

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.980/2019

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

Mr. Khalid Nasir, Ex-Warder (BPS-05), Circle Headquarters Prison, Haripur.
.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Home Department, Khyber Pakhtunkhwa, Peshawar.
2. The Inspector General of Prison's, Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent, Circle Prison Headquarter Haripur, District Haripur.
.... (Respondents)

Present

UMER FAROOQ KHAN
Advocate ... For appellant

MUHAMMAD JAN
District Attorney ... For respondents

Date of Institution.....26.07.2019
Date of Hearing.....30.01.2024
Date of Decision.....30.01.2024

JUDGMENT

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

“ That on acceptance of this appeal the impugned order dated 05.04.2019 may very kindly be set aside and the respondents may be directed to restore the appellant on his original pay scale/rank with all back benefits and the

respondents may further please be directed to allow back benefits of the intervening period i.e. w.e.f 15.03.2017 to 25.02.2019. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant”.

02. Brief facts of the case are that appellant was the employee of Prisons Department. That he was transferred from High Security Prison Mardan to Central Prison Haripu, against which he filed departmental appeal, followed by Service Appeal No.844/2017. That during pendency of the said appeal, he was issued a charge sheet, which was replied by him. That vide order dated 07.08.2017, he was removed from service against which he filed departmental appeal, followed by Service Appeal No.1219/2017, which was accepted with direction to respondents to conduct de-novo inquiry. That in the light of directions of the Tribunal, de-novo inquiry was conducted and show cause notice was issued which was replied by him. Resultantly, he was awarded major penalty of reduction to lower stage for a period of three years and the intervening period w.e.f 15.03.2017 to 25.02.2019 was treated as extraordinary leave without pay. Feeling aggrieved, he filed departmental appeal, which was not responded, hence, the instant service appeal.

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 District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant argued that the impugned order dated 05.04.2019 was against law, facts and norms of justice. He submitted that the appellant had not been treated in accordance with law and rules; that charges leveled against the appellant had not been proved and despite that, he was given major penalty. Further submitted that the Inquiry Officer had not recommended any punishment but the respondent No.3 malafidely issued the impugned order dated 05.04.2019. Lastly, he submitted that the impugned punishment was arbitrary and malafide, therefore, the same was not tenable in the eyes of law and requested for acceptance of the instant service appeal.

05. As against that, learned District Attorney argued that the appellant had been dealt with in accordance with law and rules. He submitted that the authority had used the powers conferred under Rule-14(5) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Further submitted that the charges leveled against him had been proved. Lastly, he submitted that proper inquiry had been conducted into the matter and in the light of report of the de-novo inquiry, the impugned order dated 05.04.2019 has rightly been passed. Therefore, he requested for dismissal of the instant service appeal.

06. Perusal of record transpires that the instant appeal is basically a Second round of litigation in the Tribunal. Earlier the appellant was imposed major penalty of removal from service vide order dated 07.08.2017 on the charges of non-compliance of lawful order of his transfer and absence from duty. His service appeal was allowed with direction to the respondents to conduct de-novo inquiry as there were

certain legal lacunas in the disciplinary proceedings initiated against the appellant by the respondent department. In compliance with the order of the Tribunal the respondents conducted denovo inquiry observing all the codal formalities and providing proper opportunity of defense to the appellant. The inquiry officer in the denovo inquiry has proved the charges leveled against the appellant and the competent authority imposed major penalty of reduction to lower stage for a period of 03 years vide impugned order dated 05.04.2019 upon the appellant. The major grounds advanced by the appellant is that the penalty of reduction to lower stage for a period of 03 years has been imposed by the competent authority without recommendation of the inquiry officer. We observe that it is not mandatory upon the inquiry officer to make recommendation for imposition of penalty. The inquiry officer is required to scrutinize conduct of the accused and prove or disprove the charges leveled against him. In the inquiry against the appellant the charges against him stand approved by the inquiry officer. Imposition of penalty is the discretion of the competent authority keeping in view the nature of the charge and findings of the inquiry report. Rule 14 (5) of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 empower the competent authority as under;

“After affording personal hearing to the accused the competent authority shall, keeping in view the findings and recommendations of the inquiry officer or inquiry committee, as the case may be, facts of the case and defense offered by the accused during personal hearing, by an order in writing-

- (i) exonerate the accused if charges had not been proved; or*
- (ii) impose any one or more of the penalties specified in rule 4 if charges have been proved”*

07. In view of the above discussion we find no merit to entertain the instant appeal and it stands dismissed. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 30th day of January, 2024.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

Kamranullah


30.01.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan,
District Attorney for the respondents present.

2. Vide our detailed judgment of today separately placed on file,
consisting of (05) pages, we find no merit to entertain the instant appeal
and it stands dismissed. Costs shall follow the event. Consign.

3 *Pronounced in open court at Peshawar and given under our
hands and seal of the Tribunal on this 30th day of January, 2024.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

Kamranullah