

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1280/2013

Mr. Khalid Saleem.....Appellant

VERSUS

Government of Khyber through Chief Secretary & others.....Respondent

OBJECTION PETITION ON BEHALF OF RESPONDENTS

Respectfully Sheweth,

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 11725

Dated 12-03-2014

Preliminary Objections:

1. The decision/ judgment of the Hon'ble Service Tribunal is hit by the maxim "No one could be judge in his own cause".
2. The designated Inquiry Officer for the De-novo Inquiry and the member Khyber Pakhtunkhwa Service Tribunal deciding the Service Appeal are one & same person, hence decision of Khyber Pakhtunkhwa Service Tribunal, Peshawar is dented, with personal bias and malafide.
3. The Appellant has approached this Hon'ble forum with unclean hands.
4. The decision of the Hon'ble Service Tribunal is against the principles of natural justice.

Facts & Objections:

1. Brief history of the case is that Mr. Khalid Saleem (appellant) joined the Government service as PCS EG BS-17 in 1990, promoted to BS-18 on 21.05.2008. He was retired from service on 29.04.2012 on attaining the age of superannuation. On receipt of a complaint from Provincial Inspection Team, Dr. Jamal Nasir (DMG BS-20) had conducted an enquiry under Khyber Pakhtunkhwa Removal From Service (Special Powers) Ordinance, 2000 and as a result of the enquiry, major penalty of "reduction to lower post/ scale for a period of three years and on restoration it shall operate to postpone future increments for three years" was imposed upon him on 25.05.2010. Since, the officers was downgraded to BS-17 on 25.05.2010 and the same remained intact till his superannuation i.e. 29.04.2012. His case was never placed before PSB for promotion to BS-19.
2. That the appellant challenged the enquiry report/ penalty before the Khyber Pakhtunkhwa Service Tribunal, Peshawar in S.A No. 1393/2010 & the Hon'ble Service Tribunal vide Order dated 15.12.2011 allowed the Appeal and remanded the case to the competent authority for De-novo Inquiry by setting aside the impugned Order dated 25.05.2010.

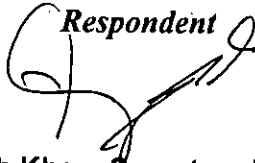
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3. The officer challenged his penalty order before the Service Tribunal through Service Appeal No. 1393/2010 and the Hon'ble Service Tribunal vide Order dated 15.12.2011, allowed the appeal and remanded the case to the Competent Authority for De-novo Inquiry by setting aside the impugned order dated 25.05.2010. Establishment Department withdrew the penalty notification of Mr. Khalid Saleem on 03.08.2012 after more than 04 months of his retirement and in the first instance, the competent authority nominated Mr. Rashid Ahmad (DMG BS-20), the then Secretary, Relief & Rehabilitation Department as Inquiry Officer to conduct a De-novo Inquiry in the matter vide Notification dated 21.03.2012. However, he returned the case with the information that he in his capacity as Secretary Establishment, remained actively involved with the case, studied it, formed an opinion and made specific recommendations to the Competent Authority and regretted to conduct the inquiry with the plea that the de-novo inquiry whose logic is based on fresh look may not defeat the ends of justice.
4. Subsequently, the Competent Authority nominated Mr. Muhammad Tayyab Awan (PCS EG BS-20), the then Member Board of Revenue for the purpose of de-novo inquiry on 12.04.2012. However, he has also informed that he has long association and friendship with Mr. Khalid Saleem and he is not in a position to conduct the said inquiry, which may be entrusted to some other person/ officer. On 16.04.2012, the Competent Authority nominated Mian Muhammad (PCS SG), the then Additional Secretary (Cabinet), Administration Department now Director General (Prosecution), Khyber Pakhtunkhwa as Inquiry Officer to conduct a de-novo inquiry against the accused officer.
5. The Inquiry Officer Mr. Mian Muhammad informed that Mr. Khalid Saleem through his written statement has requested to drop the charge sheet against him as he had been retired from service on 30.04.2012, therefore, the Inquiry Officer in terms of FR-54-A, abated inquiry proceedings against him. Litigation Wing, Establishment Department placed the judgment dated 14.09.2022 before the Scrutiny Committee of Law Department and the Committee declared it a fit case for filing of Appeal/ CPLA in the Supreme Court of Pakistan. Subsequently, Establishment Department filed a CPLA against the said Judgment.
6. The penalty of "reduction to lower post/ scale for a period of three years and on restoration it shall operate to postpone future increments for three years" was imposed upon him on 25.05.2011, he was not holding the post in BS-18. Moreover, there is no provision of proforma promotion in the Promotion Policy, 2009, therefore, the Board did not consider his proforma promotion.

Facts & Objections:

1. That the appellant was proved guilty in enquiry and was awarded major penalty of reduction to lower post/ scale for a period of three years and on restoration it shall operate to postpone future increments for 03 years.
2. That in the de-novo inquiry, the appellant was not exonerated rather enquiry proceedings were abated in terms of FR-54-A due to the retirement of the appellant.
3. That the Inquiry Officer of the De-novo Inquiry and the member Khyber Pakhtunkhwa Service Tribunal, Peshawar deciding the Service Appeal is one & same person hence, the decision of KP Service Tribunal is dented with personal interest and is against the principles of natural justice.

In view of above, it is most humbly prayed that execution proceedings in the matter may kindly/ graciously be dismissed with exemplary costs, pleas.

for  *Respondent*

**Shahidullah Khan, Secretary Establishment
Through Kaleem Ullah Baloch,
Special Secretary Establishment
Govt. of Khyber Pakhtunkhwa**