

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.7728/2020

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

Mr. Fayyaz Gul S/o Gul Hayat, Junior Clerk, Public Health School, D.I.Khan.

....

(Appellant)

VERSUS

1. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
2. The D.G Provincial Health Services Academy, Khyber Pakhtunkhwa, Peshawar.
3. The Principal Public Health School, D.I.Khan.

.... (Respondents)

Mr. Muhammad Asif Yousafzai
Advocate

...

For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

...

For respondents

Date of Institution.....09.07.2020
Date of Hearing.....15.05.2024
Date of Decision.....15.05.2024

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:

“That on acceptance of this appeal the impugned order dated 18.02.2020 may set aside and the appellant may be reinstated in to services with all back and convention benefits.



Any other remedy which this court deem fit and appropriate may also be provided in favour of appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Muslim Sweeper on fixed pay for a period of six months vide order dated 28.05.2004. His service was regularized in BPS-1 on 30.07.2008. He was upgraded from BPS-1 to BPS-4 vide notification dated 04.04.2009. He filed writ petition before Worthy Peshawar High Court, Peshawar regarding 33% quota reserved for Class-IV employees, which was accepted vide judgment dated 08.02.2011. He was adjusted on the post of Computer Lab Assistant BPS-7 by initial recruitment instead of promotion as no vacant post of Junior Clerk was available. He was adjusted on the post of Junior Clerk on 27.09.2018 upon which he submitted his arrival on 23.10.2018. An inquiry regarding fake office order was initiated in which the appellant was held responsible and vide impugned order dated 18.02.2020 he was removed from service. Feeling aggrieved, he filed departmental appeal which was not responded, 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 passed by the respondents is against the law, facts, and norms of justice, hence liable to be set aside; that no opportunity of personal hearing and cross examination was

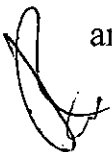


afforded to the appellant and he was condemned unheard; that charge sheet and statement of allegation have been served upon the appealant, wherein charge was not specific which is violation of (E&D) Rules, 2011. He requested that instant appeal might be accepted.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that disciplinary proceedings were initiated on 14.11.2019 regarding fake appointment order/recruitment of Mr. Muzamil; that inquiry committee found the appellant with his colleagues involved in the dealing of fake appointment order. Furthermore the committee found the appellant guilty of misconduct as being the only dealing hand at the office; that after fulfillment of legal and codal formalities he was removed from service. He requested that instant appeal might be dismissed.

6. Perusal of record reveals that initially appellant was appointed on contract as Muslim Sweeper on 28.05.2004 and his services were regularized vide order dated 30.07.2005. Appellant was lastly promoted as Junior Clerk BPS-11 and transferred to D.I.Khan where he submitted his arrival on 23.09.2018.

7. An inquiry regarding fake appointment order was initiated and appellant was also held responsible for it alongwith Mr. Jan-e-Alam Senior Clerk. Appellant was removed from service by the authority vide order dated 16.02.2020 as both appellant and Jan-e-Alam were proceeded against on one and same allegation and faced one inquiry. Jan-e-Alam filed Service Appeal



bearing No.5690/2020 before this Tribunal which was decided vide judgment & order dated 18.01.2022 wherein it is held that;

“Record reveals that the appellant was posted as Senior Clerk in the office of Paramedical Institute of Technology (PITM) D.I.Khan. A fake appointment order in respect of one Mr. Muzamill, who was son of a retiring class-iv employee and who otherwise, was eligible to be appointed against the post on retired son quota was handed over to him, upon which Mr. Muzamill reported his arrival in the office of Public Health School D.I.Khan but his appointment order was sent by the principal of the school to the appointing authority for verification, which was found bogus. To this effect, a preliminary Inquiry was conducted and found involved the appellant as well as others in issuance of the fake appointment order, for which the appellant was served with charge sheet/statement of allegation dated 14-11-2019. The appellant responded and denied all such allegations. The appellant was issued show cause notice dated 08-01-2020, which was also responded by the appellant and inquiry to this effect was also conducted. The Inquiry committee neither recorded statement of any witnesses in presence of the appellant nor the appellant was afforded any opportunity to cross-examine such witnesses, thus skipped a mandatory step as prescribed in law and in a manner, the appellant was deprived of an opportunity to defend his cause. The respondents also violated rule 11(1) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. There were no evidences, examination of prosecution witnesses or opportunity of cross-examination, hence the proceedings so conducted were not in accordance with law and such practice has already been disapproved by the apex court contained in its judgments PLD 1989 SC 335, 1996 SCMR 802, 2018 PLC (CS) 997 and 2019 SCMR 640.”

6. The inquiry officer without any solid proof only based his findings on the statement of a single person i.e. father of Muzamil and that too, without any support of other witnesses. The inquiry committee preferred to consider this single reason enough for holding him responsible based on presumptions; facts however, had to be proved and not presumed, particularly for awarding major penalty of dismissal from service. Reliance is placed on 2002 PLC (CS) 503 and 2008 SCMR 1369. The inquiry officer failed to establish as to how in the absence ED of any incriminating evidence charges can be established against

the accused. It has been held in various judgments of the apex court that regular inquiry is must before imposition of major penalty of dismissal from service, which however was not done in case of the appellant. We are of the considered opinion that the respondents badly failed to prove the allegations leveled against the appellant and penalized the appellant only because of presumptions, which however was not warranted. Another Interesting aspect of the case is that Mr. Muzamil, who was initially appointed on fake appointment order, was later on regularly appointed against such post, without penalizing him for acquiring his appointment order through illegal means. Father of Mr. Muzamil also confessed that he had received the amount taken from him as bribe, but without, mentioning as to who returned such amount to him. Moreover, keeping in view merit of the case, the penalty so awarded appears to be harsh. Competent authority had jurisdiction to award any of the punishments mentioned in law to the government employee but for the purpose of safe administration of justice such punishment should be awarded which commensurate with the with the magnitude of the guilt, Otherwise the law dealing with the subject would lose its efficacy. Reliance is placed on 2006. SCMR 1120.


7. We are of the considered opinion that though role of the appellant was dubious, but charges were not fully established against him, hence keeping in view the above cited discussion, we are inclined to partially accept the instant appeal by converting the major punishment of removal from service into stoppage of two annual increments for two years. The intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

8. As facts and circumstances of appeal No.5690/2020 filed by Senior Clerk, who faced same inquiry upon same allegation and having same role, therefore case of both are at par with each other and appellant also deserved the same treatment. It is also pertinent to mention that judgment passed by this Tribunal in appeal No.5690/2020 was implemented by respondent vide order dated 25.10.2022 by reinstating Jan-e-Alam into service.




9. For what has been discussed above, we partially accept the instant appeal by converting major penalty of removal from service into minor penalty of stoppage of the annual increments for a period of three years, the intervening period is treated as leave without pay. 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 15th day of May, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

- 12th Feb. 2024
1. Junior to counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.
 2. Former made a request for adjournment as senior counsel was indisposed. Adjourned. To come up for arguments on 15.05.2024 before the Larger Bench. P.P given to the parties.


(Salah Ud Din)
Member (J)


(Kalim Arshad Khan)
Chairman



(Rashida Bano)
Member (J)

Mutazem Shah

ORDER
15.05.2024

1. Learned counsel for the appellant present. Mr. Syed Asif Masaood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we partially accept the instant appeal by converting major penalty of removal from service into minor penalty of stoppage of the annual increments for a period of three years, the intervening period is treated as leave without pay. 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 15th day of May, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)


*M.Khan

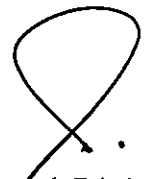
14.11.2023

SCANNED
KPST
Peshawar

Appellant in person present. Mr. Muhammad Jan,
District Attorney for the respondents present.

Appellant requested for adjournment on the ground that
his counsel is busy in Supreme Court of Pakistan. Adjourned.
To come up for arguments on 12.01.2024 before the D.B.
Parcha Peshi given to the parties.


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)


12th Jan. 2024
Naeem Amin


1. Learned counsel for the appellant present. Mr. Muhammad
Jan, District Attorney for the respondents present.

2. In view of order dated 16.05.2023, a Larger Bench comprising
of the following is constituted:

1. Mr. Kalim Arshad Khan, Chairman.
2. Mr. Salah Ud Din, Member (Judicial)
3. Mrs. Rashida Bano, Member (Judicial)

3. To come up for arguments on 12.02.2024 before the Larger
Bench. P.P given to the parties.


(Rashida Bano)
Member (J)


(Kalim Arshad Khan)
Chairman

SCANNED
KPST
Peshawar