

*Tribunal deems fit may also be granted in favour of the appellant."*

02. Brief facts of the case are that the appellant while serving as Drug Inspector in the respondents department was suspended vide notification dated 06.05.2021; that the suspension order was extended beyond the statutory period, however, the respondents department constituted an inquiry committee vide order dated 08.07.2021; that the respondents department issued charge sheet and statement of allegations to the appellant wherein plethora of allegations were leveled against him which was replied by the appellant and clarified his stance regarding the allegations leveled against him; that show cause notice was issued to the appellant vide letter dated 15.04.2022 which was also replied by the appellant on 25.04.2022 but the appellant was removed from service vide impugned notification dated 02.02.2023. Feeling aggrieved from the impugned notification dated 02.02.2023 the appellant filed departmental appeal on 22.02.2023 which was not responded within the statutory period of 90 days, hence preferred the instant service appeal on 20.06.2023.

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

04. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned notification dated 02.02.2023 and the

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**MUHAMMAD AKBAR KHAN... MEMBER (E)**

*Service Appeal No. 1411/2023*

Date of presentation of Appeal.....20.06.2023

Date of Hearing.....16.04.2024

Date of Decision.....16.04.2024

**Mr. Muhammad Shoaib Khan, Ex-Drug Inspector (BPS-17),  
Mohalla Hafizan, Mohib Road, Par Hoti, District  
Mardan.....(Appellant)**

Versus

1. **The Chief Minister, Khyber Pakhtunkhwa, through Principal Secretary, Peshawar.**
2. **The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.**
3. **The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.**
4. **The Director General Durg Control & Pharmacy Services, Khyber Pakhtunkhwa Peshawar.....(Respondents)**

**Present:**

Mr. Noor Muhammad Khattak,  
Advocate

...

For appellant

Mr. Umair Azam,  
Additional Advocate General

...

For respondents

**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 payer copied as under;

*"That on acceptance of this service appeal the impugned order dated 02.02.2023 may very kindly be set aside and the appellant may please be reinstated into service with all back benefits. Any other remedy which this august*

relating to allegations of corruption and issuance of fake drug license respondent No. 3 (Secretary Health) constituted a four member committee to conduct audit of four districts including district Mardan where the appellant was posted as Drug Inspector (BS-17). The committee pointed out irregularities and recommended disciplinary actions against Mr. Amin Ul Haq, Senior Drug Inspector (BS-18) and the appellant Mr. Muhammad Shoaib Khan, Drug Inspector (BS-17). As per charge sheet/statement of allegations 15 numbers of charges/ allegations were leveled against the appellant under the categories of inefficiency, misconduct and corruption. As per order of inquiry a two member inquiry committee was constituted to scrutinize the conduct of the appellant vis-à-vis the charges/allegations. The appellant submitted detail charge-wise reply to the inquiry committee. However, the inquiry committee did not scrutinize/examine the conduct of the appellant. No inquiry report is available on record/annexed with the reply/comments of the respondents. The learned Additional Advocate General and the Departmental Representatives referred to an inquiry report in the other connected service appeal number 1369/2023 titled Dr. Amin Ul Haq, Senior Drug Inspector (BS-18). In the said inquiry report the conduct of Dr. Amin Ul Haq has been scrutinized as is evident from the very heading of the inquiry report. Legal scrutiny of record also reveal that order of inquiry alongwith charge sheet/statement of allegations was issued by the Chief Secretary (Competent Authority) but the Show Cause Notice against the appellant and subsequent major penalty of removal from service has been imposed by the Chief Minister (Appellate Authority). Nothing is available on record to substantiate it to be joint inquiry



inaction of the respondents by not deciding the departmental appeal are against the law; that appellant has not been treated by the respondent in accordance with law and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan; that the appellant has not committed any misconduct but despite that the respondents issued the impugned notification dated 02.02.2023 whereby major penalty of removal from service has been imposed on the appellant. He further argued that the charge sheet and statement of allegations were issued by the Chief Secretary however, the impugned notification was issued by the Chief Minister Khyber Pakhtunkhwa, therefore, the whole proceedings are violative of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011; that neither chance of personal hearing nor opportunity of cross examination has been provided to the appellant prior to the issuance of impugned notification, therefore, the respondents violated Article 10-A of the constitution of Islamic Republic of Pakistan 1973. He requested the appeal might be accepted.


05. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that all the allegations leveled against the appellant have been proved during the inquiry proceedings beyond any shadow of doubt, therefore, after fulfilling of all the codal formalities removal notification dated 02.02.2023 was issued by the competent authority.

06. Scrutiny of record available on the case file and arguments advanced by the learned counsel for the appellant and learned AAG reveal that on basis of inquiry conducted by the Provincial Inspection Team (PIT)

proceedings. We observe that in the absence of inquiry report in terms of Rule-5 (1) (b) Rule-11 (1) (4) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 imposition of major penalty of Removal from service upon the appellant tantamount to condemning the appellant unheard. The aforementioned findings lead us to the conclusion that the proceedings against the appellant are manifestly biased, against the settled norms of justice and the legal procedure expressly provided under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

07. In view of the above we are constrained to set aside the impugned Notification dated 02.02.2023 imposing major penalty of removal from service upon the appellant. The appellant is reinstated into service and the case is remitted to the respondent department to conduct proper inquiry in accordance with the law and rules affording proper opportunity of defense to the accused/appellant. Costs shall follow the event. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 16<sup>th</sup> day of April, 2024.*

  
**MUHAMMAD AKBAR KHAN**  
Member (Executive)

  
**KALIM ARSHAD KHAN**  
Chairman