

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT SWAT.

Service Appeal No. 7749/2021

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

Mr. Abdul Aziz Baig S/O Lal Zaman Baig R/o Village Muzgole, Tehsil TokhowMulkhow, District Upper Chitral.

... (Appellant)

VERSUS

1. Director, Agriculture Engineering, Khyber Pakhtunkhwa Tarnab Peshawar.
2. Assistant Engineer, Agriculture Engineering Chitral office, District Lower Chitral.
3. Government of Khyber Pakhtunkhwa through Secretary, Civil Secretariat, Peshawar.
4. Syed Yaqoot Ali Shah, Junior Clerk, Office of the Assistant Agriculture Engineer, Chitral. ... (Respondents)

Mr. Saif Ullah Mongol,
Advocate

For appellant

Mr. Muhammad Jan
District Attorney

For respondents

Date of Institution.....03.11.2021

Date of Hearing07.05.2024

Date of Decision07.05.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:

**“ON ACCEPTANCE OF THE INSTNAT APPEAL, THE
IMPUGNED ORDER DATED 24.08.2020 PASSED BY
THE RESPONDNET NO.1 THROUGH LETTER NO.
8021-26/DAE/ESTT:/3/68, MAY KINDLY BE**



SUSPENDED, BE DECLARE NULL AND VOID, AGAINST THE LAW AND RULES, AND ISSUE AN ORDER TO RESTORE THE DEDUCTED AMOUNT TO THE APPELLANT ACCOUNT AND ANY OTHER RELIEF WHICH THIS HON'BLE COURT MAY CONSIDER APPROPRIATE IN THE CIRCUMSTANCES MAY GRACIOUSLY BE ALLOWED/GRANTED.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was working as Dozer Operator (BPS-7) in the respondent department since 20.06.2005; that respondent No.4 submitted baseless compliant against the appellant regarding misbehavior, beating and involvement in corrupt practices; that upon complaint of respondent No.4 an inquiry committee was constituted and they submitted their findings; that respondent No.1 through office order dated 24.08.2020, following penalties are imposed upon the appellant i.e one annual increment of the appellant must be stopped and the other two hours i.e Rs. 3600/- of new Holland Bulldozer @ 1800/- per hour must be recovered from the appellant through proper challan; that respondent No.1 through letter No. 814/DAE/4179-85 suspended the services of the appellant for three months; that the appellant had in reply filed an application to the Chairman of inquiry commission for setting aside the above suspension order but in vain; that the appellant filed departmental appeal to respondent No.2 against the deduction of Adhoc relief of 2017, 2018 and 2019 and basic pay of Rs. 5647/-, but the respondents department remain silent upon the departmental appeal of the appellant, therefore, he has now invoked the jurisdiction of this Tribunal for redressal of his grievances.

3. Respondents were put on notice who submitted their comments on the

appeal. We heard the learned counsel for the appellant as well as learned

District Attorney for the respondents and perused the case file with connected documents in detail.

4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

5. Perusal of record reveals that the appellant was working as Dozer Operator (BPS-07) in the respondent-department since his appointment on 20.06.2005. Respondents No. 1 to 4 submitted a complaint against the appellant regarding beating them, misbehavior and involvement of appellant in corrupt practices, upon which respondent No.1 vide impugned order dated 24.08.2020 imposed upon appellant penalty of stoppage one annual increment and recovery of two hours i.e. 3600/- of now Holland Bulldozer @ Rs. 1800/- per hours.

6. Perusal of inquiry report shows that neither charge sheet nor statement of allegation was served upon the appellant nor statement of any independent official or officer recorded by the inquiry committee which means that it is not regular inquiry and appellant was awarded punishment on the basis of fact finding inquiry which is against the rules and law on the subject. It is has been held in 2022 SCMR 745 that:


“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."

That punishment awarded on the basis of fact finding inquiry is not legal and justified in the eyes of law. Appellant must be provided with an opportunity of cross-examination upon respondent No. 4 who lodge complaint against the appellant beside issuing of proper charge sheet and statement of allegation to the appellant and also provide chance of hearing.

7. For what has been discussed, we are constrained to remand back the matter to the respondents for conducting proper/regular inquiry by issuing charge sheet and statement of allegation and provide proper chance of cross examination to the appellant which is an essential element of proper/regular inquiry. Respondents are directed to conclude the enquiry within a period of ninety days after receipt of copy of this judgment. Cost shall follow the event. Consign.

8. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal this 7th day of May, 2024.*



(FAREEHHA PAUL)
Member (E)
Camp Court Swat



(RASHIDA BANO)
Member (J)
Camp Court Swat

Adnan Shah

ORDER
07.05.2024

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, we are constrained to remand back the matter to the respondents for conducting proper/regular inquiry by issuing charge sheet and statement of allegation and provide proper chance of cross examination to the appellant which is an essential element of proper/regular inquiry. Respondents are directed to conclude the enquiry within a period of ninety days after receipt of copy of this judgment. Cost shall follow the event. Consign.
3. Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal this 7th day of May, 2024.


(FAREEHA PAUL)
Member (E)
Camp Court Swat


(RASHIDA BANO)
Member (J)
Camp Court Swat

Adnan Shah