

appeal in the Tribunal, he shall be treated to have died during service. Costs shall follow the event. Consign.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26th day of February, 2024.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

Kamranullah

Provided that the competent authority shall dispense with the inquiry where-

(i) a Government servant has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or

(ii) a Government servant is or has been absent from duty without prior approval of leave:

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or, for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry. The charge sheet or statement of allegations or the show cause notice, as the case may be, shall be signed by the competent authority.

07. We found nothing on record any specific order of the competent authority in writing giving reasons for dispensing with the regular inquiry as provided under the provision of above quoted Rule. We observe that the competent authority should have conducted at least fact finding inquiry to verify the complaints so as to satisfy himself to dispense with the inquiry proceedings and going for direct Show Cause Notice and then imposition of major penalty against the appellant who had served the respondent department for 25 years. Imposition of major penalty on certain oral complaints without issuing charge sheet, statement of allegations, conduct of proper inquiry, affording opportunity of defense to the accused is against fundamental rights and universal principle of natural justice.

08. Foregoing in view we are constrained to set aside the impugned order dated 12.10.2022 and the appellate order 07.04.2023 and reinstate the appellant into service with effect from the date of issuance of impugned order i.e. 12.10.2022. Since the appellant has died during pendency of his service

probe/inquiry to substantiate and bring material evidence on record. Instead the respondent No. 3 in his capacity as competent authority served a direct Show Cause Notice upon the appellant and imposed major penalty of compulsory retirement from service upon him. Serving a direct Show Cause Notice without observing the legal procedure is in contravention to the provisions of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Rule 5 of the said rules provide the following procedure for initiation of disciplinary proceedings against government servants.

5. Initiation of proceedings.—*(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-*

(a) proceed itself against the accused by issuing a show cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry: Provided that no opportunity of showing cause or personal hearing shall be given where-

(i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or

(ii) a Government servant has entered into plea bargain under any law for the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine or imprisonment; or

(iii) a Government servant is involved in subversive activities; or

(iv) it is not reasonably practicable to give such an opportunity to the accused; or

(b) get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 11:

was punctual in the duty; that without issuance of any charge sheet/statement of allegations and without conducting of inquiry, the impugned order had been issued; that the appellant had not been given any opportunity of defense under the law which was the violation of his constitutional rights guaranteed under the Constitution of Islamic Republic of Pakistan, 1973; that the appellant had compulsorily retired from service which act of the respondents was against the law and was not sustainable under the law. Lastly, he submitted that the appellant had at his credit more than 25 year service and his retirement was due in the year 2033, however, was compulsorily retired which was harsh punishment on the basis of unauthentic and baseless allegations, therefore, he requested for acceptance of the instant service appeal.

05. As against that, learned District Attorney argued that the respondent department had properly issued Show Cause Notice on 16.09.2022. He submitted that after observance of all codal formalities, the impugned order of compulsory retirement from service was issued; that there were many complaints against the appellant on the basis of which he was awarded the impugned penalty; that as the order of compulsory retirement was legal, therefore, was not liable to be set aside. Lastly, he submitted that no constitutional right of the appellant had been infringed and had been treated in accordance with law and rules, therefore, he requested for dismissal of the instant service appeal.

06. It is evident from record available on the case file that the appellant was proceeded against on the basis of complaints from the community people. The nature of the miscellaneous complaints were generic that required detail



2/Director E&SE Department Khyber Pakhtunkhwa Peshawar, may kindly be set aside, and the appellant be reinstated into his service with all back benefits. Any other remedy, which this Honorable Tribunal deems appropriate, may also be granted to the appellant.”

02. Brief facts of the case are that appellant was serving as Primary School Head Teacher (PSHT); that in the meanwhile, without any codal formalities i.e. charge sheet/statement of allegations or inquiry, major penalty of compulsory retirement from service was imposed upon appellant vide order dated 12.10.2022. Feeling aggrieved from the impugned order dated 12.10.2022, the appellant filed departmental appeal which was not responded, therefore, he filed another application to the Secretary Education (respondent No. 1) and in the light of directions of the Director Education (respondent No. 2), his appeal was considered and accordingly rejected vide order dated 07.04.2023 by the District Education Officer (Male) Mardan (respondent No. 3), hence preferred the instant service appeal on 02.06.2023.

03. Notices were issued to the respondents, who submit 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 District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order was illegal, unlawful and without jurisdiction. He submitted that the appellant was regularly performing his duty to the entire satisfaction of his high-ups and

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1267/2023

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Aurangzeb (Ex-Primary School Head Teacher) GPS Wanna Khel Tehsil
Takhtbhai District Mardan..... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
2. Director Elementary & Secondary Department Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Mardan.
4. Sub Divisional Education Officer (Male) Takhtbhai.
5. District Accounts Officer, (Mardan)..... (*Respondents*)

Present:-

MUHAMMAD IRSHAD MOHMAND,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....02.06.2023
Date of Hearing..... 26.02.2024
Date of Decision.....26.02.2024

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 prayer copied as under;

“On acceptance of this appeal, the impugned office order Endst. No. 8474-75 dated 12.10.2022 passed by respondent No. 3/DEO (Male) Mardn as well as rejection order passed on the Departmental appeal of the appellant by the respondent No.

ORDER

26.02.2024 1. Learned counsel for the appellant present. Mr. Asif Masood

Ali Shah, Deputy District Attorney for the respondents present.

Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file, we are constrained to set aside the impugned order dated 12.10.2022 and the appellate order 07.04.2023 and reinstate the appellant into service with effect from the date of issuance of impugned order i.e. 12.10.2022. Since the appellant has died during pendency of his service appeal in the Tribunal, he shall be treated to have died during service. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26th day of February, 2024.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

Kamramullah