

ORDER

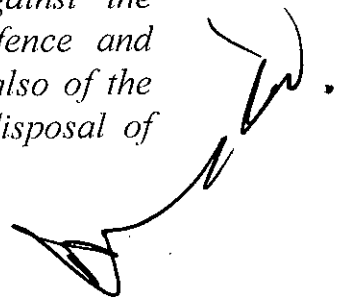
22nd July, 2024

Kalim Arshad Khan, Chairman: Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney present.

2. Appellant's case in brief is that he was initially appointed as Chowkidar vide order dated 18.08.1989; that he was charged in FIR No.94 dated 23.03.2003 U/S 302/324/34 was lodged against him; after acquittal in the said case, he approached the department through departmental appeal for his adjustment but the same was rejected on 08.06.2020, hence, the instant service appeal.

3. At the very outset, learned counsel for the appellant as well as learned District Attorney referred to a judgment dated 06.01.2016 passed in Service Appeal No. 1418/2011 titled "Wahid Gul-vs-Executive District Officer Health, Kohat and others" and stated that instant service appeal might also be decided in terms of the said judgment. Relevant para of the said judgment is reproduced as under:

"From perusal of the record, it transpired, that due process of law and rules was not followed nor were explicit orders of penalty of removal passed by the appropriate Competent Authority. It is thus clear that the appellant was not properly proceeded against by conducting of formal enquiry hence the impugned order of rejection of departmental appeal vide order dated 20.07.2011 suffered from legal infirmity. In view of the foregoing, the Tribunal is of the considered view that in order to meet the ends of justice proper disciplinary proceedings are required to be conducted against the appellant providing him full opportunity of defence and opportunity of personal hearing. The Tribunal is also of the view that FR 18 is not now in the field hence disposal of




departmental appeal of the appellant on the strength of the said provisions of rules is ultra vires of rules. The impugned order dated 20.07.2011 is set aside, the appellant is reinstated and the case is remitted to the respondent-department to conduct de-novo enquiry strictly in accordance with law/rules within a period of 60 days of the receipt of this judgment. The intervening period will be decided on the basis of outcome of the fresh proceedings. Parties are left to bear their own costs. File be consigned to the record."

4. The case in hand is no different than the above.

5. Therefore, instant service appeal is accepted, appellant is reinstated into service and the matter is remitted to the department for de-novo inquiry to be conducted within 60 days of the receipt of this order. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

6. *Pronounced in open Court at Peshawar given under our hands and seal of the Tribunal on this 22nd day of July, 2024.*


(Aurangzeb Khattak)
Member (J)


(Kalim Arshad Khan)
Chairman