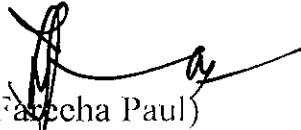
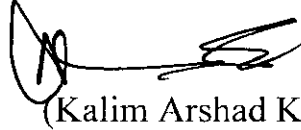


ORDER

23rd Feb. 2024

1. Learned counsel for the appellant and Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.
2. Vide our detailed judgment of today placed on file, instant service appeal is accepted the impugned orders are set aside. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23rd day of February, 2024.*


(Fareeha Paul)
Member (B)


(Kalim Arshad Khan)
Chairman

Mutazem Shah

not been given any chance of defense and all the proceedings were done in a haste rendering the entire departmental action fruitless constraining the Tribunal to set aside the impugned orders.

7. In view of the above, instant service appeal is accepted the impugned orders are set aside. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23rd day of February, 2024.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

Mutazem Shah

blue pen, besides, failed to put satisfactory explanation thereof in your reply dated 20.01.2020."

6. The appellant resubmitted reply to the charge sheet denying the allegations. Subsequently, an inquiry was also initiated against the appellant. In Para-IV of the findings of the inquiry, the inquiry officer has given ambiguous remarks regarding the tampering. The said part of para is reproduced as under:

"The committee observed that under these circumstances, it is possible that the accused might have done the subject tampering with the intentions of diverting first attention from the "Red Entries" highlighting record of the penalty on page 17 of his service book and concealing entries pertaining to imposition of withholding of two annual increments for the year, 2019 & 2020 as evident from his silence over annual increment, 2019 which was later on recovered from him with arrears. "

The Enquiry Committee is not sure regarding the alleged act of tampering by the appellant in page-17 of the service book nor we have perused the copy of the Service Book placed on file by the respondents alongwith their reply but that apparently does not show any tampering nor did we have the opportunity to peruse the original as nobody appeared before the Tribunal during the hearing nor produced original. But fact remained the same that even if any tampering has been made the same was required to have clearly been proved to have been made by the appellant in order to hold him guilty for that. When the report does not directly prove the charge, then punishment awarded on the basis of such vague finding could not be sustained. Besides, the allegations leveled against the appellant have not been proved by the respondents as the respondents have not rejected the plea on a strong ground, rather reduced the penalty in response to the departmental appeal and that too, after expiry of 90 days, when the appellant had approached this Tribunal. The record further reflects that the appellant has



replied by the appellant. That vide order dated 30.07.2020, major penalty of reduction to lower post of Junior Clerk (BPS-11) for five years was imposed upon the appellant. Feeling aggrieved, he filed departmental appeal, which was not responded at that time, therefore, he filed Service Appeal No.15290/2020. During pendency of the said appeal, the departmental appeal was decided by modifying the penalty of reduction to lower scale for a period of one year. Therefore, the appellant withdrew the service appeal No.15290/2020 with permission to file fresh appeal. Hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were issued notices. They put appearance and submitted reply.

3. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

5. Perusal of record reveals that the appellant was serving as Senior Clerk when a charge sheet was issued to him. The contents of the said charge sheet are as under:

"i) That you have an undesirable track record of habitual absence and misconduct since your appointment on 07.08.2008 which has resulted into imposition of minor penalties upon you from time to time. In spite of the aforesaid, you have been again reported for misconduct as evident from the complaint no.KP090120-625847 lodged on Pakistan Citizen Portal as well as manually received. Thus, you have badly failed to bring improvement in your overall misconduct during the course of time spanning over more than eleven years.

ii) That, you have tampered the record of penalty entered with Red Entries on Page-17 of your service book by overwriting the same with

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

**BEFORE: KALIM ARSHAD KHAN ...CHAIRMAN
FAREEHA PAUL ...MEMBER (Executive)**

Service Appeal No.1619/2021

Date of presentation of appeal.....25.01.2021
Dates of Hearing.....23.02.2024
Date of Decision.....23.02.2024

Mr. Hidayatullah Khan Ex-Senior Clerk, Public Library, Lakki Marwat.....(**Appellant**)

Versus

1. **The Government of Khyber Pakhtunkhwa**, through Secretary Higher Education Department, Civil Secretariat, Peshawar.
2. **The Director**, Archives & Libraries Khyber Pakhtunkhwa, Peshawar.
3. **The Deputy Director**, Archives & Libraries Khyber Pakhtunkhwa, Lakki Marwat.....(**Respondents**)

Present:

Mr. Muhammad Amin Ayub, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED APPELLATE ORDER DATED 01.01.2021 OF RESPONDENT NO.1 WHEREBY MAJOR PUNISHMENT OF REDUCTION TO LOWER POST OF JUNIOR CLERK (BPS-11) FOR FIVE YEARS HAS BEEN REDUCED TO ONE YEAR.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, the appellant was appointed as Junior Clerk in the year 2008 and later on was promoted to the post of Senior Clerk. That on 03.02.2020, a charge sheet was issued to him on the charges of misconduct in shape of overwriting in the service book. That same charge sheet was replied by the appellant on 17.02.2020. That an inquiry was initiated against him, wherein, inquiry officer submitted his report, recommending the appellant for removal from service. That on 07.07.2020, show cause notice was issued, which was also