argued that no regular inquiry was conducted which is mandatory before awarding the major penalty.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that a complaint was received from Anti Corruption Mardan dated 19.08.2019 regarding the fake appointment order and fake transfer for verification in which it is clearly mentioned that appointment order was fake as no dispatch number was found and fake signatures of the then agency surgeon has been made. Regular inquiry was conducted in accordance with rules through the Dy. DHO Mardan and District Coordinator LHW's Program Mardan.

6. Perusal of record reveals that appellant was appointed as Dental Technician vide order dated 02/02/2009 in the office of Agency Surgeon South Waziristan. He performed his duties till 21/05/2012 when appellant was transferred to Mardan district to Type-D Hospital Katlang, vide order dated 21/05/2012. Appellant submitted his arrival at Mardan and since then was performing his



duties till 06/08/2021 when he was dismissed from service on allegation of fake appointment order after long 11 years of his appointment.

7. Perusal of record further reveals that appellant was charge sheeted on 18/12/2020 with the allegation "Fake appointment order reference order No.145-47/IV/02-02-2009 by District Health Officer Mardan". Appellant submitted reply and denied allegation and categorically mentioned that his appointment order is genuine. Respondent alleged that regular inquiry was conducted by Dr. Shakir Ullah, Deputy District Health Officer, Mardan along with Dr. Fahad Iqbal, District Coordinator LHW Program. Inquiry was initiated upon source report of ACE Anti-Corruption Mardan letter dated 19/08/2019 wherein DHO, Mardan was asked to provide information that who was DHO, Mardan and Account Officer, Mardan on 21.04.2012 sent in connection with open inquiry No.21/2017. Inquiry was initiated by ACE Anti-Corruption because there was complaint that appellant on the basis of bogus and fake appointment order got himself transferred to Mardan. There was no complainant in the case in ACE Anti-corruption Mardan case and record is silent that who provided the information to ACE Anti-Corruption, Mardan about appellant. After receipt of letter dated 19/08/2019, proper/regular inquiry was to be initiated against the appellant but respondent conducted fact finding inquiry. Perusal of inquiry report of Dr. Shakir Ullah and Dr. Fahad Iqbal reveals that they conducted inquiry on just one day i.e 02/07/2020; no chance of hearing, self-defense or cross examination was provided to the appellant and it is not proved on record that infact appellant was personally served with letter dated 11/03/2020 for appearing before inquiry committee.

8. Agency Surgeon South Waziristan termed appellant's order fake as dispatch number of the appointment order was not found on it. Moreover the then agency Surgeon to whom picture of appointment order and service book was sent

through Whatsapp denied from his signature. This is not the proper course to have been adopted as service of a civil servant is at task and appellant on the basis of that report was dismissed from service without recording statement of the then Agency Surgeon South Waziristan and providing chance of cross examination to the appellant upon him, which is an essential element of fair trial and inquiry.

9. 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 require 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 who was 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 embedded 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. Before passing impugned order, respondent must have recorded statement of all concerned and provided opportunity to the appellant of cross-examination upon them but no such step was taken by the inquiry committee which is against the law and rules on the subject. Record is silent that what happened with ACE which became reason and basis for issuance of impugned order. Record is also silent whether respondent provided requisite information to ACE or not. It is



established on record that appellant was condemned unheard which is un-justice.

11. For what has been discussed, we are unison to set aside impugned order and reinstate appellant for the purpose of de-novo inquiry with direction to respondents to provide opportunity of defence and cross examination to the appellant as per rules. Costs shall follow the event. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18<sup>th</sup> day of December, 2023.*

  
**(FAREEHA PAUL)**  
Member (E)

  
**(RASHIDA BANO)**  
Member (J)

23<sup>rd</sup> August, 2023

1. Junior of learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

2. Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant has proceeded abroad for performing of Umra. Adjourned. To come up for arguments on 18.12.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED  
KPST  
Peshawar



(Salah-ud-Din)  
Member (Judicial)



(Kalim Arshad Khan)  
Chairman

\*Naeem Amin\*

**ORDER**  
18.12.2013


1. Appellant alongwith his counsel present. Mr. Muhammad Jan, learned District Attorney Mr. Safi Ullah, Focal Person for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to set aside impugned order and reinstate appellant for the purpose of de-novo inquiry with direction to respondents to provide opportunity of defence and cross examination to the appellant as per rules. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18<sup>th</sup> day of December, 2023.*



(FARJEHA PAUL)  
Member (E)



(RASHIDA BANO)  
Member (J)

\*Kaleemullah