

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT ABBOTTABAD.

Service Appeal No.1341/2019

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

Mr.Haq Nawaz, PSHT, GPS Jandar Khaki, Circle Boi, Tehsil & District
Abbottabad.

... (*Appellant*)

VERSUS

1. Director Education Elementary & Secondary Education Khyber
Pakhtunkhwa, Peshawar.
2. District Education Officer (Male), Abbottabad.
3. SDEO (Male), Primary Abbottabad.
4. District Accounts Officer, District Comptroller of Accounts, Abbottabad.
... (*Respondents*)

Mr. Khaliq Rabbani
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....14.10.2019
Date of Hearing.....24.01.2024
Date of Decision.....24.01.2024

JUDGMENT

RashidaBano, 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 the instant appeal impugned order
Endst. No.6207-11 mention in the hearing of service appeal
may kindly be declared as null and void, based on ill will of
respondents and malice, consequently appellant be
exonerated from the charges, any other relief which this**



honorable tribunal may deem appropriate and fit under the circumstances of the cases may also be granted.”

2. Brief facts of the case are that appellant was serving in the Education Department as PSHT (BPS-15). That the government developed a program and provided funds for security and safety of Government schools. That the appellant, being a member of the Committee for construction of boundary walls, was assigned the duty for constructing the same and funds were also released. The appellant, under the supervision of Chairman PTC and local representatives, finalized the work. That in the meanwhile, a show cause notice was issued and resultantly, recovery of three lac alongwith reduction to lower scale i.e. from BPS-15 to BPS-14 was imposed upon the appellant. Therefore, he filed departmental appeal, followed by Service Appeal No.715/2017. The Tribunal vide its judgment dated 23.11.2017, accepted the appellant and sent the matter to the department for de-novo inquiry. That the appellant was served with show cause notice and was personally heard by the respondents, however, he showed dissatisfaction over the staff for not handing over the inquiry reports. That vide impugned order dated 28.05.2019, the authorities imposed the penalty of reduction to three lower stages in time scale alongwith recovery of Rs.350,000/- upon the appellant. Feeling aggrieved, he filed departmental appeal, which was rejected, hence, the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard learned counsel for the




appellant and learned Deputy District Attorney and have gone through the record and the proceedings of the case in minute particulars.

5. Learned counsel for the appellant argued that the inquiry had not been conducted as per law and appellant had been condemned unheard without providing the documents i.e. charge sheet, inquiry report and other relevant documents. He submitted that the PTC funds were need not to be audited and if there was any need, the Secretary Education was competent to appoint a third party; that the appellant had been transferred several times due to non-payment of illegal gratification to the SDEO concerned, for which the appellant tried to prove the said gratification and as a sequel, he was punished for the this act as well. Further submitted that the impugned punishment was based on malafide. Lastly, he argued that the whole proceedings were initiated on the basis of revenge. Therefore, he requested for acceptance of the instant service appeal.

6. Conversely, learned Deputy District Attorney argued that the de-novo proceeding was conducted in pursuance to the judgment of the service tribunal but the appellant had failed to appear before the inquiry committee. Further submitted that the appellant had misused the amount of conditional grant and all the allegations leveled against him had been proved. Lastly, he concluded that the appellant had rightly been penalized and requested for dismissal of the instant service appeal.

7. Perusal of record reveals that appellant was serving in the respondent /department as PSHT when on 25.1.2016 he was issued with show cause and statement of allegations for embezzlement



and/misuse of fund of PTC allocated for boundary wall of the school and after fulfillment of codal formalities he was awarded penalty of reduction to lower scale and Rs.300000/- vide order dated 9.3.2017 against which appellant filed service appeal bearing No.180/2017 which was accepted vide order dated 23.11.2017 while department was left at liberty to conduct de-novo proceeding against the appellant.

8. Respondent after receipt of order of this tribunal initiated de-novo proceeding by appointing inquiry committee on 4.6.2019 consisting upon Mr. Nisar Ahmad Principle GHSS Nawabsher Abbottabad who submitted their report dated 14.7.2018, along with issuance of charge sheet and statement of allegation upon appellant which was not personally served upon him.

9. Inquiry committee examined Mr. Muhammad Sharif the then chairman PTC, Chowkidar GPS Jalandar, Muhammad Aslam who deposed against the appellant, appellant in appeal alleged that during hearing in this tribunal proceeding on 15.1.2019 he came to know about alleged de-novo inquiry proceeding wherein he was given copy of final show cause notice which fact is evident of the order sheet of dated 15.01.2019 of service appeal No.180/2017 without any supporting documents such as inquiry report. This factum of not associating the appellant with de-novo inquiry proceeding is also established from the record as no summon or even written report of any concern in written available on record from which it could be ascertain that appellant was served personally in de-novo enquiry proceeding.

10. It is admitted fact that during de-novo inquiry statements of all concerned were recorded, therefore, it was incumbent upon the inquiry committee to provide to the appellant with opportunity of hearing, defense and particularly cross examination upon witnesses who deposed against him. The appellant condemned unheard by the inquiry committee by not providing chance of cross examination upon witnesses which is violation of law and rules on the subject.

11. For what has been discussed above, we are unison to set aside impugned order dated 28.05.2021 and direct the respondents to conduct de-novo inquiry and provide proper chance of hearing, defence and cross examination to the appellant with further direction to conclude inquiry within sixty days after receipt of this order. Costs shall follow the events. Consign.

12. *Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 24th day of January, 2024.*



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



(RASHIDA BANO)
Member (J)
Camp Court, Abbottabad

ORDER


24.01.2024 1


Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to set aside impugned order dated 28.05.2021 and direct the respondents to conduct de-novo inquiry and provide proper chance of hearing, defence and cross examination to the appellant with further direction to conclude inquiry within sixty days after receipt of this order. Costs shall follow the events.

Consign.

3. *Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 24th day of January, 2024.*


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


(Rashida Bano)
Member (J)
Camp Court, Abbottabad