

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 1487/2019

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

Zabita Khan, S/o Khan Muhammad, R/o Khudrazi, Mohallah Samandar Gari, presently Reader DJ-VI, District Nowshera(*Appellant*)

VERSUS

1. District & Session Judge, Nowshera.
2. Registrar, Peshawar High Court, Peshawar.....(*Respondents*)

Present:-

YASIR SALEEM,
Advocate --- For Appellant

HABIB ANWAR,
Additional Advocate General --- For respondents

Date of Institution.....05.11.2019

Date of Hearing.....15.11.2023

Date of Decision..... 15.11.2023

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 this appeal, the impugned order dated 19.06.2019 may be set aside and the appellant may be restored to his original scale/grade with all due increments/benefits for all back and consequential purpose. Any other relief which has not specifically been prayed for but is more conducive in the facts and circumstances of the

case may also be granted in the best interest of justice, equity and the law."

02. Brief facts of the case are that the appellant was serving as Reader in the District Judiciary, Nowshera. That a confessional statement of one lady accused Mst. Tahira Naz was recorded on 24.12.2016 in case FIR No.826 dated 22.12.2016 under Section 302 PPC. That after recording the statement, the appellant received the original confessional statement for giving the same to the Superintendent, but as the Superintendent was on leave, therefore, the appellant handed over the said statement to a Naib Qasid namely Muhammad Ibraheem. That when the case was fixed for evidence, the learned Judicial Magistrate asked for original confessional statement but the same was missing. That explanation was called from the appellant and inquiry was also conducted. That resultantly, show cause notice was issued to him. That vide impugned order dated 19.06.2019, he was reverted from the post of Senior Clerk (BPS-14) to Junior Clerk (BPS-11) for three years and in the said period, he was held not entitled to receive any increments and postponed further increment for the period of one year. Feeling aggrieved, he filed departmental appeal which was not responded, hence, preferred the instant service appeal on 05.11.2019.

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, learned Additional Advocate General for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order dated 19.06.2019 was against law, facts and was liable to be set aside; that since an important witness had not been summoned by the inquiry officer, therefore, deprived the appellant from cross-examination; that one major and one minor penalty was given in the show cause notice whereas in the impugned order more than one penalties have been imposed upon the appellant other than not mentioned in the show cause notice which is against the law; that the impugned order was very harsh as there were three penalties imposed upon the appellant. Therefore, he requested for the acceptance of the instant service appeal.

05. On the other hand, learned Additional Advocate General contended that the impugned order had been passed after completion of all the codal formalities, hence the same is liable to be upheld; that the inquiry officer has examined oral and documentary evidence and had brought the same on file; that the appellant had been given opportunities to rebut the allegations and defend himself. He further contended that the impugned punishment was lenient as compared to the gravity of charge and the appellant had been punished after following the procedure as per Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011. Lastly, he submitted that the impugned order was not harsh one keeping in view the seriousness of the charge leveled against the appellant. Therefore, he requested for dismissal of the instant service appeal.

06. From perusal of record and arguments of learned counsel for both the parties it transpire that keeping a record of confessional statement of the accused before the judicial magistrate in the safe custody is the responsibility

of the Reader of the court. As per law the confessional statement recorded by the judicial magistrate is required to be produced before the trial court at the time of evidence. Record reveals that after recording confessional statement of the accused the judicial magistrate vide order dated 24.12.2016 handed over ^{to} the confessional statement of the accused to the appellant for safe custody. However, the stance of the appellant is that he handed over original statement to the Naib Qasid of the English Clerk of the court on the verbal direction of the judicial magistrate and Superintendent of the Session Court. The Naib Qasid admitted receipt of copy of confessional statement and denied original one. Record further reveals that it has been a practice in the court offices that confessional statements are deposited in other offices under over all supervision of Superintendent for keeping them in safe custody. The appellant produced evidence of depositing 04 original confessional statements after getting acknowledgment receipt from the receiving officials of the court which establishes this practice. However, in the instant case the acknowledgment receipt of the Naib Qasid of the court does not mention receiving of original statement by him. Contents of inquiry report also reveal that no malafide or intentional act on part of the appellant is established although negligence and inefficiency on the part of the appellant stands established, therefore, we are of the firm view that the ~~penalty~~ ^{of} imposition of major penalty of demotion of the appellant from the scale of Senior Clerk (BPS-14) to Junior Clerk (BPS-11) alongwith other minor penalty of stoppage of three annual increments for three years and postponement of further increment for the period of one year, after restoration seems very harsh.

07. In view of the foregoing we are constrained to convert the penalties contained in the impugned Notification dated 19.06.2019 into minor penalty of withholding of three increments for three years. 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 15th of November, 2023.*



(RASHIDA BANO)
Member (J)



(MUHAMMAD AKBAR KHAN)
Member (E)

ORDER

15.11.2023 01. Learned counsel for the appellant present. Mr. Habib Anwar,

Additional Advocate General 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 convert the penalties contained in the impugned Notification dated 19.06.2019 into minor penalty of withholding of three increments for three years. Costs shall follow the event. Consign,

03. *Pronounced in open Court at Peshawar and given under our hands and seal of the Tribunal on this 15th of November, 2023.*



(RASHIDA BANO)
Member (J)



(MUHAMMAD AKBAR KHAN)
Member (E)