

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 1106/2014**

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

Mr. Muhammad Rahim Khan S/O Muhammad Tariq Khan, R/O 15-d, Old  
Jamrud Road, University Town, Peshawar.

.... (*Appellant*)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary of the Province.
2. Secretary Government of Khyber Pakhtunkhwa, Establishment Department.
3. Secretary Government of Khyber Pakhtunkhwa, Administrative Department.
4. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
5. Section Officer (Transport), Administration Department.

.... (*Respondents*)

Taimur Ali Khan  
Advocate ... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney ... For respondents

Date of Institution.....18.08.2014  
Date of Hearing.....12.03.2024  
Date of Decision.....12.03.2024

**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 august court may be pleased to declare the Establishment Department’s letter/order No. SO(E-I)E&AD/9-128/2011 (Veh; No. 4156) dated 29.09.2012 being illegal and without lawful authority and of no legal effect and the same may please be set aside.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was a graduate and appeared in the PSC Examination and was selected and appointed as Section Officer in 1980. In the year 1993 he again appeared in said examination and achieved position and was appointed as Extra Assistant Commissioner. He while posted as Additional Secretary (Admn) was issued a letter dated 29.09.2011 which was duly replied by him by negating the allegations. Since the appellant was already removed from service on 26.07.2010 therefore, he filed a civil suit in the court of Civil Judge, Peshawar. During pendency of the suit respondents submitted an application for rejecting plaint because the action of allotment pertained to the period when the appellant was in active service. The application was allowed to approach proper forum vide order dated 01.04.2014. Feeling aggrieved, the appellant filed departmental appeal on 23.04.2014 which was not responded within statutory period, 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 the appellant has not been treated in accordance with law and rules and respondent violated the whole procedure, mentioned in various sections of the removal from service ordinance 2000/E&D, 2011. He further argued that the impugned order are against the law, facts, material on record and norms of justice, hence liable to be set aside. He further argued that no opportunity of personal hearing was afforded to the appellant and he was condemned unheard which is against the principle of *audi alteram partem*. He submitted that the whole proceedings were conducted at the back of appellant thus the order of recovery was bad in the eye of law, he therefore, requested that instant appeal might be accepted.

5. Conversely, learned Deputy District Attorney contended that the appellant had been treated in accordance with law and rules. He further contended that notices were issued to the concerned to appear before the inquiry officer and record their statement. However, only Mr. Ameer Muhammad, Ex- S.O (Transport) and Khalid Pervez turned up to the summons and recorded their statements. He further contended that letter were issued to the appellant pursuant to the findings and recommendations of the enquiry officer and fixed the responsibility of loss of government asset on the appellant in pursuant to the approval of competent authority. He requested that instant appeal might be dismissed.

6. Perusal of record reveals that appellant was serving in respondent department on different posts after his recruitment upon the recommendation of Khyber Pakhtunkhwa Public Service Commission in the year 1993 who

was lastly posted as Director Protocol NWFP and Additional Secretary (Admn) Administration Department. Appellant was removed from service vide notification bearing No. SO(E-I)E&AD/9-128/2010 dated 26.07.2010 by respondent department. After the removal of appellant vide order dated 29.09.2011 and 20.03.2012, respondent department directed the appellant to make payment of Rs.650000/- in respect of government vehicle which had been allotted to and then stolen/snatched from one Mr. Babar Khan S/O Muhammad Sareer Khan R/O District Mardan. Record further reveals that said directions were given on the basis of inquiry report dated 02.10.2011 which was issued vide letter No. SO(E-I)E&AD/9-128/10 dated 05.11.2010 which means inquiry was initiated after removal of the appellant who was removed vide order dated 26.07.2010, that too against the other official and not against the present appellant.

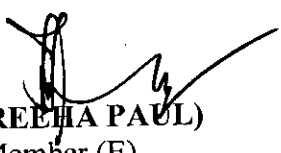
7. Respondents fixed the responsibility upon the appellant for delivery of government vehicle to unauthorized person but in our humble view order of fixing responsibility was issued after removal from service of the appellant. It is law that even a pending inquiry against the civil servant will automatically stand abated upon his/her retirement while in the instant case appellant was removed from service, not retired, even before issuance of order of inquiry, therefore, an order based upon the recommendation of that inquiry has no legal effect as no action could be taken against a person who was not a civil servant under the (E&D) Rules, 1989. Pre-requisitive of proceeding under E&D Rules 1989, is that a person who is so proceeded against, must be a member of service. Reliance is placed on 1975 PLC C.S 1435. In the instant



case no chance of defence was provided to the appellant as he was not associated with inquiry being removed from service and in an inquiry initiated against other person he was held responsible which is against the principle of justice and service rules.

8. In our humble view, after removal no action can be initiated or taken against the appellant by the department. Therefore, it is held that impugned order of recovery recommended by the inquiry officer is not binding upon the appellant and has no legal effect to this extent, however, respondent department is at liberty to adopt proper procedure if so advised. Costs shall follow the event. Consign.


9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12<sup>th</sup> day of March, 2024.*


  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**  
12.03.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney along with Muhammad Riaz and Abdur Rashid, Superintendents for the respondents present.
2. Vide our detailed judgement of today placed on file, it is held that impugned order of recovery recommended by the inquiry officer is not binding upon the appellant and has no legal effect to this extent, however, respondent department is at liberty to adopt proper procedure if so advised. 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 12<sup>th</sup> day of March, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)