

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.2455/2023

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

Mr. Farrukh Jadoon S/o Anwar Ahmad Khan, Ex- Section Officer (PMS
BPS-17) Social Welfare Department, Khyber Pakhtunkhwa Peshawar.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa Establishment Department.

.... (Respondents)

Mr. Ahmad Sultan Tareen
Advocate

.... For appellant

Mr. Muhammad Jan
District Attorney

.... For respondents

Date of Institution.....23.11.2023
Date of Hearing..... 13.02.2024
Date of Decision..... 13.02.2024

JUDGMENT

RASHIDA BANO, 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:

“On acceptance of this appeal, the impugned notification dated 18.08.2023 regarding imposition of major penalty of removal from service against the appellant may kindly be set aside and the respondents may also be directed to reinstate the appellant in service with all back benefits having accrued or accruable in appellant’s favor since the date of his removal from service.”

2. Brief facts of the case as given in the memorandum of appeal are that the appellant was appointed as Naib Tehsildar in February, 2009 and was promoted and inducted in Provincial Management Service (PMS) in BPS-17. During service, he was posted against different posts to serve including the ex-cadre posting as Land Acquisition Collector for the china Pakistan Economic Corridor, Havelian Thakot Section at NHA in different time intervals. The appellant while serving as Land Acquisition Collector at CPEC NHA, Abbottabad was imposed major penalty of removal from service. Appellant filed a review petition before the respondent No.1, which was rejected vide order dated 31.10.2023 which was received by the appellant on 02.11.2023, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the impugned disciplinary proceedings as conducted against the appellant and imposition of major penalty against him are arbitrary, baseless, unlawful, malafide, against the facts and law hence liable to be set aside being void ab-initio. He further argued that the appellant was not properly associated with the inquiry proceedings and the appellant was not provided with opportunity of personal hearing and he was condemned unheard which is violation of principle of natural justice and equity. He further argued inquiry officer recommended him minor penalty of withholding promotion for three years while in the impugned notification major penalty of removal from service was imposed upon him, which show malafide on the part of respondents.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that



due process of law has been followed and the appellant has been provided with ample opportunity to defend himself against the charges. Moreover, the appellant has failed to lend any credence to his false assertion to point out any discrepancy in the disciplinary proceedings. He further contended that appellant while entrusted with Additional Charge of LAC CPEC-HT was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 which caused a loss to the tune of Rs. 75,010,564/- to the Government Exchequer. The charges leveled against the appellant stood proved in the inquiry report and consequently major penalty of removal from service was imposed upon him by the Competent Authority.

6. Perusal of record reveals that appellant was appointed as NaibTehsildar in February 2009 and was promoted and became the part of Provincial Management Service in BPS-17. Appellant was appointed as Land AcquisitionCollector for the China Pakistan Economic Corridor (CPEC) Havalian Tahkot Pakistan at NHA for four different times. Appellant was charge sheeted for issuance of second corrigendum to award No.14 in a capacity of Land Acquisition Collector at China Pakistan Economic Corridor (Havalian Tahkot Section) NHA Abbottabad and after fulfillment of all codal formalities appellant was removed from service vide order dated 18.08.2023, impugned before this tribunal. In May, 2019 some land owners approached General Manager of the project and agitated that acquiring department started working on their land without their permission they asked for re-measurement on the site/spot and re-possession of their land, upon which acquiring department on 16.05.2019 requested appellant for acquisition of land coming in the right of way (row) as per third land acquisition folder. Appellant upon request of acquiring department acquired land by issuing 2nd corrigendum to award No 14, when demand for acquired land was put to the acquiring department by the appellant upon it department

constitute committee under the Chairmanship of General Manager, M-1 NHA, committee issue questionnaire to the appellant and all other officers of the project to explain their position. All of them including the appellant submitted reply to the said questionnaire but the committee held responsible the appellant alone for acquiring additional land by issuing 2nd corrigendum to award No. 14 and asked respondent No.3 for initiating official inquiry against the appellant vide letter dated 02.02.2022 upon which chargesheet and statement of allegation dated 14.04.2022 were issued by appointing Mr. Tariq Hassan Secretary, Regional Transport Authority as inquiry officer. Inquiry officer after fulfilling codal formalities submit report to the authority. Showcause notice was sent to the appellant on 03.11.2022 alongwith finding without sending of entire inquiry report from respondent No.1 through office of respondent No.3. Appellant replied to the show case notice and requested for personal hearing, which was accordingly afforded to him. The most important aspect of the case in hand is that inquiry against appellant was initiated upon the request and complaint of the NHA but neither complainant nor anyone else on his behalf appeared before the inquiry officer.

7. It is general principal that one who alleged must prove the allegation but in the instant case, no such thing is available. NHA alleges that appellant at his own acquired land vide second corrigendum to award No. 14 while appellant contended that he acquired additional land as per request and third folder of the NHA acquiring department after bringing in to the notice of all concern in acquiring department.


8. It is also pertinent to mention here that land which was acquired by issuing second corrigendum to award No.14 was in the possession of NHA and request for the de-notification of the corrigendum was not put/made by the NHA which means that said land was required for the completion of the project and was acquired in the public interest.



9. Appellant was awarded major penalty of removal from service without providing opportunity of cross examination upon the complainant, members of inquiry committee who recommended initiation of departmental proceeding against the appellant beside all others, who remain associated with the acquisition of land in the project and land owners upon whose agitation NHA decided to acquire additional land which means appellant was condemned unheard.

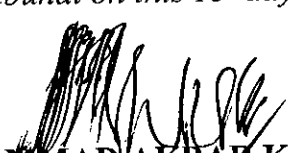
10. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty of removal from service, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of *audi alteram partem* was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.


11. For what has been discussed above, we are unison to set-aside impugned order and reinstate the appellant into service for the purpose of de-novo inquiry with direction to provide opportunity of hearing, defense and most importantly cross examination upon committee who held responsible appellant and requested for initiating inquiry against the appellant beside all



officials who are relevant for the purpose of preparing 3rd folder of the project of NHA and to associate land owners with the inquiry proceedings. De-novo proceeding must be concluded within sixty days after receipt order. The issue of back benefits shall be decided subject to the outcome of denovo enquiry. Costs shall follow the event. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of February, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER

13.02.2024 1. Appellant alongwith his counsel present. Mr. Mohammad Jan learned District Attorney alongwith Mr. Muhammad Riaz, Superintendent for the respondents present..

2. Vide our detailed judgement of today placed on file, we are unison to set-aside impugned order and reinstate the appellant into service for the purpose of de-novo inquiry with direction to provide opportunity of hearing, defense and most importantly cross examination upon committee who held responsible appellant and requested for initiating inquiry against the appellant beside all officials who are relevant for the purpose of preparing 3rd folder of the project of NHA and to associate land owners with the inquiry proceedings. De-novo proceeding must be concluded within sixty days after receipt order. The issue of back benefits shall be decided subject to the outcome of denovo enquiry. 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 13th day of February, 2024.*



(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)