

kindly be set aside and the appellant may kindly be reinstated into service with all back benefits. Any other remedy this august Tribunal deems fit may kindly be awarded in favour of the appellant as well.”

02. Brief facts of the case are that the appellant while serving as Senior Drug Inspector (BS-18) in the respondent department was suspended for initiation of disciplinary action on the basis of audit report by a committee constituted by respondent No. 3; that on receipt of suspension order the appellant approached respondent No. 5 to inquire about further proceedings in the case and through an application dated 24.05.2021 requested respondent No. 1 not to include Pharmacist in the Inquiry Committee as he was in litigation with the Pharmacist cadre but instead of that the prejudice prevailed and a pharmacist was ultimately included in the inquiry against the appellant; that the appellant was directed by Mr. Asghar Khan, Additional Secretary Relief Rehabilitation and Settlement Department who was Chairman of Inquiry Committee to appear on 26.07.2021 before the Inquiry Committee; that on the said date the appellant was delivered a copy of statement of allegations which was replied by the appellant on 03.08.2021 but astonishingly on the same date another letter dated 02.02.2021 addressed to the Director General Drug Control and Pharmacy Services by Mr. Abdur Rauf (BPS-17) Provincial Drug Inspector District Mardan was handed over to the appellant which was duly replied by the appellant on 11.08.2021; that since 11.08.2021 the appellant was never called for any proceedings or



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No. 1369/2023

Date of presentation of Appeal.....16.06.2023

Date of Hearing.....16.04.2024

Date of Decision.....16.04.2024

**Dr. Amin Ul Haq S/o Abdul Haq R/o Tangi Nasratzai, Muhallah
 Usman Khail, District Charsadda. Senior Drug Inspector BPS-18
(Appellant)**

Versus

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

Present:

Mr. Naveed Akhtar,
 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 of the respondent No. 2 may*

as Provincial Drug Inspector at Mardan against the law, because he was Pharmacist and against the judgment of the Hon'ble Peshawar High Court, Peshawar in a case where the petitioner was one of the petitioner and Mr. Abdur Rauf was a respondent. Mr. Abdur Rauf was never called for cross examination by the appellant and the whole proceedings are vitiated and marred by prejudice against the appellant; that the appellant raised objection to the inclusion of Mr. Zahid Khan in the Inquiry Committee for the reasons that he was a Pharmacist and was posted as Drug Inspector against whom litigation was going on the issue of change of cadre but no heed was paid to the appellant; that the audit report on which the inquiry committee had relied cannot be called as such under the law, because the same does not disclose any misappropriation, embezzlement or any loss to the public exchequer; that the so called audit report was compiled on 15.07.2020, when the appellant had spent 08 months as an incumbent and all the files collected were not pertaining to the period of his incumbency and ironically the audit report does not mention the date on which this report was compiled which is makes it serious suspicious; that the appellant has been treated in utter derogation of law. He has been put under suspension beyond the statutory period and his salaries were stopped for more than two years since December 2020 and has been consistently condemned unheard which is against the norms of law and principle of natural justice. He further argued that the charge sheet and statement of allegations were issued by the Chief Secretary who was not competent to issue the same; that neither chance of personal hearing nor

personal hearing by the inquiry committee and was issued a Show Cause Notice which was received to the appellant on 20.04.2022 which was also replied by the appellant; that vide letter dated 03.08.2022 received to the appellant on 10.08.2022, the appellant was provided a copy of an undated inquiry report and a further reply was submitted; that the appellant was called for personal hearing on 25.11.2022 before the Secretary LG, E&RD Department 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 21.02.2023 which was not responded within the statutory period of 90 days, hence preferred the instant service appeal on 16.06.2023.

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 inaction of the respondents by not deciding the departmental appeal are against the law; that the inquiry has been conducted in violation of the law and rules; that the inquiry proceedings were conducted in a very illegal manner wherein the findings were based on a letter dated 02.02.2021 by a BPS-17 Officer namely Abdur Rauf who was appointed

reveal that on basis of inquiry conducted by the Provincial Inspection Team (PIT) 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 posted as Drug Inspector (BS-17). The committee pointed out irregularities and recommended disciplinary actions against Mr. Muhammad Shoaib Khan, Drug Inspector (BS-17) and the appellant Dr. Amin Ul Haq, Senior Drug Inspector (BS-18). 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 vis-à-vis the charges. 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 proceedings. We also find that in the charge sheet 15 numbers of allegations have been categorized as inefficiency, misconduct and corruption but in the Show Cause Notice the third category of "corruption" has been replaced with the "misuse of authority" which is altogether different category of

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. That the appellant has rendered more than 13 years meritorious service to the entire satisfaction of department and the allegations leveled against him are only the outcome of malafidies for agitating his lawful rights.

05. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that inquiry committee conducted the inquiry in accordance with law, rules and principles of natural justice; that the appellant has admitted the opportunity of personal hearing and service of charge sheet alongwith statement of allegations and Show Cause Notice; that the letter dated 02.02.2021 was issued in compliance of the direction of the audit committee and the finding of the inquiry committee were based on the facts that came out to the surface after conducting of regular inquiry in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011; 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

proper inquiry in accordance with the law and rules affording proper opportunity of defense to the accused/appellant. Costs shall follow the event.

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



KALIM ARSHAD KHAN

Chairman



MUHAMMAD AKBAR KHAN

Member (Executive)

offence. This create doubts of biases against the appellant as the inquiry report did not contain any findings regarding corruption. Perusal of contents of inquiry report reveals that conduct of the appellant vis-à-vis the charges and allegations have not been scrutinized/analyzed with an independent mind by the inquiry committee. The appellant submitted detailed charge wise reply against the long list of allegations. The inquiry committee as per procedure provided under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was required to scrutinize conduct of the appellant against each charge in order to prove the same on the basis of documentary proofs or evidence gathered through statements of witnesses, providing ample chance of cross-examination of the witnesses to the accused. We hold that the appellant has been condemned unheard by imposing major penalty of removal from service against him who is senior civil servant with 14 years service to his credit on the basis of cursory inquiry which tentamounts to manifest injustice. 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

16.04.2024

01. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General alongwith Mr. Safiullah, Focal Person for the respondents present. Arguments heard and record perused.

02 Vide our detailed judgment of today separately placed on file, 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.

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



MUHAMMAD AKBAR KHAN
Member (Executive)



KALIM ARSHAD KHAN
Chairman