

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT
CAMP COURT SWAT

Service Appeal No. 7351/2021

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Abdul Hadi S/O Said Gulab, R/o Maminzo P/O & Tehsil Khar, District
Bajaur. (Appellant)

VERSUS

1. Secretary, Higher Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Director, Higher Education, Khyber Pakhtunkhwa, Rano Ghari near Chamkani Mor, Peshawar.
3. Deputy Director (Establishment), Higher Education, Khyber Pakhtunkhwa, Rano Ghari near Chamkani Mor, Peshawar.
4. District Education Officer (DEO), Bajaur.
5. District Accounts Officer, Bajaur.
6. Principal, Government Degree College, Nawagai, Bajaur.
7. Mr. Abdul Haq, Ex-Principal, Govt. Degree College,
8. Mr. Khaista Rehman, Ex-DEO, District Bajaur, presently Principal, GHS Khar No. 1, Bajaur R/o Village Inam Khwaro Chinagai, Tehsil Wara Mamond, P.O Inayat Kalay, District Bajaur.
9. Mr. Ilyas Ex-Head Clerk, DEO Office, District Bajaur, presently Assistant, GHSS Gardai, District Bajaur, R/o Naro Oba, Gulo Shah, Tehsil Salarzai, P.O Raghagan, District Bajaur.

... (Respondents)

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Mr. Abdullah Qazi
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....25.08.2021
Date of Hearing.....06.05.2024
Date of Decision.....06.05.2024



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 orders dated 18.03.2021 and 02.08.2021 issued by respondents may kindly be cancelled/carried/set aside and the appellant may kindly be reinstated into service with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Junior Clerk against the deceased son quota vide order dated 29.10.2018. He took the charge of the post on 01.11.2018 and his salary was started. During service, a fact finding inquiry was initiated against him by issuing charge sheet and statement of allegation. Thereafter, major penalty of removal from service alongwith recovery of salaries drew by the appellant was imposed upon him vide order dated 18.03.2021. Feeling aggrieved, he preferred departmental before respondent No.1 which was filed vide order dated 02.08.2021, 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that the impugned order is against the law, facts, norms of justice, hence liable to be set aside; that appellant has not been treated in accordance with law and rules; that allegations against the appellant are illegal, unjust, against the facts and law,



hence the impugned orders are required to be cancelled; that a valid appointment order of the appellant has been termed to be fake and shown to have no record in their office, which is against the facts and record, hence the allegations against appellant are based on malafide; that no chance of cross examination was provided to the appellant.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules; that appellant produced two fake appointment orders dated 28-10-2018 and 29-10-2018. He initially claimed appointment order dated 28-10-2018 but during the visit of inquiry officer to District Education Office, it transpired from Diary/ Dispatch Register that it was Sunday on 28-10-2018 and not a single letter has been issued on that date. On query, the appellant produced another appointment order dated: 29-10-2018 but again, no such order was issued from District Education, Officer, rather the Diary/ Dispatch register showed that letter No. 1527 was issued on 29-10-2018 in respect of Mr. Saleh Muhammad, GP fund case; that father of the appellant was Headmaster and died during the service and after his death, his son namely Fazal Hadi (brother of the appellant) was appointed as Junior Clerk against deceased Son quota at Govt; High School, Kamadara, Barang Bajour vide order dated: 15.02.2011. As per section 10(4) of APT, Rules one of the children of the deceased is entitled for appointment which is already availed by the brother of the appellant.

6. Perusal of record reveals that appellant was appointed as Junior Clerk against the deceased son quota vide order dated 29.10.2018. He took the charge of the post on 01.11.2018 and his salary was started. During service, a fact



finding inquiry, followed by formal inquiry, was initiated against him by issuing charge sheet and statement of allegation. Thereafter, major penalty of removal from service alongwith recovery of salaries drawn by the appellant was imposed upon him vide order dated 18.03.2021. He was issued charge sheet on the following allegation;

“i. That son was not entitled for appointment under deceased son quota as your brother had already availed the said quota, hence your appointment order is not legal.

ii. That your produced two appointment orders as junior clerk from DEO Office dated 28.10.2018 and 29.10.2018 having no diary/dispatch registered number.

iii. Moreover, you took over charge on 01.11.2018 while your salary was initiated from DAO on 29.10.2018 with a different personal number which makes doubtful your appointment order.”

Main allegation was that the appellant applied under deceased son quota despite knowledge of the fact that such quota/opportunity had already been availed by his brother Mr. Fazal Hadi in the year 2011 as he was appointed as Junior Clerk on deceased son quota. Fact of appointment of his brother on deceased son quota was admitted by the appellant himself.


7. Perusal of appointment order of appellant reveals that he was appointed against the deceased son quota, when brother of the appellant availed deceased son quota, which is available only for one son/daughter of the deceased employee and not for all the children, therefore, no other/second son could be appointed against the deceased son quota of the same deceased employee.


8. Moreover, if appellant had reservations upon appointment of his younger brother then he must have challenged it the year 2011 just after his appointment but he kept mum, therefore, now he could no agitate it on the plea of elder son. It is admitted fact that appellant had performed his duty from the

date of appointment till the date of passing impugned order, therefore, order of recovery of salaries from the appellant of the period during which he performed duties is injustice and the same came within the definition of past and close transaction. So order to effect is not in accordance with law on the subject and hereby set aside to this extent.

9. For what has been discussed above, the appeal in hand is partially allowed to extent of recovery from the appellant of the period during which he served the department. Cost shall follow the event. Consign.

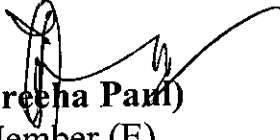
10. *Pronounced in open court in Swat and given under our hands and seal of the Tribunal on this 6th day of May, 2024.*



(Fareeha Paul)
Member (E)
Camp Court Swat


(Rashida Bano)
Member (J)
Camp Court Swat

ORDER
06.05.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, the appeal in hand is partially allowed to extent of recovery from the appellant of the period during which he served the department. Cost shall follow the event. Consign.
3. *Pronounced in open court in Swat and given under our hands and seal of the Tribunal on this 6th day of May, 2024.*


(Fareeha Paul)
Member (E)
Camp Court Swat


(Rashida Bano)
Member (J)
Camp Court Swat

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