

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

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

**Service Appeal No. 9619/2020**

Date of presentation of Appeal.....06.08.2020  
Date of Hearing.....31.07.2024  
Date of Decision.....31.07.2024

**Akhtar Ali S/o Wali Muhammad, Ex-Warder (BPS-07) Mohallah  
Thana Cham, Tehsil Chota Lahore, District Swabi.**  
.....**Appellant**

Versus

1. The Inspector General of prison Khyber Pakhtunkhwa, Peshawar.
  2. The Superintendent, Headquarters Prison, Peshawar.
- .....**(Respondents)**

Present:

Mr. Muhammad Maaz Madni, Advocate.....For appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney .....For respondents  
.....

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (J):** The appellant namely Akhtar Ali, applied for the post of Warder in the Khyber Pakhtunkhwa Prison Department. He passed the requisite selection process, and fulfilled all qualifications, securing an appointment order dated 07-10-2019. He submitted an affidavit regarding merit-based appointment, underwent a medical examination confirming fitness for the job, and began performing his duties satisfactorily. The appellant received a series of show-cause notices for alleged absences, culminating in a final show-cause notice and a dismissal order dated 20-03-2020. Feeling aggrieved from the order dated 20-03-2020, the appellant preferred departmental appeal on

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09.04.2020, which was not responded within the statutory period of 90 days, therefore, the appellant filed the instant service appeal on 06.08.2020, however during the pendency of the instant appeal, the departmental appeal of the appellant was rejected vide order dated 07.08.2020 by the Additional Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.

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. The learned counsel for the appellant argued that the appellant responded to all show-cause notices regarding his absences duly in time and denied all the allegations leveled against him but despite this, he was issued multiple show-cause notices, leading to an exaggerated count of absences from 7 days to 45 days, which is against the law and rules on the subject. He next argued that the impugned order dated 20-03-2020 was issued without serving a charge sheet, conducting a proper regular inquiry, and without adhering to the principles enunciated by the apex court regarding the imposition of major penalties even on temporary employees. He further argued that the impugned removal order dated 20-03-2020 violates Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, and Article 38(e), which aims to reduce income disparity. He also argued that no thorough inquiry was conducted,

and the allegations were dubious and unsubstantiated. 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.

4. Conversely, learned Deputy District Attorney for the respondents argued that the appellant remained habitually absent without prior intimation, displaying a poor attitude towards his responsibilities. He next argued that the appellant was issued multiple show-cause notices for willful absences, which were replied to but found unsatisfactory, therefore, a formal charge sheet/statement of allegation was issued. He further argued that a regular inquiry was conducted in the matter by providing the appellant with multiple opportunities to present his defense, including a personal hearing before the inquiry officer, however, he failed to prove the absence of misconduct. He also argued that all the legal and codal formalities were adhered to throughout the disciplinary proceedings, leading to the justified and lawful removal of the appellant from service. 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.

6. Perusal of the record would show that the respondent-department issued an advertisement for the recruitment of Warder (BPS-05) positions. The appellant applied through Pakistan Testing Service and was assigned a Roll Number. The appellant passed the written test and was called for an interview on 10-04-2019, as

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indicated by a letter dated 29-03-2019. Following a successful interview, the appellant was appointed as a Warder and issued an appointment order on 07-10-2019, listed at serial No. 33. The appellant submitted an affidavit of merit, underwent a medical examination confirming fitness, and commenced his duties. Starting from 29-01-2020, the appellant received a series of show-cause notices for absenteeism, including notices dated 07-02-2020 and a statement of allegation dated 18-02-2020. The appellant responded to each notice but received a final show cause notice on 09-03-2020, to which he replied. Subsequently, on 20-03-2020, he was issued a removal order. The apex court has consistently emphasized the necessity of following due process when imposing major penalties on employees. This includes the issuance of a charge sheet detailing the specific allegations against the employee, conducting a fair inquiry prior to any decision regarding penalties. In the present case, the respondents failed to issue a charge sheet to the appellant. This omission represents a significant procedural flaw, as the charge sheet serves as a foundational document that informs the employee of the charges they face, allowing them to prepare for their defense. The absence of a charge sheet is a clear violation of the required legal protocols and indicates a lack of transparency in the disciplinary process. The Tribunal found that the respondents did not carry out a proper inquiry before the removal of the appellant. The inquiry is crucial for ensuring that any penalties imposed are just and based on factual determinations. Without a thorough investigation, the basis

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for the decision to remove the appellant is left unfounded and arbitrary, undermining the integrity of the employment process. The principles of natural justice apply universally to all employees, including temporary staff. Ensuring a fair process is essential to uphold the rights of all individuals within the employment framework. The failure to observe these principles highlights an overarching disregard for employee rights, which can lead to a lack of trust and morale within the workplace. Furthermore, the respondents presented multiple and conflicting durations regarding the alleged absence of the appellant. Such inconsistencies, coupled with insufficient documentation, cast doubt on the credibility of the allegations. This Tribunal noted that inequalities or discrepancies in records could suggest capriciousness rather than justified disciplinary measures. Given the complexities of procedural adherence, factual deliberations on absenteeism, and constitutional mandates, the case is remanded to the respondent authorities for a comprehensive de-novo inquiry. They are further directed to ensure the appellant is accorded all procedural rights, including a formal charge sheet, a detailed inquiry conducted and adequate opportunity for defense responses.


7. In view of the above, the removal order dated 20-03-2020 as well as rejection of departmental appeal order dated 07.08.2020 are set-aside and the appellant is reinstated in service with the direction to the respondents to conduct a de-novo inquiry in line with legal and procedural mandates, ensuring the appellant's fair treatment and right to defense, in accordance with constitutional protections and relevant

  
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judicial precedents. The de-novo 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 shall be subject to outcome of de-novo 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)


*\*Naeem Amin\**


**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. <sup>Arguments</sup> heard and record perused.

2. Vide our judgment of today placed on file, the removal order dated 20-03-2020 as well as rejection of departmental appeal order dated 07.08.2020 are set-aside and the appellant is reinstated in service with the direction to the respondents to conduct a de-novo inquiry in line with legal and procedural mandates, ensuring the appellant's fair treatment and right to defense, in accordance with constitutional protections and relevant judicial precedents. The de-novo 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 shall be subject to outcome of de-novo 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)  
Member (Judicial) 31/07/2024