

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7726/2021

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

Waqar Ahmad S/O Akhtar Zaman Ex. Examiner of examination Kohat,  
(BPS-18), presently Senior S.S (Physics) GHSS Khesgi Payan Nowshera.  
.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Elementary and Secondary Education Department, Peshawar.
2. Chief Minister, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Abdullah Shah  
Advocate ... For appellant

Mr. Habib Anwar  
Additional Advocate General ... For respondents

Date of Institution.....13.10.2021  
Date of Hearing.....05.01.2024  
Date of Decision.....05.01.2024

JUDGMENT

**RashidaBano, 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:

**It is therefore, most humbly prayed that on acceptance of the instant appeal the respondents may kindly be directed;-**

- I. Declare the notification dated 14/4/2021 as illegal, without any force of law, void ab initio hence liable to be set aside.**



- II. **Directing the respondents to exonerate the appellant from the charges leveled against him.**
- III. **Directing the respondents not to withhold the annual increment of the appellant for any further period.**
- IV. **Direct the respondents to release the annual increment of the appellant as withheld by the respondents for one year.**
- V. **Anyother relief not specifically prayed for but this August Tribunal deems fit may also be granted in favor of the Appellant.**

2. Brief facts leading to filing of the instant appeal are that the Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department initiated inquiry on the charges of leaking of English Paper in SSC Examination 2019 of Kohat Board. Appellant, alongwith another, was held responsible by issuing charge sheet which was duly replied him. Thereafter, minor penalty of withholding of one annual increment for one year was imposed upon him vide notification dated 14.04.2021. Feeling aggrieved, he filed departmental appeal, which was not responded to, hence the instant service appeal.


3. We have heard learned counsel for the appellant and learned Additional Advocate General 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 notification is against the law and facts, hence, not maintainable in the eyes of law. He submitted that the whole process have been conducted in the absence of appellant and no inquiry and statement of allegations as well as charge sheet had been served upon the appellant. Further submitted that the appellant had been condemned unheard and no opportunity of personal hearing had been provided to them which was the requirement of law and justice.



5. Conversely, learned Additional Advocate General contended that the appellant has been treated in accordance with law and rules. He further contended that it was the responsibility of the appellant to conduct smooth and fair examination but a mishap happened due to the negligence of the appellant in which he was held responsible and after fulfillment of all codal formalities, he was awarded minor penalty of withholding of one annual increment for one year.

6. Perusal of record reveals that appellant was serving as Controller of Examination BPS-18 in respondent department at BISE Kohat, when annual examination of SSC was held, wherein English Paper was leaked in one of the examination centers, upon which authority constituted an inquiry committee for finding real facts, which submitted its report, and responsibility was fixed on the appellant being controller of examination and one Mst. Farzana SCT (BPS-16) Superintendent of examination hall. Appellant was served with a charge sheet with the allegations follows:-

1. You being the incharge Controller of Examination BISE Kohat, failed to properly manage the SSC Annual Examination (Annual) Examination Center No.57 GGHS Nari Paros Karak.
  2. You did not follow the computerized draw for conduct examination in spite of vivid instructions issued by the department.
  3. You deputed MS Farzana SCT as Superintendent to center No.57 Nari Paroos Karak although her name was neither available in computerized draw nor in the list of shadow draw. Her selection was not sustainable, inappropriate and improper because she was reportedly performing exam duties at this same center. She was junior teacher and appointed without any consultation with concerned DEO/SDEO (Female).
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4. The question papers were packed in a very loose stuff and were sealed through scotch which was too vulnerable and prone to such occurrence.
5. An inquiry was conducted against you held you responsible for the same.

Authority constituted inquiry committee consisting of Mr. Imad Ali, PMS (BPS-19) and Mr. Sharif Gul (BPS-19). Committee, after conducting inquiry, submitted its report to the authority and which passed the impugned order dated 14.04.2021 whereby penalty of withholding of one annual increment for one year was imposed upon the appellant.

7. Perusal of the inquiry committee's report reveals that it exonerated the present appellant from liability based on its conclusion on every charge as follows:-

1. Charge No.1: It had no weight in the referred context.
2. Charge No.2: It had no weight and was against the available facts
3. Charge No.3: The charge is partially proved up to the extent of appointment of a repeated and always directly is never on appreciable for the last 15 years.
4. Charge No.4: The Ex-Controller Mr. Waqar Ahmad cannot be held responsible upto the extent of using loose paper stuff. The charge therefore, carries no weight.
5. Charge No.5: The ex-Controller BISE Kohat Waqar Ahmad may not be held responsible.

The committee reached its final conclusion as follows:


“The Controller Examinations may not be maligned for any appointment which can ensure the smooth conduct of examination. When inquiry committee after due consideration and detail inquiry from all concerned including Chairman of BISE Kohat exonerated appellant. Then to award impugned penalty to the appellant is not justified without any other material/proof against him on record. So far appointment of repeater is concerned, when no one is ready to



perform examination duties, then it was the last option which too was exercised and Mst. Farzana appointed after consultation with the Chairman of BISE Kohat instead of awarding impugned penalty to the appellant, department must proceed against teachers whose name was there in the draw for performance of duties but they refused”.

9. For what has been discussed above, we are unison to set aside impugned order dated 14.04.2021 wherein penalty of withholding of one annual increment for period of one year was awarded to appellant. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 5<sup>th</sup> day of January, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

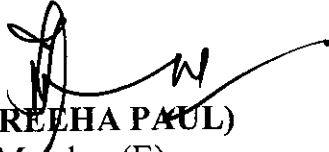
**ORDER**


05.01.2024

1. Appellant alongwith his counsel present. Mr. Habib Anwar learned Additional Advocate General alongwith Mr. Faheem Khan, Assistant for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to set aside impugned order dated 14.04.2021 wherein penalty of withholding of one annual increment for period of one year was awarded to appellant. 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 5<sup>th</sup> day of January, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)