

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.7310/2021

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

Mr. Shabir Ahmad Ex-Warder Sub-Jail Parachinar..... (Appellant)

VERSUS

1. The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent Central Headquarter Prison D.I.Khan.

... (Respondents)

Mr. Syed Noman Bukhari
Advocate

...

For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

...

For respondents

Date of Institution.....06.08.2021

Date of Hearing.....17.04.2024

Date of Decision.....17.04.2024

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 orders dated 24.05.2020 and 09.07.2021 may please be set aside and the appellant may be reinstated into service with all back benefits. Any other remedy, which this august tribunal deems fit and appropriate that may also be awarded in favour of appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant is the employee of Prison Department and performed duties with full zeal and zest. During service mother of the appellant fell ill and he was the only male member to look after his mother, therefore, he filed application for one month leave. After joining duties appellant again absented himself on the basis of which he was removed from service vide order dated 25.04.2021. Feeling aggrieved, appellant filed departmental appeal, which was rejected, 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 impugned order are against the law facts, norms of justice and material on record, hence not tenable and liable to be set aside. He further argued that appellant has not been treated in accordance with law and respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan; that no regular inquiry was conducted before imposition of major penalty and only fact finding inquiry was




conducted but the appellant was not associated with the proceedings, neither statement recorded in presence of appellant nor was the chance of cross examination was provided to the appellant; that appellant has been condemned unheard which is against the principle of audi alteram partem.

5. Conversely learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant had willfully absented himself from lawful duty without prior permission from his high ups. Moreover, the documents attached by the appellant regarding the illness of his mother are prior to his absence period. He further contended that all the codal formalities and legal requirements were observed and thereafter the punishment was awarded to the appellant.

6. Perusal of record reveals that appellant was proceeded against departmentally on the allegation of willful absence from duty. Authority ordered disciplinary action against him vide order dated 29.03.2021 by appointing one Mr. Ijaz Ahmad Assistant Superintendent Jail D.I.Khan.

7. Perusal of inquiry report reveals that inquiry officer mentioned in it that appellant despite service did not bother to appear before him but not record of such notices was available where from it could prove that appellant was served upon by the respondent. When respondents were asked to produce the same their representative submitted written statement that same was not

 available with them. Legally speaking when allegation against the appellant

was of willful absence then in accordance with rules appellant would have to be proceeded under Rule 9 of E&D, Rules, 2011 but respondent instead of proceeding appellant under rule 9 of E&D Rules, ordered inquiry, which too was not conducted in accordance with law as even notice of the same for appearance was not sent and served upon the appellant. No charge sheet or statement of allegation was issued which means no inquiry was conducted and appellant was condemned unheard and awarded major penalty of removal from service without observing legal formalities which is against the law and rules on the subject.


8. 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.



9. For what has been discussed above, we are unison to set aside the impugned orders and reinstate the appellant for the purpose to conduct proper inquiry in accordance with law and rules by providing opportunity of defence and cross examination to the appellant upon all concerned. The issue of back benefits shall be decided subject to the outcome of inquiry. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of April, 2024.*



(Fakeeha Paul)
Member (E)


(Rashida Bano)
Member (J)

ORDER

17.04.2024

1. Learned counsel for the appellant present. Mr. Asif Masaood , Ali Shah learned Deputy District Attorney for respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to set aside the impugned orders and reinstate the appellant for the purpose to conduct proper inquiry in accordance with law and rules by providing opportunity of defence and cross examination to the appellant upon all concerned. The issue of back benefits shall be decided subject to the outcome of inquiry. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of April, 2024.*



(Fareeha Paul)
Member (E)



(Rashida Bano)
Member (J)