

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1321/2019

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

Noman Khan Ex-Process Server District Judiciary, Swabi.

... (Appellant)

VERSUS

1. District & Sessions Judge, Swabi.
2. Senior Civil Judge, Swabi.
3. Registrar, Peshawar High Court, Peshawar.

... (Respondents)

Fazal Shah Mohmand
Advocate

...

For appellant

Mr. Muhammad Jan
District Attorney

...

For respondents

Date of Institution.....10.10.2019
Date of Hearing.....26.03.2024
Date of Decision.....26.03.2024

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 below:

“On acceptance of this appeal, the impugned orders dated 12.09.2019 of respondent No.1, order dated 24.01.2018 of respondent No.2 may kindly be set aside and the appellant may

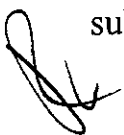


kindly be ordered to be reinstated in service with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Process Server in the year 2012. On 19.10.2017, he transferred from process serving agency Tehsil Headquarter to Process Serving Agency, District Headquarter and in the meanwhile, the appellant was fell ill and was unable to perform his duty. After recovery, he submitted arrival report on 02.11.2017, upon which he was suspended from service. Departmental proceedings were initiated which culminated into removal from service vide impugned order dated 24.01.2018. Feeling aggrieved, he preferred departmental appeal on 14.02.2018 which was rejected on 12.09.2019, 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 he has not been treated in accordance with law and rules and the mandatory provisions of law have been badly violated. He further argued that the impugned orders are illegal, unlawful and void ab-initio, hence liable to be set aside; that no charge sheet was issued to the appellant, thus no charge was framed and the proceeding were issued in total disregard of law on the subject; that no proper inquiry was conducted and nor opportunity of cross examination was provided to the appellant. He submitted that no chance of personal hearing was afforded to him and he was



condemned unheard; that appellant was awarded major penalty upon absence of 13 days which does not commensurate with his guilt, therefore, he requested that instant appeal might be accepted as prayed for.

5. Conversely learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant, owing to his absence during his posting at Tehsil Lahore at District Swabi, was transferred vide order dated 19.10.2017. He was required to assume the charge and commence performing his duty there but he failed, on the basis of which he was suspended from service. He further contended that plea of the appellant regarding his ailment is a concocted story because medical prescriptions presented by the appellant when sent for verification from concerned quarter and they were found bogus, which act of the appellant exposed him to another action, including criminal proceeding for forgery.

6. Perusal of record reveals that the appellant was appointed process server in respondent department in the year 2012. He was transferred from Tehsil Headquarter Process Serving Agency to District Process Serving Agency on 19/10/2017 by respondent No.2. Appellant fell ill during those days due to which he was unable to perform his duties and to assume his charge at District Headquarter Process Serving Agency Swabi. Doctor prescribed him rest. Appellant was suspended vide order dated 2.11.2017. On 2.11.2017 after recovery, appellant reported his arrival at District Headquarter Swabi. Inquiry was initiated against him for willful absence from 19.10.2017 to 1.11.2017. He

 was issued show cause notice, which was duly replied but without considering

the same, he was awarded major penalty of removal from service vide order dated 24.1.2018.

7. Perusal of inquiry report dated 15.1.2018 reveals that no charge sheet or statement of allegation was issued to the appellant by the authority and inquiry was initiated without complying with the formalities and requirements of rules on the subject. Inquiry officer also in her report categorically mentioned that appellant was proceeded against ex-parte, which means all the proceedings were conducted at the back of the appellant, despite the fact that appellant assumed his duties on 2.11.2017 at District Headquarter. When appellant was on duty, an inquiry officer proceeded against him ex-parte, which is injustice. Statement of Mr. Faziullah (balif) and Sardar Ali were recorded by the inquiry officer as CW1 and CW2 respectively, but no chance of cross examination was provided to the appellant. Appellant was awarded major penalty of removal from service without providing him opportunity of defense and cross examination upon both of them.

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 the 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. It is also pertinent to mention here that appellant was awarded major penalty of removal from service only upon absence of 12 days despite knowing the fact that absence of the appellant was due to his illness and not willful. In the case neither law, rules nor instructions of law have been complied with by the respondent. Moreover, if absence of the appellant was willful then respondents had to follow procedure laid down in Rule 9 of (E&D) Rules, 2011 i.e issuing notice upon home address of the appellant and then to publish notice of absence in two leading newspaper. No such procedure was adopted by respondents which was violation of law and rules on the subject.

10. For what has been discussed above, we are unison to set aside the impugned orders and reinstate the appellant into service with all back benefits.

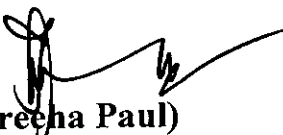
11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

ORDER
26.03.2024

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 unison to set aside the impugned orders and reinstate the appellant into service with all back benefits.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)