

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.949/2022

Date of presentation of Appeal.....23.06.2022
Date of Hearing.....15.05.2024
Date of Decision.....15.05.2024

Engr. Muhammad Yasin, Superintending Engineer, Bannu Irrigation Circle, Bannu.....(*Appellant*)

Versus

1. **The Government of Khyber Pakhtunkhwa** through Chief Secretary, Civil Secretariat, Peshawar.
2. **The Chief Secretary**, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. **The Secretary Irrigation Department**, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.....(*Respondents*)

Present:

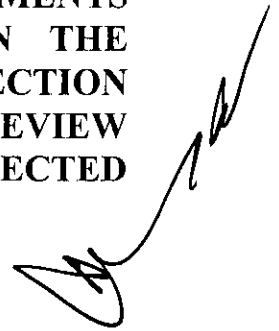
Mr. Muhammad Asif Yousafzai, AdvocateFor the appellant
Mr. Umair Azam, Additional Advocate General....For respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE PENALTY ORDER NO.SO(E)IRRI;/12-30/2015/INQUIRY DATED 02.11.2021 WHEREBY THE PENALTY OF WITHHOLDING OF TWO INCREMENTS FOR TWO YEARS WAS IMPOSED UPON THE APPELLANT AND ALSO AGAINST THE REJECTION ORDER DATED 08.06.2022 WHEREBY THE REVIEW PETITION DATED 05.11.2021 HAS BEEN REJECTED BY THE RESPONDENTS.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as enumerated in the memo and grounds of appeal are that appellant was serving as Superintending Engineer in the Irrigation Department; that he was charge sheeted for not vetting the comments timely by



the Additional Advocate General; that show cause notice was also issued to the appellant and after conducting personal hearing of the appellant, penalty of withholding of two annual increments for two years was imposed upon appellant vide impugned order dated 02.11.2022.

3. Feeling aggrieved, the appellant made representation on 05.11.2021, but the same was rejected vide order dated 08.06.2022. Therefore, he filed the instant service appeal.

4. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

5. We have heard learned counsel for the appellant and learned Additional Advocate General for respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order(s).

6. On the allegations leveled against the appellant, an inquiry committee as constituted. The inquiry committee conducted its proceedings and came up with the following findings:

"Findings:

1. Both the accused were called upon for personal hearing on 27th January 2020. The Department representative for the instant case i.e. Engr. Muhammad Tahir, the then Executive Engineer

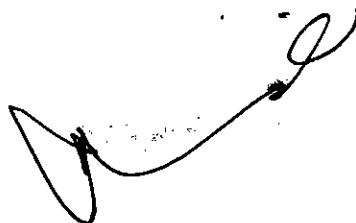
Paharpur Irrigation Division, D.I.Khan appeared and submitted his statement along with supporting documents. Similarly, the accused Engr: Muhammad Yasin, the then Superintending Engineer D.I.Khan was also heard who apprised the committee that the comments were prepared and vetted from the learned Additional Advocate General. He further apprised the committee that after vetting the comments from learned Additional Advocate General is supposed to be re-submitted to the respondents for their signature and after doing needful by all the respondents give proper certificate and affidavit and there after deposited in the Peshawar High Court D.I.Khan Bench. Needless to mention here that the order of Peshawar High Court, D.I.Khan Bench dated 01.10.2019 has already been challenged in the Honourable Peshawar High D.I.Khan "Review Petition No.1399-D/2019" which is still subjudice.

2. The comments were forwarded to AAG vide letter No.P&D/PS/Chief Engineer (North) Irrigation Department Peshawar/2020/2154, dated 27.01.2020 for verification. The learned AAG verified the comments to have been vetted by their office.

3. The record further reveals that deponent/representative of the Irrigation Department i.e. Engr: Muhammad Tahir, the then Executive Engineer Paharpur Irrigation Division D.I.khan, was identified before the Additional Registrar at the time of deposition by the learned Additional Advocate General.

4. A review petition has been lodged in the Peshawar High Court D.I.Khan Bench, the same have been verified from the office of Additional Advocate General office vide letter No.P&D/PS/CE/2020, dated 27.01.2020."

7. The committee found the appellant not guilty of misconduct but even then, the appellant was awarded punishment of withholding of two increments for two years, which could not be justified for the sole reason that after findings of inquiry committee, there was no solid reason as to why the appellant was penalized.



Service Appeal No. 949/2022 titled "Engr. Muhammad Yasin, Superintending Engineer, Bannu Irrigation Circle, Bannu versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others", decided on 15.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan Chairman, and Mr. Muhammad Akbar Khan Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

8. This being so, we allow this appeal, set aside the impugned order of withholding of increments. Costs shall follow the event. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of May, 2024.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

Mutazem Shah

S.A #.949/2022


ORDER


15th May. 2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present.

2. Vide our detailed judgment of today placed on file, we allow this appeal, set aside the impugned order of withholding of increments. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of May, 2024.*


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman

11.01.2024

Learned counsel for the appellant present:
Mr. Roz Amin, Superintendent alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 01.03.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)

Naeem Amin

01.03.2024 1. Appellant present in person. Mr. Muhammad Jan District Attorney alongwith Roz Amin, Superintendent for the respondents present.

2. Appellant requested for adjournment on the ground that his learned counsel is busy in the august Supreme Court of Pakistan today. Granted. To come up for arguments on 15.05.2024 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

Fazle Subhan, P.S