

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1619/2022 .

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Rehmat Ullah S/O Watan Khan R/O Khan Suleman Khel presently working
as SPST BPS-14 GPS Payow Zar Bhattani District Lakki Marwat.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education, Civil Secretariat, Peshawar.
3. Assistant Director-III (Estab-I) Directorate of Elementary & Secondary Education Department, Peshawar.
4. District Education Officer (Male), Lakki Marwat.

... (Respondents)

Mr. Taimur Ali Khan
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....14.11.2022
Date of Hearing.....04.04.2024
Date of Decision.....04.04.2024

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:




“On acceptance of this appeal, the impugned notification dated 29.06.2022 and impugned appellate order 26.10.2022 wherein the appellant has been awarded major penalty of reduction to three lower stages, being void, illegal may please be set aside and the appellant may kindly be restored to actual position as PSHT BPS-15 alongwith all back benefits.”

2. The appellant's case in brief is that he was serving as Primary School Head Teacher (BPS-15) in the Government Primary School, Abu Khan Suleman Khel, Lakki Marwat; that while performing the duties in the said capacity, an inquiry was conducted the appellant was allegedly unaware of the said proceedings; that vide order dated 29.06.2022, he was awarded major penalty of reduction to lower post from PSHT (BPS-15) to SPST (BPS-14) for period of five years; that feeling aggrieved, he filed departmental appeal to the appellate authority who (appellate authority) converted the penalty of reduction to lower post for five years, into reduction to three lower stages. Therefore, he filed the instant 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant submitted that the impugned orders were against law, service rules, void and are in violation of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011; that the impugned orders were illegal, unwarranted and legally not sustainable; that the appellant had not been served with any show cause notice/charge sheet; that the allegations leveled against the appellant were ambiguous and were not specified; that before awarding major punishment, no final show cause notice had been issued. Lastly, he submitted that the appellant was innocent and the instant service appeal may kindly be accepted



as prayed for.

5. As against that, District Attorney argued that the impugned orders were in accordance with rules and policy; that the orders were legal and made in the light of evidence and record, wherein, there was enough proof of appellant's misconduct; that proper notices were served and opportunity of personal hearing had been given to the appellant; that the appellate authority had issued the order of reduction to lower post in the light of fresh inquiry. Lastly, he submitted that the competent authority had adopted proper and mandatory procedure, and thereafter, passed the impugned order. Therefore, he requested for dismissal of the instant service appeal.

6. Perusal of record reveals that ADEO Circle, Tajori, Lakki Marwat, on 09.06.2021 visited GPS Kotka, Abu Khan, Suleman Khel, the school where appellant posted as PSHT, and reported about appellant's misconduct, illegal occupation of government property by land owner poor administration and management as a result which Mr. Wajeeh Ullah, Principal, GHSS Wanda Amir, Lakki Marwat was appointed as inquiry officer who after fact finding inquiry submitted report on 21.10.2021, with the following findings;

- i. *Strength of students of the school has decreased as compared to last year, but it is not 45, as physically 58 students were present and 89 as per student attendance register.*
- ii. *No pet birds are kept permanently at school.*
- iii. *Teaching learning condition/situation of the school was not too worse to bring about demotion of PSHT.*
- iv. *Though PSHT uses simple or common mobile phone, but he does not use smart phone. As PST of the school uses smart phone regularly, which is linked with DEO (M) office, hence, no information gap exists.*
- v. *The registers or record of the school has not been maintained properly or systematically.*



- vi. *PSHT of the school is simple and straight forward man rather stranger type. But these are individual differences either based on locality or natural division, hence cannot be termed as standard for such like posts.*
- vii. *The chowkidar of the school has not taken over charge at the school.*

Enquiry Officer recommended that;

- i. *Most of the points of the report of ASDEO (C) are not based upon fact; hence his recommendation for demotion of PSHT to SPST is encroachment of his authority or misuse of his official capacity.*
- ii. *PSHT may be directed strictly to update his school record accordingly.*
- iii. *PSHT and PST may be directed to motivate the local community for enhancement of enrollment, as the strength of the students is not satisfactory.*
- iv. *The competent authority may make surprise visits to the said school and all schools of far flung areas.*

7. Authority vide letter bearing No.7214/Misc dated 01.02.2021, addressed to appellant agreed with the recommendation of the inquiry officer and directed SDEO to increase surprise inspection visits to the school of appellant, but just after 27 days of the show cause notice was issued to the appellant by the DEO bearing No.7778 dated 29.12.2021, for not complying with the recommendation of inquiry officer communicated to the appellant on 01.12.2021, and received to him on 02.12.2021, without providing sufficient time for acting upon the recommendation. Appellant was also transferred from the said school to GPS Payao Zar Betanni, and after personal hearing appellant was awarded with penalty of reduction to lower post from PSHT to SPST for a period of five years vide order dated 29.06.2022. Appellant filed departmental

appeal wherein appellate authority vide order dated 26.10.2022 modify penalty awarded to the appellant from reduction to lower post to reduction to three stages.

8. Respondents in para No.8 of reply grounds mentioned about awarding punishment on the basis of fresh inquiry. They were directed to provide the fresh inquiry but they could not produce the fresh formal inquiry rather departmental representative produced an order dated 29.06.2022, according to which DEO was pleased to withdraw the notification bearing No.1051-53 dated 22.02.2022 regarding constitution of fresh formal inquiry against appellant i.e. Rehmat Ullah, PSHT, in the best public interest. So, no regular inquiry was conducted by respondents and appellant was condemned unheard.

9. Appellant awarded penalty on the basis of fact finding inquiry, wherein appellant was not found guilty of misconduct and without providing sufficient time for improving attendance of the school that too in situation of Covid-19 pandemic, which is not in accordance with law and rules.

10. 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 required 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.

11. For what has been discussed above, the appeal in hand is allowed as prayed for. Costs shall follow the event. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of April, 2024.*



(Kalim Arshad Khan)
Chariman



(Rashida Bano)
Member (J)