

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**CAMP COURT, ABBOTTABAD**

**Service Appeal No. 108/2023**

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

Fazal Wahid, Ex-DM S/O Haji Abdul Hai, GMS Khan Abad, District Lower Kohistan. ....(Appellant)

Versus

1. District Education Officer (Male) District Lower Kohistan.
2. Director Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. Secretary, Elementary and Secondary Education, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
4. Deputy Commissioner Upper Kohistan, the then District Coordination Officer, Dasso Kohistan.
5. District Accounts Officer, District Lower Kohistan.  
.....(Respondents)

Mr. Muhammad Arif Jan,  
Advocate

... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

Date of Institution.....	11.01.2023
Date of Hearing.....	24.07.2024
Date of Decision.....	24.07.2024

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 27.09.2022 passed by respondent No. 1 against which departmental appeal was preferred by the appellant on 07.10.2022 but the same was not decided within the stipulated period of time. It has been prayed that on acceptance of the appeal, the impugned order dated 27.09.2022 might be set aside and the appellant be reinstated into service with all back benefits, with further direction to the respondents

to pay all the outstanding salaries to the appellant, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed against the post of Drawing Master vide order dated 13.08.2007 and posted in GMS Bar Bela Kohistan. He was removed from service by respondent No. 1 vide order dated 22.02.2020 which was challenged by the appellant in Service Appeal No. 1404/2020. The Tribunal vide judgment dated 15.09.2021 allowed the appeal, impugned orders were set aside, the appellant was reinstated into service for the purpose of denovo inquiry and the case was remitted to the respondent department for holding inquiry regarding the allegations leveled against him. The issue of back benefits was subject to the outcome of denovo inquiry. The appellant was reinstated into service, de-novo inquiry was conducted where-after the finding of the same was forwarded to respondent No. 2 who sent the inquiry report to respondent No. 1 vide letter dated 27.03.2022 for proper decision. Instead of deciding the same, respondent No.1 ordered for holding another inquiry on the same subject matter against the appellant. The inquiry was conducted and the report was submitted in favour of the appellant but respondent No. 1 disagreed with the findings of the Inquiry Officer and passed the impugned order dated 27.09.2022, wherein the reinstatement order dated 07.10.2021 of the appellant was withdrawn and his earlier removal order dated 22.02.2022 was kept intact, despite the fact that it had already been declared illegal and was set aside by the Tribunal and the judgment had also attained finality. The appellant filed petition for implementation and release of monthly



salaries and during pendency of proceedings, the impugned order was communicated to him against which he preferred departmental appeal to respondent No. 2 but no final order was passed on it within the stipulated period; hence the instant service appeal.

3. Respondents were put on notice who submitted written reply. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant was rightly appointed by the competent authority through a selection committee. He argued that the authority who passed the impugned order was not competent. He further argued that the respondents badly failed to pass a speaking order as in case of disagreement with the findings of inquiry officer, the competent authority was required and bound under the law to express his own views but he only relied upon the earlier proceedings. He argued that the appellant was serving the department regularly since his appointment but somewhere was unable to attend his duties due to the restraining order of the respondents but the respondents failed to pay all the outstanding salaries and back benefits to the appellant. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was appointed by the District Coordination Officer Kohistan Upper as Drawing Master carrying BPS- 09 while he was competent for appointment at District level



for posts in BPS- 11 to 15 vide notification dated 17.11.2005 of the Provincial Government. He further argued that as per recruitment policy at the relevant time, the required qualification for the post of DM was HSSC and DM Diploma which the appellant did not possess at the time of appointment. He argued that as per entry at page 5 in his service book, his appointment was made at GMS Bar Bela Jalkot on 13.08.2007 and Source-I form was verified by the DAO Kohitan for activation of his pay on 21.10.2011 after a period of more than 04 years of his appointment. Similarly, his medical certificate available in his service record showed that the medical report was signed by the concerned DHO on 23.11.1999, about eight years prior to his appointment which was unjustified. He further argued that after remission of the case by the Tribunal, the denovo enquiry was conducted by the Inquiry Committee and according to its report, there was no record of appointment of the appellant in the office of DEO (Male) Kohistan Upper. He requested that the appeal might be dismissed.

6. This is a second round of litigation. Previously the appellant was removed from service and that order was challenged before the Service Tribunal. The Tribunal vide its judgment dated 15.09.2021 set aside the impugned order and the appellant was reinstated into service for the purpose of denovo inquiry and the case was remitted to the respondent department for holding proper/regular inquiry regarding the allegations leveled against him. The issue of back benefits was subject to the outcome of denovo inquiry. In pursuance of that order, the respondents reinstated the appellant and a denovo inquiry was initiated against him. Charge sheet



available with the reply stated the following irregularities/illegality committed by the appellant:-

- a) Guilty of misconduct.
- b) Guilty of corruption.
- c) Concealing of facts.
- d) Fraudulently activities.

A simple perusal of the irregularities/illegality mentioned above showed that the allegations leveled against the appellant were not specific in nature as the misconduct and corruption had not been clearly defined/specified by the competent authority. Moreover, the facts concealed by the appellant had not been also indicated nor were the fraudulent activities identified/highlighted by the competent authority. It was further noted that the charge sheet as well as statement of allegations did not mention the name of the competent authority who was issuing it. Two inquiries were made available by the respondents with their reply, one conducted by Muhammad Ashfaq Khan Jadoon, , DEO (Male) Battagram and the other by a committee comprising of Sultan Room Qureshi, Principal GHSS Ranolia, Furqan I/C Principal GHSS Chakai and Abdul Haq, I/C Deputy District Education Officer (Male) Kohistan Lower. In the inquiry conducted by Muhammad Ashfaq Khan Jadoon in the light of charge sheet and statement of allegations issued on 12.10.2021, certain points/questions had been raised by the Inquiry Officer. The Inquiry Officer highlighted the competency of the DCO whether he was competent or not. Instead of addressing the points/questions raised by the Inquiry Officer, the competent authority entrusted another denovo inquiry to the Inquiry Committee comprising of the officers which also gave more or less the





same findings. The order impugned before the Tribunal showed that the competent authority did not agree with the recommendations of both the inquiries and instead withdrew order of reinstatement of the appellant with immediate effect and kept the previous order of removal from service intact.

7. In the light of inconclusive inquiries, how could the competent authority arrive at any decision as he did while issuing the impugned order? Moreover, he also did not give any reason of his disagreement with the inquiry reports and the reinstatement order of the appellant. In view of the foregoing it is difficult for this Tribunal to arrive at an informed decision.

8. In the light of the above discussion, we refer the matter back to the respondent department with the direction to frame precise charges and conduct inquiry in the light of rules by fully associating the appellant in the entire process. The appellant is reinstated into service for the purpose of inquiry. The entire process should be completed within 60 days of the receipt of copy of this judgment. The issue of back benefits is subject to the outcome of inquiry. Cost shall follow the event. Consign.

9. *Pronounced in open court at camp court, Abbottabad and given under our hands and seal of the Tribunal this 24<sup>th</sup> day of July, 2024.*

  
(FAREEHA PAUL)  
Member (E)  
(Camp Court, Abbottabad)


  
(RASHIDA BANO)  
Member (J)  
(Camp Court, Abbottabad)


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24<sup>th</sup> July, 2024 01. Mr. Muhammad Arif Jan, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, we refer the matter back to the respondent department with the direction to frame precise charges and conduct inquiry in the light of rules by fully associating the appellant in the entire process. The appellant is reinstated into service for the purpose of inquiry. The entire process should be completed within 60 days of the receipt of copy of this judgment. The issue of back benefits is subject to the outcome of inquiry. Cost shall follow the event. Consign.

03. *Pronounced in open court at camp court, Abbottabad and given under our hands and seal of the Tribunal this 24<sup>th</sup> day of July, 2024.*

  
(FAREEHA PAUL)  
Member (E)  
(Camp Court, Abbottabad)

  
(RASHIDA BANO)  
Member (J)  
(Camp Court, Abbottabad)

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