

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

BEFORE: **AURANGZEB KHATTAK** ... **MEMBER (Judicial)**  
**RASHIDA BANO** ... **MEMBER (Judicial)**

**Service Appeal No. 7471/2021**

Date of presentation of Appeal.....17.09.2021  
Date of Hearing.....31.07.2024  
Date of Decision.....31.07.2024

**Sajid Sardar**, Watcher (BPS-07) Wildlife Division Kohat, Wildlife Park Kohat. ....**Appellant**

Versus

1. The Secretary, Environment Forestry and Wildlife Khyber Pakhtunkhwa, Peshawar.
  2. The Chief Conservator Wildlife, Khyber Pakhtunkhwa, Peshawar.
  3. The Divisional Forest Officer, Kohat Wildlife Division Kohat.
- .....(**Respondents**)

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Present:

Syed Noman Ali Bukhari, Advocate.....For appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney .....For respondents

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**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (J):** The appellant namely Sajid Sardar, was appointed as a Wildlife Watcher on September 6, 2018, and was subsequently posted to the Kohat Wildlife Park on December 4, 2018. During his tenure, a charge sheet was served on him on December 23, 2019, citing allegations purportedly relating to incidents that allegedly occurred prior to his appointment at the Kohat Wildlife Park. The appellant submitted a detailed response to the charge sheet, categorically denying all allegations. An inquiry was conducted, however, as per appellant he was denied the opportunity for cross-examination and that his defense was not duly considered. Consequently, a show cause notice was issued without

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clarifying regarding the specifics of his alleged misconduct, to which the appellant replied. The first impugned order dated June 19, 2020, resulted in the appellant facing a stoppage of annual increments for two years and a financial recovery of 87,000 PKR. Subsequently, a de-novo inquiry was initiated by the Chief Conservator without providing prior notice or allowing the appellant to participate, leading to another order on April 13, 2021, imposing further penalties of stoppage of 03 annual increments as well as recovery of Rs. 592,500/-. The appellant challenges the penalties imposed upon him, through filing of departmental appeal, which was not responded within the statutory period of 90 days, hence the appellant filed the instant service 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 argued that two inquiries were conducted in the matter but no adequate opportunity for defense was provided to the appellant during both the inquiries. He next argued that the absence of cross-examination rights contravened the fundamental principle of natural justice, thereby infringing upon Article 10-A of the Constitution of Islamic Republic of Pakistan, which ensures the right to a fair trial. He further argued that the inquiry was conducted jointly against multiple officials without adhering to the appropriate hierarchical protocols outlined in Rule

2(f) (ii) of the E&D Rules, 2011, which procedural misstep rendered the inquiry void ab initio. He also argued that the allegations in the initial charge sheet related to periods before the appointment of the appellant, thereby establishing a lack of substantive evidence linking the appellant to any wrongdoing, therefore, the principle of "no one be punished for the fault of others" as referenced in NLR 2005 TD Supreme Court Page 78 was to be fundamentally applicable. He next contended that the charge sheet was never formally issued before the second inquiry, which violates established legal precedents confirming that such inquiries conducted without prior charge sheets are deemed null and void. He further contended that the absence of a proper show cause notice and the failure to provide the inquiry report constituted a significant violation of the E&D Rules, 2011. He also argued that prior notices and details surrounding disagreements with the previous inquiry findings were also not provided, undermining the procedural legitimacy of the resulting actions against the appellant. He also added that the lack of personal hearing opportunities, both in the initial and subsequent inquiries, underscored a denial of justice. In the last he contended that the impugned orders may be set-aside and the appeal in hand may be accepted as prayed for.

4. Conversely, learned Deputy District Attorney for the respondents argued that, during the tenure of the appellant at the Kohat Wildlife Park from December 4, 2018, to December 20, 2019, submitted monthly reports without dispute, which suggested that the appellant had a comprehensive understanding of the situation on the

ground and failed to act regarding the discrepancies noted. He next argued that the appellant was afforded ample opportunities to defend himself in both the initial and de-novo inquiries. He further argued that all legal and codal formalities were met in accordance with the relevant rules and regulations. He also contended that following dissatisfaction with the previous inquiry's results, the Chief Conservator constituted a new committee to conduct a de-novo investigation, which was lauded as an appropriate action in light of the findings, adhering to due process procedures as dictated by the E&D Rules. He next argued that the appellant submitted late departmental appeal, exceeding the prescribed 30-day period as well as the overall 90-day limit for processing such appeal, therefore, the failure to act within these statutory time frames rested solely with the appellant. He further argued that the inquiry findings clearly indicated negligence and inefficiency on the part of the appellant as determined by senior officers of the department, therefore, failure to report the correct number of animals over an extended period was deemed serious, contributing to the disciplinary actions taken. He also contended the penalties awarded to the appellant were classified as minor under the E&D Rules and did not fall into major penalty categories as alleged by the appellant. In the last he argued that the impugned orders may be kept intact and the appeal in hand may be dismissed with cost.

5. We have heard the arguments of learned counsel for the parties and have perused the record with their valuable assistance.

6. Perusal of the record would show that the appellant, was appointed as a Wildlife Watcher in BPS-07 on 06-09-2018. Following this, he was posted to the Kohat Wildlife Park on 04-12-2018. While performing his duties, he was served with a charge sheet on 23-12-2019, outlining allegations regarding missing of wild animals which he denied by claiming they were baseless and pertained to a period before his posting, as per contention of the appellant. The consequences of the charge sheet led to a series of disciplinary actions, culminating in the issuance of two impugned orders dated 19-06-2020 and 13-04-2021. No adequate opportunity for defense was provided during either of the inquiries. It is a well-established legal principle that every individual has the right to an adequate and fair opportunity to defend against allegations made against them. The failure to provide such an opportunity raises serious concerns about the integrity of the inquiry process. The right to cross-examine witnesses is a fundamental aspect of the principle of natural justice, which is enshrined in Article 10-A of the Constitution of Islamic Republic of Pakistan. The absence of the right to cross-examine witnesses seriously undermines the fairness of the inquiry proceedings and may constitute a violation of the constitutional rights of the appellant. The inquiry conducted against multiple officials, without following the hierarchical protocol as dictated by Rule 2(f)(ii) of the E&D Rules, 2011, raises serious procedural issues. According to these rules, inquiries must be conducted in a manner that respects the hierarchical relationships within the administrative framework. The failure to adhere to these rules suggests that the

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inquiry may indeed be void ab initio. The learned counsel for the appellant pointed out that the allegations in the initial charge sheet pertain to periods prior to the appointment of the appellant. This aspect is crucial, as it indicates a lack of direct evidence linking the appellant to any alleged wrongdoing. The principle of "no one be punished for the fault of others," as cited in NLR 2005 TD Supreme Court Page 78, is particularly relevant in this regard, as it protects individuals from undue liabilities stemming from the actions of others. The argument made by learned counsel for the appellant regarding the lack of a formally issued charge sheet before the second inquiry merits serious consideration. Legal precedents have established that inquiries conducted without prior charge sheets are deemed null and void. This procedural misstep cannot be overlooked in assessing the legitimacy of the inquiries conducted against the appellant. The absence of a proper show cause notice prior to the inquiries and the failure to provide the inquiry report also constitutes significant violations of the E&D Rules, 2011. The right to be informed of the allegations and the evidence against oneself is a cornerstone of due process. The absence of any prior notices or discussions concerning disagreements with previous inquiry findings further undermines the procedural legitimacy of the actions taken against the appellant. Such omissions deny the appellant the chance to engage with the findings and present his case adequately. Lastly, the lack of personal hearing opportunities throughout the inquiry processes signifies a denial of justice, which is contrary to the principles of fair play and natural justice that must guide all inquiry

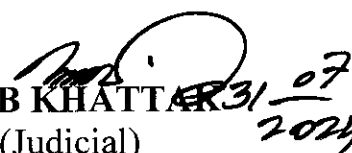
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*Service Appeal No.7471/2021 titled "Sajid Sardar versus The Secretary, Environment Forestry and Wildlife Khyber Pakhtunkhwa, Peshawar and others", decided on 31.07.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Ms. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

proceedings. In conclusion, upon a thorough examination of the arguments presented, it becomes evident that the inquiries conducted against the appellant were rife with procedural irregularities and substantial violations of natural justice principles.

7. In light of the considerations outlined above, the appeal is accepted and the impugned orders dated 19-06-2020 and 13-04-2021 are set-aside and the matter is remanded back to the respondent-department for a regular inquiry, to be conducted in accordance with the established legal principles and the pertinent rules, ensuring a fair trial for the appellant in accordance with Article 10-A of the Constitution of Islamic Republic of Pakistan. The regular inquiry is to be completed within a period of 90 days from the date of receipt of copy of this judgment. The issue of back benefits, if any, shall be subject to outcome of regular inquiry. Parties are left to bear their own costs. File be consigned to the record room.


8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 31<sup>st</sup> day of July, 2024.*


  
AURANGZEB KHATTAK  
Member (Judicial)

  
RASHIDA BANO  
Member (Judicial)

**ORDER**  
31<sup>st</sup> July, 2024

1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal is accepted and the impugned orders dated 19-06-2020 and 13-04-2021 are set-aside and the matter is remanded back to the respondent-department for a regular inquiry, to be conducted in accordance with the established legal principles and the pertinent rules, ensuring a fair trial for the appellant in accordance with Article 10-A of the Constitution of Islamic Republic of Pakistan. The regular inquiry is to be completed within a period of 90 days from the date of receipt of copy of this judgment. The issue of back benefits, if any, shall be subject to outcome of regular inquiry. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 31 day of July, 2024.*

  
(Rashida Bano)  
Member (Judicial)

  
(Aurangzeb Khattak) 31/07  
Member (Judicial) 2024.