

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 260/2019**

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

**Hilal Khan, Naib Qasid (BPS-03), District & Session Judge, Peshawar.**

... (Appellant)

**VERSUS**

1. District & Sessions Judge, Peshawar.

2. Senior Civil Judge, Peshawar.

... (Respondents)

Bilal Ahmad Kakazai  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

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Date of Institution.....20.02.2019

Date of Hearing.....30.05.2024

Date of Decision.....30.05.2024

**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:

**“By accepting the present appeal and setting aside the impugned order dated 15.02.2019, wherein the appellant’s departmental appeal against his removal order dated 05.12.2018 was refused.**



**By accepting this appeal and re-instating the appellant in service with retrospective effect from 05.12.2018, with all the consequential benefits.”**

2. Brief facts of the case, as given in the memorandum of appeal are that appellant was appointed as Class-IV on 24.06.2015; that while serving as Naib Qasid attached to the court of Mr. Ijaz Ur Rahman Qazi, Learned Judicial Magistrate-II Peshawar, a FIR No. 528, dated 27.10.2018 under section 419, 420, 468, 478 PPC PS Sharqi was registered against the appellant for allegedly preparing fake release warrant for an accused confined in judicial lockup. The appellant was arrested and his bail plea was turn down by the JMC-IV, ASJ-I and Peshawar High Court, Peshawar. Bail was granted by the august Supreme Court of Pakistan vide order dated 15.01.2019. A show cause notice was served upon the appellant, which was properly replied. Thereafter, he was removed from service vide order dated 04.12.2018. Feeling aggrieved, he preferred departmental appeal, which was rejected, hence the present 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that he has not been treated in accordance with law and rules. He further argued that the impugned order passed by the respondents is illegal, unlawful, void and against the principle of natural justice, hence liable to be set aside. He further argued that no regular

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inquiry was conducted in the matter. He submitted that no opportunity of personal hearing was afforded to the appellant and he was condemned unheard.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law/rules. He further contended that the impugned order was issued solely based on merits. He further contended that in an open court recording, the appellant acknowledge his guilt and said that he was under no coercion or influence. He further contended that appellant was not condemned unheard; in fact he was given ample opportunities to defend himself, but instead of defending himself, he admitted his guilt. He requested that instant appeal might be dismissed.

6. Perusal of record reveals that appellant was appointed as Class-IV on 24.06.2015 and serving the department honestly. While serving Naib Qasid attached to the court of Mr. Ijaz Ur Rehman Qazi, learned judicial Magistrate-II Peshawar, an FIR No.528, dated 27.10.2018 U/s 419, 420, 468, 478 PPC PS Sharqi was registered against the appellant for allegedly preparing fake release warrant for an accused confirmed in judicial lockup. The appellant was arrested and his bail plea was turned down by the JMIC-IV ASJ-I and Peshawar High Court and lastly granted the concession of bail by august Supreme Court of Pakistan vide order dated 15.01.2019. The appellant was served with a show cause notice dated 27.10.2018, which was duly replied by the appellant on 03.11.2018. The appellant reply was not taken into consideration and the learned Senior Civil Judge, Peshawar vide order dated 04.12.2018 notified 05.12.2018, removed the appellant from service under section 4(b) (iii) Khyber Pakhtunkhwa Efficiency & Disciplinary Rules 2001.

7. Appellant was awarded major penalty of removal from service without providing opportunity to defend himself by conducting proper inquiry rather on the basis of fact finding inquiry which is evident from show cause notice dated 27.10.2018 wherein regular inquiry was dispense with, and reliance was placed on fact finding inquiry conducted earlier, which is not in accordance with law and rules, and have no effect. It is has been held in 2022 SCMR 745 that:


***“Regular inquiry and preliminary/fact finding inquiry---Distinction--Regular inquiry was triggered after issuing show cause notice with statement of allegations and if the reply was not found suitable then inquiry officer was appointed and regular inquiry was commenced (unless dispensed with for some reasons in writing) in which it was obligatory for the inquiry officer to allow evenhanded and fair opportunity to the accused to place his defence and if any witness was examined against him then a fair opportunity should also be afforded to cross-examine the witnesses-- Whereas a discrete or fact finding inquiry was conducted at initial stage but internally to find out whether in the facts and circumstances reported, a proper case of misconduct was made out to initiate disciplinary proceedings.”***

8. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be

imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of 'audi alteram partem' was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483. So, appellant was condemned unheard by the respondents which is against the rules on the subject and also against the principal of natural justice that no one could be condemned unheard.

9. For what has been discussed above, we are in unison to set aside the impugned order and reinstate the appellant into service for the purpose of de-novo/regular inquiry with direction by issuing charge sheet, statement of allegation and to provide a chance of self-defense and cross examination to the appellant and to conclude the inquiry within sixty days after receipt of this judgment. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. 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 30<sup>th</sup> day of May, 2024.*

  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)

**ORDER**  
30.05.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney along with Sajjad, Assistant for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to set aside impugned order and reinstate appellant into service for the purpose of de-novo/regular inquiry with direction by issuing charge sheet, statement of allegation and to provide chance of self-defense and cross examination to the appellant and to conclude the inquiry within sixty days from the receipt of this order. 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 30<sup>th</sup> day of May, 2024.*

  
(Farzana Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)