

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 32 /2015

Muhammad Ayub S/o Attaullah Khan,
R/o Hakeem Topa, Lakki Marwat, Ex-Deputy
District Education Officer, E&SE, Department,
Peshawar. Appellant

14/11
29/12/2014

Versus

1. Chief Minister, Govt. of KP, Peshawar
Through R. No. 2.
2. Chief Secretary, Govt. of KP, Peshawar.
3. Secretary, Govt. of KP, E&SE
Department, Peshawar.
4. Director Education, E&SE Department,
Peshawar.
5. District Education Officer (Male), E&SE
Department, Peshawar. Respondents

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**APPEAL U/S 4 OF THE SERVICE TRIBUNAL
ACT, 1974 AGAINST OFFICE NOTIFICATION
NO. SO(S/M)E&SED/4-17/2013/MIR AZAM
AND OTHERS, DATED 23.09.2014 OF R. NO. 1,
WHEREBY MAJOR PENALTY OF COMPULSORY
RETIREMENT WAS IMPOSED UPON
APPELLANT FOR NO LEGAL REASON.**

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Respectfully Sheweth:

That on the recommendations of PSC KP, appellant was appointed as Head Master B-17 in the year, 1992 and was promoted to the post of Principal, B-18 in 2004. In the year 2008, he was posted as District Officer in the department.

29/12/14

7/1/15

2. That the then EDO, Lakki Marwat, Mr. Abdul Malik advertised posts of Junior Clerks, B-07 along with other posts of male and female teachers, i.e. AT, TT, PST, DM, CT, PET, etc, in Daily Mashriq, dated 06.10.2011 in the department. Till the closing date, 20.10.2011, 572 applications were received in the office.

Committee, compromising of:-

1. Mir Azam Khan, District Education Officer, Chairman.
2. M. Ayub Khan, District Officer, Member.
3. Shafi Ullah Khan, H.R.D.O, Member.
4. Noor Alam Wazir, Section Officer (Budget), Member.
5. Mir Ajab Khan, Superintendent, Member.
6. Haroon Badsha, Junior Clerk, Member.

was constituted who conducted typing test. Scrutiny Committee scrutinized the record of the candidates and for the purpose, 118 candidates out of 266 appeared.

During recruitment process, the EDO, Abdul Malik was transferred on 18.02.2012 and Mir Azam Khan was posted as EDO, Lakki Marwat now DEO. He took over the charge of the post on 20.02.2012 and completed the remaining process within 07 months i.e. constitution of DSC, merit list, etc.

Merit list of 16 candidates was finalized and consequently issued appointment orders on 01.10.2012. Fresh candidates were also taken into task at the time of preparation of Merit List. (Copy as annex "A")

3. That after issuing of the appointment orders of the ineligible, 3rd Divisioner, relatives, etc by ignoring candidates having qualifications of FA/BA/DIT/MA made complaints over the said appointments to high ups and then to probe into the matter, two members Inquiry Committee was constituted, comprising of:-

1. Mr. Abdul Ghafoor Baig, Special Secretary, HED Peshawar.
 2. Mr. Attaullah Khan, Principal, RITE, Peshawar,
- probed into the matter and Mir Azam Khan, DEO, Lakki Marwat was mainly held responsible for appellant of

ineligible, unjustified and relatives Junior Clerks and recommended:-

- a. Mir Azam Khan, DEO for Major penalty of removal from service.
- b. Shafiullah, rep. of DC Office for inefficiency.
- c. Muhammad Ayub, DDO for inefficiency.
- d. Noor Alam, Departmental rep. Warning.
- e. Haroon Bacha, Junior Clerk for disciplinary action.

And also declare all the appointments to be null and void, being illegal. (Copy as annex "B")

4. That on 25.05.2014, appellant was served with show cause notice by R. No. 1 under KP, Govt. Servants (E&D) Rules, 2011 with allegations of
 - i. Inefficient
 - ii. Misconduct.

Directly and not through the Inquiry Committee vide covering letter of SO (S/M) of E&SE Department, dated 18.06.2014. (Copy as annex "C")

Here it is pertinent to point out that appellant was not served with any charge sheet and statement of allegation but only DEO, S&SED, so one chance of defence was curtailed by the authority which is against the norms of law, justice and enquiry procedure.

5. That after receipt of the said show cause notice, appellant submitted application on 30.06.2014 to the authority to provide him complete enquiry report to able him to submit reply but in vain. (Copy as annex "D")
6. That on 01.07.2014, appellant submitted reply to the show cause notice by denying the allegations. (Copy as annex "E")
7. That on 28.08.2014, SO (S/M) of E&SE Department wrote letter to appellant that R. No. 1 has authorized Secretary, Govt. of KP, Establishment Department, Peshawar for personal hearing before him on 01.09.2014, so he should attend his office on the said date.

This act of the authority was not only in contrary of law on the subject but no such example exists in law, meaning thereby that he was not provided opportunity of personal hearing, being mandatory. (Copy as annex "F")

8. That on 23.09.2014, major penalty of Compulsory retirement was imposed upon appellant by R. No. 1. (Copy as annex "G")
9. That on 20.10.2014, appellant submitted review petition before R. No. 1 for setting aside the impugned punishment which met dead response till date. (Copy as annex "H")

Hence this appeal, inter alia, on the following grounds:-

GROUNDS:

- a. That the principal accused, Mir Azam Khan, DEO, E&SED was served with charge sheet for illegal appointment of Junior Clerks while appellant was not served with any charge sheet, thus one chance of defence was curtailed for no legal reason.
- b. That representative of the department namely Noor Alam Wazir was only awarded with warning while as per the verdicts of the apex court, on one and the same charge, all shall be dealt with equally and fairly but in the case in hand, some were given major punishments while others were awarded with minor punishments, so discrimination inter se the employee was made.
- c. That the Inquiry Committee made recommendations to declare the appointment orders of Junior Clerks to be null and void, being illegal but no action in this respect till date was taken and the beneficiaries of the illegal appointments are still enjoying benefits of the posts.
- d. That in the whole service law, there exists no concept of personal hearing through substitute who has no role in the subject matter nor is aware with the fact of the case but in

the case in hand, appellant was directed to appear before Secretary, Establishment, KP, Peshawar for personal hearing instead of the authority, meaning thereby that personal hearing, being mandatory, was not afforded to him.

- e. That after service of show cause notice upon appellant, he requested the authority to provide him the enquiry report to enable him to submit cogent reply to the notice but no heed was paid to his request, meaning thereby that appellant was not afforded opportunity of self defence.
- f. That the impugned order is not per the mandate of law, so is based on malafide.

It is, therefore, most humbly requested, that order dated 23.09.2014 of R. No. 1, be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in the circumstances of the case.

Dated: 27.12.2014

Appellant
Through 
Saadullah Khan Marwat


Arbab Saif-ul-Kamal

&


Miss Robina Naz,
Advocates.