

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.905/2023

Date of presentation of Appeal.....24.03.2023
Date of Hearing.....04.07.2024
Date of Decision.....04.07.2024

Qari Umar Nabi, S/O Muhammad Zaman R/O Village Lund Khwar Tehsil Takht Bhai District Mardan(Appellant)

Versus

1. **Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.**
2. **Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.**
3. **District Education Officer (Male) Mardan.....(Respondents)**

Present:

Mr. Amjad Ali, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney..For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ WITH RULE 19 OF KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY AND DISCIPLINE) RULES, 2011 AGAINST THE OFFICE ORDER BEARING ENDST NO. 10805-06 DATED 16.12.2022 PASSED BY RESPONDENT NO.4 I.E. DISTRICT EDUCATION OFFICER MALE MARDAN) WHEREIN THE DEO (M) DATED 19.11.2022 AND IMPOSED MAJOR PENALTY OF REMOVAL FROM SERVICE UPON THE APPELLANT THEREAFTER APPELLANT FILED DEPARTMENTAL APPEAL DATED 07.01.2023 WHICH DISPATCHED THROUGH REGISTERED POST & ACKNOWLEDGE DUE CARD DATED 10.01.2023 WHICH REMAINED UN-RESPONDED AFTER LAPSE OF 60 DAYS WHICH ARE ILLEGAL AGAINST LAW AND FACTS AND LIABLE TO BE SET ASIDE.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as per memo and grounds of appeal are that he was appointed as Qari vide appointment order dated 29.09.2007 and took charge of the said post on 09.10.2007; that FIR No.8 dated 28.08.2009 was lodged by the Anti-Corruption Mardan U/S 419, 420, 468, 471, 109 PPC, wherein, appellant was convicted and sentenced by the learned Special Judge, Anti-Corruption vide judgment dated 22.01.2013 for submission of fake educational documents; that on 31.12.2008 his appointment order was withdrawn and the said withdrawal of the order was challenged before the Tribunal in Service Appeal No.609/2009 and this Tribunal vide judgment dated 02.11.2009 ordered for reinstatement of the appellant with all back benefits and left the respondents at liberty to conduct de-novo inquiry; that the appellant appealed to the Hon'ble Peshawar High Court, Peshawar through Criminal Appeal No.48-P/2013 for setting aside conviction order of the court of Anti-Corruption; that the Hon'ble Peshawar High Court, Peshawar ordered for acquittal of the appellant and also ordered for reinstatement of the appellant into service, without back benefits; that the appellant again approached this Tribunal through filing Service Appeal No.574/2014 against the removal order dated 31.03.2010 and this Tribunal by reinstating the appellant into service, remitted the same for conducting detailed inquiry; that the same was conducted and vide order dated 16.12.2022 he was



again removed from service; that feeling aggrieved, he filed departmental appeal on 07.01.2023 which was not responded, hence, the instant service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

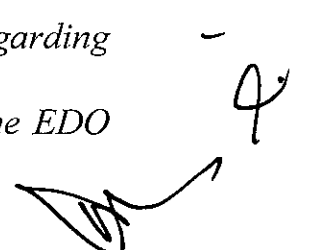
03. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney assisted by learned counsel for private respondents, controverted the same by supporting the impugned order(s).

05. From the record, it is evident that appellant was appointed as Qari vide appointment order dated 29.09.2007 and took charge of the said post on 09.10.2007. An FIR No.8 dated 28.08.2009 was lodged by the Anti-Corruption Mardan U/S 419, 420, 468, 471, 109 PPC, wherein, appellant was convicted and sentenced by the learned Special Judge, Anti-Corruption vide judgment dated 22.01.2013. On 31.12.2008 his appointment order was withdrawn and the said withdrawal of the order was challenged before the Tribunal in Service Appeal No.609/2009 and this Tribunal vide judgment dated 02.11.2009 ordered for

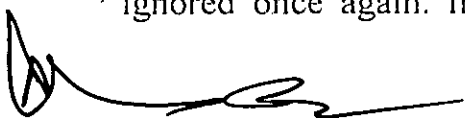
reinstatement of the appellant with all back benefits and left the respondents at liberty to conduct de-novo inquiry. In order to get acquitted in the FIR, the appellant appealed to the Hon'ble Peshawar High Court, Peshawar through Criminal Appeal No.48-P/2013 and accordingly the Hon'ble Peshawar High Court, Peshawar ordered for acquittal of the appellant and also ordered for reinstatement of the appellant into service, without back benefits. Against the removal order dated 31.03.2010 the appellant again approached this Tribunal through filing Service Appeal No.574/2014 which was disposed of on 04.10.2022 in the following terms:

"2. After hearing arguments of learned counsel for the appellant and Deputy District Attorney for respondents both were confronted with the inquiry report on the basis of which impugned order was passed. Finding-B refers to some school record. We are afraid that school record does never contain any record after the SSC examination result etc as after passage of SSC the students goes to College and University. Therefore, there was no occasion that school record must contain at least, B.A degree with it. Similarly there is reference to the record of EDO, Mardan wherein it is shown that the appellant had passed B.A in the year 2004 from the Peshawar University and as against that it is alleged that the appellant had passed his BA examination from Malakand University. The enquiry report is silent regarding the fact whether the document retained in the office of the EDO



Mardan were those, which were presented by the appellant at the time of appointment and similarly whether the documents referred to as school record were also annexed with the application for appointment by the appellant or not? Likewise the report is not disclosing the facts by annexing any merit list as to what benefits and how that was got by the appellant because of the alleged fake documents, the learned counsel for the appellant as well as Deputy District Attorney were unanimous to agree that let this matter be remitted to the department for conducting detailed enquiry covering all the facts and/ or at least the above points and then the department may proceed in accordance with law. The appellant is reinstated for the purpose of enquiry. The enquiry shall be completed within sixty days after receipt of this order. Copy of the enquiry report be transmitted to the Registrar of this Tribunal. Similarly date of acknowledgement of the order be also communicated to the Registrar of this Tribunal. The instant execution appeal is disposed off in the above terms. Consign."

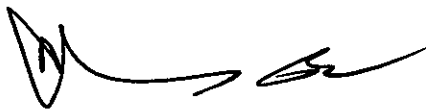
06. Inquiry was conducted, wherein, the BA Degree which was acquired from Peshawar University was sent for verification, which was found bogus, however, the issue of Degree of Malakand University remained unresolved. Besides, in the above order of the Tribunal, there is mention of merit list which was not annexed at that time, in the de-novo inquiry, the said list has been ignored once again. In other words, the inquiry ordered to be



conducted is not in accordance with the orders of the Tribunal passed in Service Appeal No.574/2014.

07. Keeping in view the above situation, the appeal is accepted, impugned order dated 16.12.2022 of removal of the appellant from service is set aside and the appellant is reinstated in service for the purpose of inquiry. However, the department is directed to conduct a proper inquiry strictly as per direction given in the order dated 04.10.2022 and then pass appropriate speaking order, within 60 days of the receipt of this judgment. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 4th day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)