

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1409/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER(J)
MR. FAREEHA PAUL ... MEMBER(E)

Mr. Irfan Alam S/o Alam Khan, Assistant, P&D Department, Peshawar, KP.
.... (Appellant)

VERSUS

1. Government of KP through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary P&D, Civil Secretariat, Peshawar.
3. Chief Minister, Chief Minister Secretariat, Peshawar.
4. Additional Secretary LGE & RDD/Inquiry Officer, Civil Secretariat, Peshawar.
....(Respondents)

Mr. Syed Haziq Ali Shah
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution..... 20.06.2023
Date of Hearing..... 12.02.2024
Date of Decision..... 12.02.2024

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:

“It is, therefore, humbly prayed that on acceptance of this appeal the impugned notification/order dated 07.02.2023 may kindly be set aside and the appellant may be reinstated into service with all back benefits.”

2. Brief facts of the case as given in the memorandum of appeal are that appellant joined the respondent department in the year 2004 and was performing



his duty with zeal and zest. That appellant while serving as Assistant in CPEC Cell, was issued charge sheet alongwith summary of allegations, which was replied by him. Thereafter appellant was awarded major penalty of compulsory retirement from service. Feeling aggrieved, he filed departmental appeal, which was not responded, hence the present 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that that the impugned order dated 07.02.2023 is illegal, unlawful, against the law and fact hence liable to be set aside. He further that appellant had never committed any act or omission which could be termed as in-efficiency, corruption or misconduct warranting the major penalty imposed upon him. He further argued that penalty awarded to the appellant is completely disregarding and ignoring the findings of the inquiry officer. He submitted that imposition of penalty awarded to the appellant is harsh and against the norms of justice and also against the principle of proportionality.

5. Conversely, learned District Attorney contended that appellant had been treated in accordance with law and rules. He further contended that when the appellant was serving in CPEC Section P&D Department, various complaints were lodged against him on involvement of issuance of fake recruitment orders and taking money from the complainants, therefore, as per rules disciplinary proceedings were initiated against him. He further contended that acts/omission of the appellant fall in the ambit of misconduct, which warranted imposing of major penalty upon him.



6. Perusal of record reveals that appellant was appointed as Assistant BPS-14 in 2012 whose service was regularized at the strength of the Khyber Pakhtunkhwa Employees Regularization of Service Act, 2018 vide notification dated 08.06.2018. Appellant was transferred to CPFC Section of P&DD vide order dated 14.01.2020 of P&D Department. Appellant was issued with charge sheet and statement of allegation on the charges mentioned below:

- I. That out of five, four number of offers of appointments (copies enclosed) under signature of Chief. CPEC Cell were orbiting on social media i.e. WhatsApp.*
- II. That a Fact Finding inquiry was conducted and during the course of statement of record, the appointees confirmed that their offers of appointments were issued with your collaboration in lieu of taking monetary gratification/bribe by you.*
- III. That one Mr. Ismail Shah, resident of Village Musa Zai, Peshawar alleged that you took 5 lac rupees as bribe from him in lieu of appointment of his two sons in CPEC Cell, however, you returned the money on 04.03.2021 to Mr. Ismail.*
- IV. That it confirmed that you were involved in issuance of offers of appointments and taking illegal gratification in lieu of appointments.*
- V. That as per statement of Mr. Ismail Shah, you were in contact with him in issuance of offers of appointments of his two sons.*

For the purpose of inquiry against the said accused with the reference to the above allegations, Mr. Muhammad Masood PMS-19 was appointed as inquiry officer, who after conducting inquiry submitted his inquiry report to authority.

After issuing final show cause notice on 11.05.2022, vide impugned order, the



competent authority imposed upon appellant compulsory retirement from service on 07.02.2023.

7. Appellant in very clear words during inquiry stated to the inquiry officer that appointment orders of sons of Ismail Shah were given/handed over to him by the then Director Mr. Abdul Aziz Abbasi. In such a situation it was incumbent upon the inquiry officer to record statement of Mr. Abdul Aziz Abbasi and provides chance of cross examination to appellant in case of his denial. Moreover, inquiry officer referred to the written statement of Mr. Ismail Shah but upon him no chance of cross examination was provided to the appellant, otherwise too, inquiry officer referred to the fact finding inquiry which is not legal way because at this stage too, no chance of cross examination was provided to appellant.

8. Record is silent that whether the main culprit Mr. Abdul Aziz Abbasi was proceeded against or not? Whether he was held responsible for issuing of appointment orders or not? If he was held responsible, then the case of appellant being subordinate will be looked in some other perspective. Appellant was awarded major penalty of compulsory retirement from service without providing opportunity of cross examination which means he was condemned unheard.

9. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, 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 require 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.

10. For what has been discussed above, we are unison to set aside impugned orders and reinstate appellant into service for the purpose of de-novo inquiry with direction to provide chance of cross examination upon Mr. Abdul Aziz Abbasi and Ismail Shah which is foremost requirement of fair trial and conclude the inquiry within sixty days from the receipt of this order. Costs shall follow the event.

Consign.

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


(FAREEHA PAUL)
Member (E)



(RASHIDA BANO)
Member (J)

ORDER

12.02.2024 1 Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Mehar Muhammad, S.O (Litigation) for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to set aside impugned orders and reinstate appellant into service for the purpose of de-novo inquiry with direction to provide chance of cross examination upon Mr. Abdul Aziz Abbasi and Ismail Shah which is foremost requirement of fair trial and conclude the inquiry within sixty days from the receipt of this order. 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 12th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)