

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD

Service Appeal No.423/2022

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

Mr. Muhammad Ajmal S/o Muhammad Shamraiz, Ex-/Jr Scale
Stenographer District Judiciary Haripur, Resident of Post Office,
Sarai Saleh, Mohallah New Abadi near Wonderland Park, GT road
Ali Khan Tehsil & District Haripur.

... (*Appellant*)

VERSUS

1. The Worthy District & Sessions Judge, Haripur.
 2. The Honorable Registrar, Peshawar High Court, Peshawar.
- ... (*Respondents*)

Mr. Abdul Rehman Qadir
Advocate ... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondents

Date of Institution..... 25.03.2022
Date of Hearing..... 25.01.2024
Date of Decision..... 25.01.2024

JUDGMENT

Rashida Bano, Member (J): The instant appeal instituted under section 4
of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer
copied as below:

**“That on acceptance of instant service appeal the
impugned order of removal from service of the
appellant dated 30.11.2021 may graciously be declared
illegal, unlawful and be set aside with the**




reinstatement of the appellant in service with full back pay and consequential service benefits.”

2. Brief facts of the case are that appellant was serving as Junior Scale Stenographer in the District Judiciary, Haripur. That during posting the court of Judge Family Court-I, the appellant was directed to draft an explanation to be called from Miss Sania Tariq (Computer Operator), which he drafted and the same was served upon her. That due to the said explanation, she allegedly showed him annoyance and filed a complaint against him to the District & Sessions Judge, Haripur. That the learned DSJ called an Explanation from the appellant on 21st October, 2021 which was replied by the appellant. That an inquiry was initiated against the appellant, wherein, the Judge Family Court-III was appointed as Inquiry Officer. That upon completion of inquiry proceedings, show cause notice was issued to him which was also replied by the appellant. That on 30.11.2021, appellant was removed from service. Feeling aggrieved, he filed departmental appeal on 21.12.2021, which was not responded, hence, the instant service appeal.
3. 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.
4. Learned counsel for the appellant argued that the appellant had not been dealt with as per law. He submitted that the complainant had annoyed over the drafting of explanation due to which she filed complaint against him; that the appellant had not been given opportunity of defense and no charge sheet alongwith statement of



allegations had been served upon him. Further submitted that inquiry had not been conducted as per procedure provided in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011; that the impugned penalty was harsh and the appellant had not been dealt with in accordance with principles of natural justice. Lastly, he concluded that the matter between the appellant and complainant had been resolved and the complainant had also requested the learned District Judge, Haripur for withdrawal of her complaint but despite that, he was removed from service. Therefore, he requested for acceptance of the instant service appeal.

5. Conversely, learned Deputy District Attorney argued that the service record of the appellant was also not satisfactory which was reflected in his ACRs w.e.f 01.01.2018 to 31.07.2018. He submitted that the inquiry was of preliminary nature, in which the charge sheet/statement of allegations were not necessary. Further submitted that the charges leveled against him had been proved; as the complainant's mobile number was and were also admitted by the appellant; that the appellant had committed misconduct in shape of harassing the complainant in the duty; impugned order had been passed after proper verification of documents and in the light of proper inquiry. He submitted that there was no need of notice to the appellant as it had been mentioned in the terms & conditions of the appointment order that no notice shall be given. Further submitted that the impugned order had been issued as per law and full opportunity of defense had been given to the appellant. Lastly, he submitted that the appellant had submitted fake



documents for his appointment, therefore, he was rightly dismissed from service. Therefore, he requested for dismissal of the instant service appeal.

6. Perusal of record reveals that appellant was served with an explanation on 21.10.2021 upon application of one Miss Sania Tariq with allegation of harassment at her workplace. Appellant submitted reply of the same and denied allegation leveled in complaint. Authority appointed Judge family court III Haripur as inquiry officer to conduct the inquiry into the matter vide order dated 26.10.2021. Authority had not issued any charge sheet or statement of allegation alongwith order of inquiry. Inquiry officer conducted inquiry, record statement of appellant and Sania Tariq KPO and submit her report. Authority issued final show cause notice on 27.11.2021 and appellant was removed from service vide order dated 30.11.2021 despite application for withdrawal the complaint by Miss Sania Tariq complaint upon whose application disciplinary proceeding were initiated. Enquiry officer in her report mentioned that she conducted fact finding inquiry and it is fact finding inquiry as no charge sheet or statement of allegation was given nor any chance of cross examination upon complaint was provided to the appellant.

"It is has been held in 2022 SCMR 745 that regular inquiry was triggered after issuing show cause notice with statement of allegations and if the reply was not found suitable then inquiry officer was appointed and regular inquiry was commenced (unless dispensed with for some reasons in writing) in which it was obligatory for the inquiry officer to allow evenhanded and fair opportunity

to the accused to place his defence and if any witness was examined against him then a fair opportunity should also be afforded to cross-examine the witnesses-- Whereas a discrete or fact finding inquiry was conducted at initial stage but internally to find out whether in the facts and circumstances reported, a proper case of misconduct was made out to initiate disciplinary proceedings."

So appellant was awarded major punishment of removal from service on basis of fact finding inquiry which is not sustainable in the eyes of law.

7. For what has been discussed above, we are unison to set aside impugned order 30.11.2021, reinstate appellant into service for the purpose of de-novo inquiry with direction to conduct regular inquiry in accordance with (E&D) Rules by issuing of charge sheet, statement of allegation and provide proper chance of hearing, defense and cross examination which for most requirement of fair trial, within 60 days, the issuance of back benefits will be decided subject to outcome of de-novo inquiry. Costs shall follow the event. Consign.

8. *Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 25th day of January, 2024.*



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





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

ORDER

25.01.2024

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 30.11.2021, reinstate appellant into service for the purpose of de-novo inquiry with direction to conduct regular inquiry in accordance with (E&D) Rules by issuing of charge sheet, statement of allegation and provide proper chance of hearing, defense and cross examination which for most requirement of fair trial, within sixty days, the issuance of back benefits will be decided subject to outcome of de-novo inquiry. Costs shall follow the event. Consign.
3. *Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 25th day of January, 2024.*



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



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

23.01.2024

1. Appellant in person present. Mr. Syed Asif Masood learned Deputy District Attorney for the respondents present.

2. Appellant stated that Parcha Peshi given to him was of 25.01.2024 but during search on website he came to know that his case is for today, therefore, he requested for fixation of appeal on 25.01.2024. Granted. To come up for arguments on 25.01.2024 before D.B at camp court, Abbottabad. P.P given to parties.


(Muhammad Akbar Khan)
Member (E)


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

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