

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15578/2020

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

Mr. Sadaqat Ali, Naib Qasid District & Session Court, Peshawar.

... (Appellant)

VERSUS

1. The Registrar, Peshawar High Court, Peshawar.
2. The Hon'ble District & Sessions Judge Peshawar.
3. The Hon'ble Senior Civil Judge (Admin) Peshawar.

... (Respondents)

Roeda Khan
Advocate

... For appellant

Mr. Asif Masood Ali Shah
District Attorney

... For respondents

Date of Institution.....03.12.2020
Date of Hearing.....26.04.2024
Date of Decision.....26.04.2024

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 impugned orders dated 19.06.2020 may kindly be set aside and the appellant may kindly be allowed all back benefits of service with effect from



06.05.2011. Any other remedy which this august Tribunal deems fit that may also be granted in favour of appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Naib Qasid on 10.07.1989 in the District Courts Peshawar and was transferred to Hon'ble Peshawar High Court, Peshawar on 12.04.1996. Appellant was compulsory retired by respondents on 06.05.2011 against which appellant filed writ petition bearing No. 3472/2012 which was accepted on 26.09.2018 by holding that order was passed by incompetent authority and competent authority was directed to initiate proceedings. In compliance with the order by worthy Peshawar High Court, Peshawar inquiry officer was appointed by competent authority who exonerated the appellant from the charge leveled against him. On 25.10.2020, the competent authority once again ordered for inquiry against the appellant to inquire further into the matter as result of which inquiry officer recommended for minor punishment of censure against the appellant and submitted his report on 06.06.2020. That on 19.06.2020 the impugned order was issued by imposing the minor penalty of censure upon the appellant. Feeling aggrieved, he filed departmental appeal, which was not responded to, hence the instant service appeal.

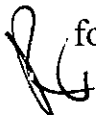
3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules; that the impugned order dated



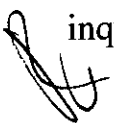
19.06.2020 is void ab-initio as it has been passed without fulfilling codal formalities; that the charges leveled against the appellant are false, fabricated and baseless as is evident from the inquiry report; that inquiry officer after conducting proper inquiry exonerated the appellant from all the charges mentioned in the charge sheet however the impugned order was passed which is unjust, unfair hence not sustainable in the eyes of law; that no show notice was issued to the appellant. He requested that instant appeal might be accepted.

5. Conversely learned District Attorney contended that appellant has been treated in accordance with law and rules. He contended that a practicing lawyer, Mr. Saeed Khan Shangla, lodged a complaint dated 02.01.2011 against the appellant regarding illegal gratification which was processed by Respondent No.1 wherein he narrated that Mr. Anwar Khan, Advocate who was his class fellow and was implicated in a criminal case whose Acquittal Criminal Appeal titled "State through Zareen Khan & State and state v/s Muhammad Akbar Khan" was pending adjudication before the Peshawar High Court, Peshawar. Appellant was discharging his duties as a Class-IV entered into a commitment with Mr. Akbar Khan, Advocate (Accused) for the dismissal of the said appeal on payment of handsome amount. Mr. Akbar Khan, Advocate informed Mr. Saeed Khan, Advocate regarding the said deal and contended that appellant had approached him for dismissal of appeal in his favor. Upon receipt of complaint the statement of the appellant was recorded by the Respondent No.1 on 02.11.2011 and thereafter he was issued Charge Sheet and Statement of Allegations to which he replied but the same were not

 found to be satisfactory.

6. Accordingly, vide office order dated 06.05.2011 he was imposed upon the major punishment of compulsory retirement from service. He further contended that he himself admitted that he arranged the dismissal of criminal appeal pending before worthy Peshawar High Court on receiving illegal gratification. He further contended that appellant was provided a chance of cross-examination but was deliberately not cross-examined. He requested that appeal might be dismissed.

7. Perusal of record reveals that appellant was compulsory retired by respondents on 06.05.2011, against which he filed writ petition bearing No. 3472/2012 which was accepted on 26.09.2018 by holding that order was passed by incompetent authority and competent authority was directed to initiate proceedings. In compliance with the order passed by worthy Peshawar High Court, competent authority appointed inquiry officer who exonerated the appellant from the charge leveled against him. On 25.10.2020, the competent authority once again ordered for inquiry against the appellant to inquire further into the matter that recommended for minor punishment of censure against the appellant and properly submitted his report on 06.06.2020. That on 19.06.2020 the impugned order was issued by imposing the minor penalty of censure upon the appellant. When further probe was ordered by the authority then it was incumbent upon the inquiry officer, who submitted his inquiry report on 06.06.2020, that he must summon Mr. Saeed Shangla Advocate to probe into the fact due to which earlier report was not considered sufficient in the matter but the said inquiry officer relied upon the statement recorded by the earlier inquiry officer where in no opportunity of cross examination was provided to




the appellant. Moreover, inquiry officer also relied upon the statement of the appellant recorded during inquiry ordered by the incompetent authority, MIT Peshawar High Court, Peshawar and finding of that inquiry officer was set aside by the Worthy Peshawar High Court, Peshawar.

7. It is also not acceptable to a prudent mind that a Class-IV employee is in such a position where he settled the matter of deciding fate of appeal/case with an Advocate of High Court in respect of its accepting or rejection because cases are always decided on merit by the worthy justice/judges, and not in accordance with the whims and wishes of some Class-IV employee of their establishment, therefore, leveling this allegation by a senior lawyer is just an allegation and nothing else.

8. It is not understandable that how without bringing some new evidence on record, inquiry officer formed his opinion about the conduct of the appellant. In our view, finding of second inquiry officer is just his personal opinion, not supported by any material/evidence. Furthermore, appellant was not dealt with accident to the relevant rules as he was not provided an opportunity of cross examination which is foremost essential element of a fair trial.

9. For what has been discussed above, we are unison to accept the appeal as prayed for. 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 26th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

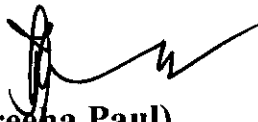
ORDER


26.04.2024

1. Learned counsel for the appellant present. Mr. Asif Masaood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept the appeal as prayed for. 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 26th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

*Kaleemullah