

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT ABBOTTABAD

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

Service Appeal No.1489/2020

Date of presentation of Appeal.....11.03.2020
Date of Hearing.....22.01.2024
Date of Decision.....22.01.2024

Bilal Fareed Driver Water Shed Management Circle, Abbottabad, resident of Bagnotar, Tehsil & District, Abbottabad, presently residing in servant Quarter situated in the premises of Project House at Mirpur, Abbottabad.....(*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Forest Department, Khyber Pakhtunkhwa, Peshawar.
2. Chief Conservator Watershed Forest Department, Khyber Pakhtunkhwa, Peshawar.
3. Divisional Forest Officer (DFO) Dour Watershed Division Abbottabad.
.....(*Respondents*)

Present:

MUHAMMAD ARSHAD KHAN TANOLI,
Advocate ----- For appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney ----- For respondents.


JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"that on acceptance of the instant service appeal impugned order No. 12 dated 01.11.2019, may graciously be ordered to be set aside and the appellant may be reinstated in service as a

driver in forest Department, Abbottabad, with all back benefits. Any other relief which this honourable Tribunal deems fit and proper, may kindly be allowed to the appellant.”

02 Brief facts of the case are that the appellant was appointed in the respondent department as a “Driver” vide order dated 08.05.2014; that on 29.09.2018, the appellant was implicated in FIR No. 333 PS Bagnotar by the local police and made recovery of five bottles of wine from the vehicle of the appellant; that the appellant is at bail and facing trial before the competent court and the criminal charge is yet to be proved against the appellant. He was issued show cause notice on 30.09.2019 which was properly replied but without considering the reply of the show cause notice the appellant has been removed from service vide impugned order dated 01.11.2019. Feeling aggrieved from the impugned order dated 01.11.2019, the appellant filed departmental appeal on 26.11.2019 which was not responded, hence preferred the instant service appeal on 11.03.2020.



03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order is void, illegal, without lawful authority, against the principles of natural justice and illegal exercise of power and it has been issued without proving the appellant guilty; that after registration of case FIR No. 333 dated 29.02.2019, the respondent department issued show cause notice on

30.09.2019 which was replied by the appellant but without considering the reply of the show cause notice, respondent No. 3 a cursory manner without conducting regular inquiry, removed the appellant from service; that the appellant was removed from service without applying the proper mode, hence the impugned order is liable to be set aside; that the impugned order has been passed on surmises and the allegations leveled against the appellant are baseless; that the Khyber Pakhtunkhwa Government Servants, (Efficiency & Discipline) Rules, 1973 are no more in the field which has been replaced by Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011; that the appellant has been proceeded illegally under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 1973, therefore, the impugned order is liable to be set aside and the appellant has a right to be reinstated into service with all back benefits; that last but not the least the appellant has been acquitted of the charge by the competent court of law during pendency of the service appeal vide judgment dated 28.07.2020.

05. Learned Deputy District Attorney on behalf of respondents contended that the appellant has been proceeded against under the provision of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 being involved in unlawful act leading to misconduct and indiscipline which created bad name for the department in general public; that after registration of FIR No. 333 the appellant was placed under suspension and was also served with Show Cause Notice by respondent No. 3 dated 30.09.2019 which was replied by the appellant and found un-satisfactory. He was also provided opportunity of personal hearing but he failed to provide any cogent

reason/valid documentary proof in his defense; that FIR was registered against the appellant by the Bagnotor Police during routine patrolling after recovery of five bottles wine (local alcohol) from him, therefore, he was proceeded against legally under the provision of relevant rules after completion of all the codal formalities.

06. Scrutiny of record reveals that the appellant was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 on the charge that an FIR was registered by the Abbottabad Police against the appellant after recovery of 05 bottles of wines from the official vehicle which he was driving. An FIR was registered against the appellant but he was acquitted by the competent court of law on 28.07.2020. On the basis of the said FIR the Divisional Forest Officer, Dour Watershed Division, Abbottabad issued a direct Show Cause Notice to the appellant on 30.09.2019 and imposed on him the major penalty of removal from service vide impugned order dated 01.11.2019. Rule-5 (1) (a) of the Khyber Pakhtunkhwa Government Servants, (Efficiency & Discipline) Rules, 2011 provides as under:

Initiation of proceedings.—(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-

(a) proceed itself against the accused by issuing a show cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry:

CSR 194-A provides that *“A Government Servant who has been charged for a criminal offence or debt and is committed to prison shall be considered as under suspension from the date of his arrest. In case such a*

Government Servant is not arrested or is released on bail, the competent authority may suspend him, by specific order, if the charge against him is connected with his position as Government Servant or is likely to embarrass him in the discharge of his duties or involve moral turpitude. During suspension period the Government servant shall be entitled to the subsistence grant as admissible under FR-53."

07. We observe that an inquiry was required to be conducted against the appellant or atleast the competent authority was required to bring on record as to why the inquiry was being dispensed with. Imposition of major penalty of removal from service upon the appellant without conducting proper inquiry does not seems justifiable particularly when the appellant stands honorably acquitted from the criminal charge by the competent court of law. We are therefore, constrained to set aside the impugned order, reinstate the appellant into service and remand the case to the respondents to conduct proper inquiry in accordance with law. The question of back benefits will be subject to the outcome of inquiry. Costs shall follow the event. Consign.

08. *Pronounced in open court at camp court Abbottabad and given under our hands and the seal of the Tribunal on this 22nd day of January, 2024.*



RASHIDA BANO
Member (J)
Camp Court Abbottabad



MUHAMMAD AKBAR KHAN
Member (E)
Camp Court Abbottabad

ORDER

22.01.2024 01. Learned counsel for the appellant present. Mr. Asif Masood Ali

Shah, Deputy District Attorney for the respondents present.

Arguments heard and record perused.

02. Vide our detailed judgment of today, separately placed on file, consisting of (05) pages, we are constrained to set aside the impugned

order, reinstate the appellant into service and remand the case to the respondents to conduct proper inquiry in accordance with law. The

question of back benefits will be subject to the outcome of inquiry.

Costs shall follow the event. Consign.

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