

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
AURANGZEB KHATTAK ... **MEMBER (Judicial)**

Service Appeal No. 102/2024

Date of presentation of Appeal.....02.01.2024
Date of Hearing.....23.07.2024
Date of Decision.....23.07.2024

**Ahmad Shah S/o Misal Khan, R/o Mohallah Miangan Choki Mumriz
P.O Pabbi Tehsil Pabbi District Nowshera. Ex-Patwari Halqa, Chowki
Drab, Tehsil Pabbi.Appellant**

Versus

1. Government of Khyber Pakhtunkhwa through Commissioner Peshawar Division Peshawar.
2. Deputy Commissioner, Nowshera.(Respondents)

Present:

Mr. Abrar Ul Haq, Advocate.....For appellant
Mr. Muhammad Jan, District AttorneyFor respondents
.....

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: According to the facts gathered from the record, the appellant, while serving as a Patwari in District Nowshera was proceeded against departmentally on the allegations of his involvement in fake mutations, separate inquiries were conducted, leading to his removal from service vide impugned order dated 18.11.2022. Aggrieved by removal order dated 18.11.2022, the appellant filed departmental appeal before the Commissioner Peshawar Division. Upon which, the Commissioner ordered a de-novo inquiry. The de-novo inquiry reaffirmed the earlier findings, therefore, the departmental appeal of the appellant was dismissed. The appellant

has now approached this Tribunal through filing of instant appeal for redressal of his grievance.

2. On receipt of the appeal and its admission to regular hearing, the respondents were summoned. Respondents put appearance through their respective representative and contested the appeal by way of filing para-wise reply, raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant contended that the inquiry process was flawed, lacking proper procedural compliance and fairness. He next contended that no final show cause notice was issued, and the appellant was condemned without a fair hearing or right to defense. He further contended that the inquiry focused disproportionately on the appellant while neglecting to account for other officials involved (Girdawar circle, Revenue Officer, Circle Revenue Officer), which runs counter to fair practice principles. He also contended that the appellant was not given an adequate hearing opportunity during the de-novo inquiry, therefore, the principles of natural justice and Articles 10-A and 25 of the Constitution of Islamic Republic of Pakistan, 1973 were badly violated. He next argued that health issues (Malaria and Dengue) exacerbated the appellant inability to engage effectively with the inquiry process. In the last he argued, that the impugned orders may be set-aside and the appellant might be reinstated in service with all back benefits.

4. On the other hand, learned District Attorney for the respondents contended that the impugned orders were legally and factually correct. He further contended that the appellant was treated in accordance with



the law. He further contended that proper inquiries were conducted under the E&D Rules 2011 against the appellant, therefore, he was rightly removed from service. He further contended that the appellant had been given ample opportunity to defend himself but he failed to defend himself. In the last he argued that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

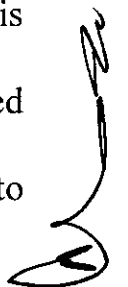
5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that on 13.01.2022, a complaint was filed before the Board of Revenue, alleging fake mutations. The case was sent to the Assistant Commissioner for inquiry. Initial inquiry conducted by AC (Revenue) Nowshera concluded that the matter was sub-judice before the Civil Court and, therefore, not within the jurisdiction of the revenue courts as per Section 41 of the Land Revenue Act 1967. Following disagreement with the initial inquiry, the Deputy Commissioner Nowshera reassigned the inquiry to AC Pabbi. The AC Pabbi report dated 23.09.2022 found the allegations against the appellant to be true and recommended a major penalty, subsequently resulting in the appellant's removal from service on 18.11.2022. The Deputy Commissioner order, allegedly directing second inquiry, is conspicuously absent from the file. This omission is particularly troubling, as it deprives us of the opportunity to scrutinize the basis and scope of the second inquiry. The absence of this order creates a void that undermines the legitimacy of the entire



proceedings. Aggrieved by the removal order, the appellant filed a departmental appeal before the Commissioner Peshawar Division. The Commissioner ordered a de-novo inquiry. Furthermore, the Commissioner order, which purportedly initiated the inquiry, lacks the requisite supporting reasons. This deficiency is a clear violation of the principles of natural justice, as it fails to provide a rational basis for the inquiry. Without reasons, the order appears arbitrary and capricious, thereby casting a long shadow of doubt over the inquiry validity. In the absence of these essential documents, we find that the subsequent inquiry and the impugned orders stemming from it are fundamentally flawed. The inquiry findings and conclusions are necessarily tainted by the procedural lapses that have occurred thus far. We cannot countenance such a patently unfair process, as it undermines the very fabric of our judicial system. Moreover, non-reinstatement of the appellant for the purpose of the de-novo inquiry raises grave concerns about the fairness and validity of the proceedings. This omission denies the appellant a meaningful opportunity to participate in the inquiry, thereby violating their right to be heard. Such a glaring irregularity cannot be overlooked, as it perpetuates a gross injustice.

7. Consequently, the impugned orders are set-aside and the appellant is reinstated in service with the direction to the Deputy Commissioner to conduct a proper inquiry strictly in accordance with law and rules within a period of 90 days from the date of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to him to



Service Appeal No.102/2024 titled "Ahmad Shah versus Government of Khyber Pakhtunkhwa through Commissioner Peshawar Division Peshawar and another", decided on 23.07.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Mr. Aurangzeb Khattak, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

defend himself. After conducting a proper inquiry, the Deputy Commissioner shall pass an appropriate order, supported by reasons, as mandated by law. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23 day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



AURANGZEB KHATTAK
Member (Judicial)


Naeem Amin


Service Appeal No. 102/2024 titled "Ahmad Shah Versus Government of Khyber Pakhtunkhwa through Commissioner Peshawar Division Peshawar and others".

ORDER

23rd July, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the impugned orders are set-aside and the appellant is reinstated in service with the direction to the Deputy Commissioner to conduct a proper inquiry strictly in accordance with law and rules within a period of 90 days from the date of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to him to defend himself. After conducting a proper inquiry, the Deputy Commissioner shall pass an appropriate order, supported by reasons, as mandated by law. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23 day of July, 2024.*


(Aurangzeb Khattak)
Member (Judicial)


(Kalim Arshad Khan)
Chairman