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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Amended Service Appeal No. 1512/2019

Date of Institution ... 11.11.2019

Date of Decision ... 22.01.2021

Sohail Ayub S/o Nazir Ayub R/o Darosh District Chitral.

... (Appellant)

VERSUS

Chief Conservator forest, Central Southern, Region-I, Peshawar and four others.

... (Respondents)

Present:

MR. MUHAMMAD SHOAIB KHAN,
Advocate

--- For Appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. MIAN MUHAMMAD
MR. HAMID FAROOQ DURRANI,

--- MEMBER(Executive)
--- CHAIRMAN

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- Original office order dated 14.06.2019 passed by Respondent No. 4 and appellate order dated 1.11.2019 of Respondent No.3 have been challenged and assailed under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974, where-under the appellant has been terminated/removed from service.

02. Brief facts of the case leading to institution of the instant service appeal, are that the appellant recruited in the respondent-department as Junior Clerk (BPS-11) on 18.03.2019, was proceeded against for mis-conduct, inefficiency and harassment of a lady colleague (Mrs. Shakira Bibi, FFE). The Appellant was awarded major

penalty of "termination/removal from service" on 14.06.2019 by respondent No.4 against which he preferred departmental appeal on 24.06.2019. The appellate authority i.e Respondent No.3 did not consider his plea and while agreeing with the penalty awarded by the Competent Authority, upheld the same vide office order dated 01.11.2019, hence, the instant service appeal before the Services Tribunal instituted on 11.11.2019.

03. Learned counsel for the appellant argued that the charge of absence for one date (05.04.2019) does not become a serious irregularity or mis-conduct on part of the appellant and the punishment awarded is not commensurate to the charge. He further contended that the committee constituted for investigation of charge against the appellant for alleged harassment of a lady colleague was not properly constituted as per requirement of Section-3 of the Protection Against Harassment Of Women At The Work Place Act, 2010 because it did not include a female member. Moreover, the complainant was not made available during personal hearing for cross examination by the appellant and as such the ends of justice have not been met.

04. Learned Assistant Advocate General on the contrary, negated and contradicted the arguments of learned counsel for the appellant and vehemently addressed his arguments that the appellant was in the first three months of probation period and who remained absent from duty on various dates i.e 05.04.2019, 25.04.2019 and 10.05.2019. His conduct as official proved to have been recalcitrant as he had been time and again advised both verbally and in black and white to mend his way and improve his conduct as an official. Moreover, a complaint of lady colleague Mrs. Shakira Bibi, FFE dated 23.04.2019 was received alleging him to have harassed her by sending her indecent and uncivilized messages. In terms of

Section-3 of the Protection Against Harassment Of Women At The Work Place Act, 2010, the charge was investigated by a committee constituted on 30.04.2019 under SDFO. The committee submitted its report on 21.05.2019 and found the appellant guilty for harassment of women at work placed under the said Act. The learned Additional Advocate General, however, did not negate the fact that the inquiry committee on harassment was not properly constituted under Section-3 of the Protection Against Harassment Of Women At The Work Place Act, 2010.

05. After having heard the arguments of learned counsel for the parties and perusal of record it is observed that the appellant being a civil servant under term No.I of his appointment order dated 18.03.2019, was required to have been proceeded against for mis-conduct and inefficiency under the provisions of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011. The appellant was subjected to the inquiry proceedings on two scores simultaneously i.e misconduct and inefficiency as well as charge to have harassed a lady colleague. However, no charge sheet/ statement of allegations or show cause notice culminating in award of penalty, could be issued to the appellant as a civil servant. Similarly, on account of allegation of harassment of a lady colleague, the enquiry committee for the purpose was not properly constituted as is required under Section-3 (2) of the Act *ibid* which stipulates that:

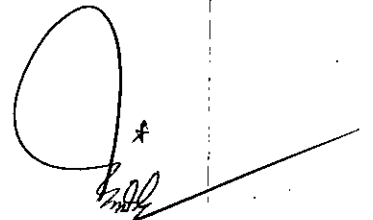
“The Committee shall consist of three members of whom at least one member shall be a woman. One member shall be from senior management and one shall be a senior representative of the employees or a senior employee where there is no CBA. One or more members can be co-opted from outside the organization if the organization is unable to designate three members from within as described above. A Chairperson shall be designated from amongst them”

06. As a sequel to the above it is crystal clear that the appellant was required to have been proceeded against on two scores i.e disciplinary proceedings of misconduct and inefficiency under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 as well as the charge of harassment of lady colleague under the ibid Act. Needless to say that due course of law did not take place and chance of fair trial including cross examination was not provided to the appellant. Above all the enquiry committee for investigation of harassment was not properly constituted as per dictates of law, hence, its proceedings and recommendations have no legal sanctity and validity. The appeal is therefore, allowed and the impugned orders dated 14.06.2019 and 01.11.2109 are set aside. The respondents shall, however, be at liberty to constitute enquiry committee strictly in terms and spirit of Section-3(2) of the Protection Against Harassment Of Women At The Work Place Act, 2010 in order to probe the allegations(s) against the appellant. Parties shall, however, bear their respective costs. File be consigned to the record room.

ANNOUNCED
22.01.2021



(HAMID FAROOQ DURRANI)
CHAIRMAN



(MIAN MUHAMMAD)
MEMBER(E)