



appellant and to conclude the inquiry within sixty days from the receipt of this order. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. 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 7th day of March, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

“Regular inquiry and preliminary/fact finding inquiry--- Distinction---Regular inquiry was triggered after issuing show cause notice with statement of allegations and if the reply was not found suitable then inquiry officer was appointed and regular inquiry was commenced (unless dispensed with for some reasons in writing) in which it was obligatory for the inquiry officer to allow evenhanded and fair opportunity to the accused to place his defence and if any witness was examined against him then a fair opportunity should also be afforded to cross-examine the witnesses-- Whereas a discrete or fact finding inquiry was conducted at initial stage but internally to find out whether in the facts and circumstances reported, a proper case of misconduct was made out to initiate disciplinary proceedings.”

7. 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. So, appellant was condemned unheard by the respondents which is against the rules on the subject and also against the principal of natural justice that no one could condemned unheard.

8. For what has been discussed above, we are unison to set aside impugned order and reinstate appellant into service for the purpose of de-novo inquiry with direction to provide chance of self-defense and cross examination to the

despite major punishment of removal from service was imposed upon the appellant which means that the appellant was punished for the fault of others.

05. As against that, learned Deputy District Attorney contended that in the inquiry report and the evidence received from the NTS administration also prove the impersonation on the part of the appellant. He was given full opportunity at the time of inquiry, the appellant also appeared before the inquiry committee, and was given a chance of personal hearing but he badly failed to defend himself but he failed to prove his involvement, therefore, the appeal may graciously be dismissed with costs, he concluded.


6. Perusal of record reveals that initially inquiry was initiated against the PSTs including Mr. Iftikhar Ali S/o Shukat Ali and Mr. Mirajul Haq s/o Shah Nazar Khan upon complaint that they had applied for PST through NTS in the month of November but in the test conducted by NTS, they were not appeared personally and some other person appeared for them, taken the test for them as impersonators during the course of inquiry it came into the surface that present appellant appeared for Iftikhar Ali and Mirajul Haq PTS by impersonating them. Whereupon they also summon appellant, asked some question and held him liable for impersonation with recommendation to the department to hand over appellant to the law enforcing agency. Authority on the basis of this report issued show cause notice to the appellant and passed impugned order of removal from service vide order dated 11.11.2016. Appellant was awarded major penalty of removal from service without providing opportunity to defend himself by conducting proper inquiry rather on the basis of fact finding inquiry which is evident from impugned order, wherein it is mentioned and where as an inquiry committee was constituted to conduct inquiry and find out the fact, any punishment awarded on the basis of fact finding inquiry is not in accordance with law and rules, and have no effect. It is has been held in 2022 SCMR 745 that:



appellant was called to attend the office of District Education Officer, but he denied the allegation leveled against him and stated that it may be the error of the NTS/Education department; that Show Cause Notice was issued to the appellant which was duly replied by the appellant and denied the allegation leveled against him. That on the basis of allegations, he was removed from service vide order dated 09.11.2016. Feeling aggrieved from the impugned order dated 09.11.2016, the appellant filed departmental appeal on 24.11.2016 which was not responded within the statutory period, hence preferred the instant service appeal on 14.03.2017.

03. Notices were issued to the respondents to submit their reply/comments; however the respondents did not submit reply/comments within the specified time as a result of which their right of defence was struck off vide order sheet dated 18th January, 2023.

04. Learned counsel for the appellant contended that not taking action on the departmental appeal of the appellant and order dated 1.11.2016 are against the law, rules and material on record, therefore liable to be set aside. That the inquiry was conducted against the other officials, but the inquiry committee also called the appellant and alleged him for impersonation which was totally denied by the appellant and also stated that it may be the error of the NTS/Education department and also gave written statement that he is not involved in the case and did not know the impersonator, but despite that the appellant was hold responsible for the fault of others. The inquiry was not conducted to the prescribed procedure. That no charge sheet was issued to the appellant, thus no charge was framed against the appellant; that no proper inquiry was conducted and no one was examined neither in support of the allegation nor in presence of the appellant. No opportunity of cross examination was provided to the appellant. He has therefore, been condemned unheard; that the appellant denied the allegations of impersonation but



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 275/2017

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

Rashid Khan, Ex-PST Sharif Malak Killi Takhat Bhai,
Mardan.....(*Appellant*)

VERSUS

1. The Secretary Education (Elementary & Secondary) Peshawar..
2. The Director Elementary & Secondary Education, Peshawar.
3. The DEO (Male), Mardan.....(*Respondents*)

Syed Noman Ali Bukhari,
Advocate

--- For Appellant

Syed Asif Masood Ali Shaha,
Deputy District Attorney

--- For respondents.

Date of Institution.....:14.03.2017
Date of Hearing..... 07.03.2024
Date of Decision..... 07.03.2024

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 under;

“That on acceptance of this appeal, the order dated 01.11.2016 may be set aside and the respondents may be directed to reinstate the appellant with all back and consequential benefits. Any other remedy, which this Tribunal deems fit and appropriate, may also be awarded in favour of appellant.”

02. Brief facts of the case are that appellant was appointed as PST in the respondent department vide order dated 27.03.2012; that he was charged in impersonation case in the NTS test 2015-16, in which an inquiry was conducted against the appellant and other candidates who applied for the post of PST. The