

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 567/2023**

**BEFORE: MRS. RASHIDA BANO ... MEMBER(J)**  
**MISSFAREEHA PAUL ... MEMBER(E)**

Sar Taj, Ex-Senior Clerk in the Office of the District Education Officer (F),  
Mardan. ... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through chief Secretary, Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department, Peshawar.
3. ~~Director, Elementary and Secondary Education, Khyber Pakhtunkhwa Peshawar.~~
4. District Education Officer (F), Mardan. ... (Respondents)

Mr. Yasir Saleem  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

Date of Institution.....14.03.2023  
Date of Hearing.....28.02.2024  
Date of Decision.....28.02.2024

**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 office order dated 24.11.2022 may kindly be set aside and the appellant may please be reinstated in service with all back and consequential benefits.”**



2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Junior Clerk in Education Department vide order dated 23.02.1993 and was performing his duty with zeal and zest with the entire satisfaction of his superiors. He was promoted to the post of Senior Clerk in the year 2019. During service, charge sheet alongwith statement of allegation was served upon the appellant, which was properly replied. Partial inquiry was conducted into the matter without conducting proper inquiry. Thereafter, final show cause notice was issued which was also replied by him. Respondents without considering replies of the appellant imposed major penalty of compulsory retirement from service vide order dated 24.11.2022. Feeling aggrieved, he preferred departmental appeal, which was not responded, hence 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the constitution are badly violated. He further argued that no proper proceedings were conducted prior to the imposition of major penalty of compulsory retirement from service. He further argued that appellant was never associated properly with inquiry proceedings; that not a single witness appeared before the Inquiry Committee to record his statement against him or if any, the appellant was never provide opportunity to cross examine those who may have deposed against him; that it was also proved during the inquiry proceedings that actually Mr. Israr (Junior Clerk) was involved in the matter




but even then the appellant was held guilty which is not sustainable under the eyes of law, he therefore, requested that instant appeal might be accepted.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further argued that respondent department has adopted proper proceeding before the major penalty of compulsory retirement from service. He further contended that appellant was properly associated with the inquiry proceedings and he was held responsible for fake appointment of Mst. Asma CT, as well as her illegal salaries amounting to Rs. 162744/-

6. Perusal of record reveals that appellant was initially appointed as Junior Clerk vide order dated 23.02.1993 that ever since his appointment, the appellant performed his duties with zeal and devotion. Appellant was also promoted as Senior Clerk in April 2019. He was served with a charge sheet containing four allegations, out of which one charge was proved. Thereafter, he was served with a show cause notice dated 26.04.2022, which was again duly replied by the appellant, but without considering his replies respondents imposed the major penalty of compulsory retirement from service vide order dated 24.11.2022.


7. Perusal of inquiry report reveals that only one charge that he was responsible for fake appointment of Mst. Asma CT allegedly was proved, appellant replied the same in these words in respect of Mst. Asma CT. "Two orders apparently signed by Mst. Farzana Sardar (C24-C25) besides the one issued by Directorate C-26 are available on record no remedial steps what so ever have been proposed/taken by the accused which shows his connivance/involvement in the issue of fake appointment beyond any shadow



of doubts." Upon which inquiry committee has drawn the conclusion. It is also evident from the inquiry that vide order dated 17.12.2009 the appellant was assigned duties/affairs relating to AT, TT, DM, PET, and Qaria and not of CT, Junior Clerks and Lab Assistants. Therefore \*proposal of remedial step not taken by the appellant is not understandable. Moreover, this charge was also against one Niqab. Reply of Niqab and appellant are the same but appellant was held responsible while said Niqab was discharge by holding that charge was not proved. This is discriminatory. Moreover as per Mst. Farzana Sardar pay of said Mst. Asma CT was not released and DEO (F) Mardan was timely informed by her, which means she took prompt action in such a situation when one Israr, Junior Clerk was held responsible for the fake appointment order of Mst. Asma CT then to hold appellant responsible for the same is not justifiable. We fail to understand that what kind of remedial step inquiry committee expect from the appellant in respect of fake appointment of Mst. Asma when he was not dealing with the affairs of CT section. Therefore, awarding major penalty of compulsory retirement is injustice with appellant as nothing was proved against him during inquiry despite the fact that no chance of cross examination was provided to him.

8. For what has been discussed above, we are unison to accept the appeal as prayed for. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 28<sup>th</sup> day of February, 2024.*

  
(Farzha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)