FORMOF ORDER SHEET

Court of_____

12(2) CPC Petition No. 573 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	14/06/2024	The Petition U/S 12(2) CPC in appeal no. 1299/2019 submitted by Secretary Health & other respondents through Section Officer Litigation. It is fixed for hearing before Division Bench at Peshawar on 25.06.2024. Original file be requisitioned. Parcha Peshi given to the representative of the respondent department. By the order of Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

12(2)CPC Petition no 573/2024

1. Secretary to Govt. of Khyber pakhtunkhwa Health Department
2. Director General Health Services Khyber Pakhtunkhwa

..... Petitioners

VERSUS

Dr. Lal Zari, Ex-Deputy Director (BPS-18), Population Welfare Department, FATA Merged Area Secretariat, Warsak Road, Peshawar.

.....Respondent

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Section Officer (Lit-II)
Govt. of Khyber Pakhtunkhwa
Health Department.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

12(2) CPC Petition No. 573/2024

1. Secretary to Govt. of Khyber Pakhtunkhwa Health Department
2. Director General Health Services Khyber Pakhtunkhwa .....**Petitioners**

VERSUS

Dr. Lal Zari, Ex-Deputy Director (BPS-18), Population Welfare Department, FATA Merged Area Secretariat, Warsak Road, Peshawar .....**Respondent**

PETITION UNDER SECTION 12(2)OF CIVIL, PROCEDURE CODE 1908 AGAINST THE JUDGMENT OF THE HONORABLE TRIBUNAL DATED 14/04/2023 IN SERVICE APPEAL NO. 1299/2019

Khyber Pakhtukhwa Service Tribunal
Diary No. 13573
Dated 14/6/24

Respectfully Sheweth:

FATS:

1. That the respondent had filed Service Appeal bearing No. 1299/2019 before the Service Tribunal Peshawar
2. That the respondent concealing the material facts from this Honorable Tribunal that the Health Department is the parent department, however, the petitioners has not made Health Department as party and thus she succeeded to get Ex-parte judgment dated 14/04/2023 (copy of judgment attached).
3. That the impugned Ex-parte judgment dated 14/04/2023 is liable to be set-aside on the following grounds:-

GROUNDS:

A. That the impugned judgment dated 14/04/2023 has been obtained by the respondent on the basis of fraud, mis-representation and concealment of facts, hence the impugned judgment is liable to be set-aside.
B. That the respondent had been performing and enjoying double service benefits fraudulently i.e. from Population department and Health Department at the same time which is gross misconduct.
C. That the respondent concealed her removal order from the Health Department in order to conceal her second appointment for which she will be proceeded.
D. That in order to cancel her second appointment in Population department, she mala-fide did not cite Health Department as a party.

Prayer:

In view of the above, it is requested that the judgment of the Honorable Service Tribunal dated 14/04/2023 may be set-aside and the petitioners may be allowed to properly defend the case, please.

(Mr. Mahmood Aslam)
Secretary to Govt. of Khyber Pakhtunkhwa
Health Department
(Petitioner No. 01)

(Dr. Muhammad Saleem)
Director General Health Services
Khyber Pakhtunkhwa
(Petitioner No. 02)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

1. Secretary to Govt. of Khyber Pakhtunkhwa Health Department
2. Director General Health Services Khyber Pakhtunkhwa .....**Petitioners**

VERSUS

Dr. Lal Zari, Ex-Deputy Director (BPS-18), Population Welfare Department, FATA Merged Area Secretariat, Warsak Road, Peshawar .....**Respondent**

PETITION UNDER SECTION 12(2)OF CIVIL, PROCEDURE CODE 1908 AGAINST THE JUDGMENT OF THE HONORABLE TRIBUNAL DATED 14/04/2023 IN SERVICE APPEAL NO. 1299/2019

AFFIDAVIT

I Dr. Muhammad Saleem Director General Health Services Khyber Pakhtunkhwa do hereby state on oath that contents of the above petition are correct to the best of my knowledge and nothing has been concealed.

ATTESTED
14/06/2024

Deponent

Dr. Muhammad Saleem
Director General Health Services
Khyber Pakhtunkhwa

"A" (3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 1299 /2019

Dr. Lal Zari, Ex: Deputy Director (BPS-18),
Population Welfare Department FATA (Merged Area),
Merged Area Secretariat, Warsak Road, Khyber Pakhtunkhwa, Peshawar
.....**APPELLANT**

VERSUS

1- The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2- The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
3- The secretary population welfare Department, Khyber Pakhtunkhwa Peshawar.
4- The Director General Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 25.06.2019 WHEREBY MAJOR PENALTY OF REDUCTION TO LOWER GRADE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE IMPUGNED APPELLATE ORDER DATED 06.09.2019 WHEREBY REVIEW PETITION OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 25.06.2019 and 06.09.2019 may very kindly be set aside and the appellant may be restored on her original post i.e. Deputy Director (BPS-18) with all back benefits including seniority. That the respondents may further please be directed to grant back benefits to the appellant for the intervening period i.e. w.e.f. the date of dismissal (21.5.2015) till the date of re-instatement (25.6.2019). Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:
ON FACTS:

Brief facts giving rise to the present appeal are as under:-

1. That the appellant was appointed as Assistant Director in the Population Welfare Department (FATA) now (Merged Area) vide

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1299/2019

Date of Institution ... 02.10.2019
Date of Decision ... 14.04.2023

Dr. Lal Zari, Ex: Deputy Director (BPS-18), Population Welfare Department FATA (Merged Area), Merged Area Secretariat, Warsak Road, Khyber Pakhtunkhwa, Peshawar.

... (Appellant)

VERSUS

The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and three others.

... (Respondents)

Noor Muhammad Khattak,
Advocate ... For appellant.

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

Mrs. Rozina Rehman ... Member (J)
Miss Fareeha Paul ... Member (E)

JUDGMENT

Rozina Rehman, Member(J): The appellant has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

"On acceptance of this appeal the impugned orders dated 25.06.2019 and 06.09.2019 may very kindly be set aside and the appellant may be restored on her original post i.e. Deputy Director (BPS-18) with all back benefits including seniority. That the respondents may further please be directed to grant back benefits to the appellant for the intervening period i.e. w.e.f the date of dismissal (21.05.2015) till the date of reinstatement (25.06.2019)."

2. Brief facts leading to filing of the instant appeal are that appellant was appointed as Deputy Director in the Population Welfare Department (FATA), now Merged Area vide order dated 26.07.2006. During service, she was promoted to single cadre post of Deputy Director (BS-18) on the recommendation of Departmental Promotion Committee. She was suspended on some allegations, where-after, an inquiry was conducted and she was dismissed from service. She filed review petition which was also rejected, where-after, she filed service appeal which was accepted with direction to the authorities to conduct de-novo inquiry. Accordingly, de-novo inquiry was conducted and she was awarded major penalty of reduction in lower grade for a period of one year. Feeling aggrieved, she filed review petition which was rejected, hence, the present service appeal.

3. We have heard Noor Muhammad Khattak Advocate learned counsel for the appellant and Asif Masood Ali Shah learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Noor Muhammad Khattak Advocate, learned counsel for appellant, inter-alia, contended that the impugned notification dated 25.06.2019 whereby major penalty of reduction in lower grade for one year was imposed is against law, facts and norms of justice, hence, not tenable and liable to be set aside. He contended that the de-novo inquiry so conducted by the Secretary Irrigation was against law, Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and spirit of judgment of this Tribunal dated 31.08.2018 as it had been observed by this Tribunal that statements of Secretary Social

Welfare and Members of Procurement Committee as well as Technical Committee should have been recorded in the presence of the appellant with opportunity to cross-examine them but despite clear directions, their statements were not recorded nor the appellant was afforded an opportunity to cross-examine them. It was further argued that once again a deliberate attempt was made by the Inquiry Officer to give safe passage to the responsible officers by making the appellant scapegoat for the second time. That no regular inquiry was conducted in the matter which as per Supreme Court judgments was necessary. Reliance was placed on 2008 SCMR-1369, 2020 PLC (C.S) 1291 and 2011 PLC (C.S) 1111.

5. Conversely, learned Deputy District Attorney contended that appellant was appointed as Woman Medical Officer (BS-17) who was promoted to BS-18 and was posted as Deputy Director Population Welfare Program in the erstwhile FATA. He submitted that she was suspended on 18.02.2014 with immediate effect on account of involvement in the irregularities committed in the procurement of medicines, therefore, charge sheet alongwith statement of allegations was served upon her and she submitted written reply which was found unsatisfactory; that the competent authority after perusal and examination of the inquiry report, imposed major penalty on the appellant after fulfillment of all codal formalities. Lastly, he submitted that as per judgment of this Tribunal, appellant was reinstated into service for the purpose of de-novo inquiry and after de-novo inquiry, the competent authority imposed major penalty of reduction to lower

grade/post for a period of one year and that she was punished after fulfillment of all codal formalities.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that some glaring discrepancies were noticed by this Tribunal in the earlier round of litigation and it was concluded that the inquiry was not conducted in just, fair and transparent manner. Relevant para from the judgment of this Tribunal dated 31.08.2018 is hereby reproduced for ready reference:

> *"Perusal of reply of the appellant to the charge sheet and statements of allegations revealed that purchase committee headed by the Secretary Social Sector (FATA) alongwith seven others members was constituted after obtaining approval from the Secretary Social Sector (FATA). Bids invited were opened on the directions of the Secretary SS by a broad based committee having representation of relevant stakeholders. Comparative statement was signed by the concerned and finally by the Secretary Social Sector (FATA). In case there were deficiencies in the comparative statement was it not the responsibility of Secretary concerned as Head of the department to take corrective measure/stop the process? He can't be absolved of his responsibility. The inquiry committee should have recorded statements of members of purchase committee/technical committee and thereafter should have analyzed their role in*

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their findings. While responding to the charge at Sr. No. b of the charge sheet the appellant in her reply stated that representative of A&C Department was included to participate in the proceedings of the procurement committee on the verbal advice of SSS (F). Why this fact was not got verified from the Secretary SS to meet the ends of justice? While in reply to charge at Sr. no. d she leveled certain accusations against Mr. Fakhar Alam, Store Keeper and Mr. Muhammad Kamran. It was the duty of the inquiry committee to have recorded their statements, but the report was silent on this issue.

In addition to this reply furnished to the enquiry committee by the official respondents was also worth perusal. In this reply fingers were pointed out towards Secretary Social Sector (FATA) being responsible for certain lapses. It was quite strange why the Secretary Social Sector not associated with inquiry proceedings? Was it intentional or otherwise? Fairness demanded that his statement should have been recorded to counter the allegations leveled by the appellant those contained in the official reply. We apprehend that the appellant was made scapegoat to save the skin of others. Action of the enquiry committee also goes against the spirit of E&D Rules 2011. Firstly statements of all concerned, including Secretary should have been recorded in the presence of the appellant and thereafter opportunity of cross examination should have

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been given to her. It is a serious departure from the laid down procedure and is sufficient for making the proceedings illegal/unlawful. The inquiry committee also proposed disciplinary action against Mr. Fakhar Alam, Store Keeper and Mr. Rashid Ahmad but during the course of hearing official respondents when confronted on this point were clueless. Similarly, no documentary evidence was produced to substantiate that action against the officials of AGPR as proposed by the enquiry committee was taken."

In view of the above, appeal was accepted by this Tribunal and impugned order was set aside. Respondents were directed to conduct de-novo inquiry against the appellant strictly in accordance with law. The de-novo inquiry report is available on file which shows that charge sheet alongwith statement of allegations were never served upon appellant. As per Rule-10 (J) (b) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, if the competent authority decides that it is necessary to hold an inquiry against the accused under Rule-5, it shall pass an order of inquiry in writing which shall include the grounds for proceeding, clearly specifying the charges alongwith apportionment of responsibility.

7. In the instant case, upon the direction of this Tribunal for de-novo inquiry, charge sheet alongwith statement of allegations was not served upon the appellant as per law. It will not be out of place to mention here that framing of charge and its communication alongwith statement of allegations is not mere a formality but it is a mandatory

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pre-requisite which is to be followed. Despite directions by this Tribunal, Secretary Social Sector being head of the Department, was not examined in the presence of appellant in order to provide her a proper opportunity of cross-examination. Statement of members of the Purchase Committee/Technical Committee were also not recorded in the presence of appellant. The appellant had leveled certain allegations against Mr. Fakhar Alam, Store Keeper and Mr. Muhammad Kamran but their statements were not recorded despite directions and again the de-novo inquiry is silent on this issue. Secretary Social Sector (FATA) was responsible for certain lapses but again he was not associated with the inquiry proceedings and the appellant was made scapegoat to save the skin of others. De-novo inquiry was not conducted in accordance with Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 as neither the statements of all concerned were recorded in the presence of the appellant nor she was given any opportunity of cross-examination. Nothing was brought before this Bench in order to show any action against Secretary, Storekeeper and other officials of AGPRs and Rule-11(4) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was violated as their statements were not recorded in the presence of accused appellant. It is also on record that show cause notice was also not served upon the appellant. The report of de-novo inquiry is also silent in this regard and that's why no reply was submitted by the appellant. Inquiry report was also not provided. As per Rule-14(4)(c) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the competent authority shall provide a copy of the inquiry

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report to the accused but in the instant case, inquiry report was provided on the previous date of hearing to the appellant. Admittedly she was condemned unheard as no chance of personal hearing was afforded to her. It has been held by the Supreme Court of Pakistan that where the civil servant was not afforded a chance of personal hearing before passing of termination order, such order would be *void ab-initio*. Reliance is placed on 2003 PLC (C.S) 365.

8. For what has gone above, the impugned order of imposition of penalty with disciplinary proceedings wherefrom it resulted, is set aside and appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
14.04.2023

(Fareeha Paul)
Member (E)

(Rozina Rehman)
Member (J)

"Ahtazem Shah"

Date of ... 17/4/23
Number of ... page 8
Copying Fee ... 40/-
... 40/-
... 18/5/23
Date of Delivery of Copy ... 18/5/23

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

AUTHORITY LETTER

Mr. Safi Ullah Focal Person (Litigation-II) Health Department Civil Secretariat is hereby authorized to attend/defend the court cases and file comments on behalf of Secretary Health Government of Khyber Pakhtunkhwa before the Hon'ble Khyber Pakhtunkhwa, Service Tribunal and lower courts.

(MAHMOOD ASLAM)
Secretary to Govt. of Khyber Pakhtunkhwa
Health Department