


resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of audi alteram partem was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010-PLD SC 483.

10. For what has been discussed above, we are unison to reinstate appellant for the purpose of cross examination upon complainant Kifayatullah. Respondents are directed to conduct a fresh inquiry after cross examination upon the Kifayatullah within 60 days of receipt of this order. Cost shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 29th day of May, 2024.*


(Fateeha Paul)
Member (E)


(Rashida Bano)
Member (J)

established from cross examination upon the complainant which was not done in this case.

8. Although appellant mentioned in his reply to explanation, reply to charge sheet that he used to obey his order of immediate boss and ex-judicial officer used to talk on his cell phone, but to test the genuineness of the allegation and mens rea of the appellant cross examination upon the Kifayatullah is most relevant and necessary. Moreover complaint was filed against the ex-judicial officer who allegedly for gains/benefits talk with the complainant and not against the appellant who being driver is not in a position to compel his boss to talk or deal with the litigants. During proceeding of inquiry against the ex-judicial officer disciplinary proceeding against the appellant was recommended which leads to his dismissal from service. Appellant was awarded major punishment of dismissal from service. As per verdict of superior court

9. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure,



upon the appellant .Mr. Muhammad Asghar Ali Senior Civil Judge (Admn) Lakki Marwat was appointed as enquiry officer in order to probe the charges. Appellant submitted his reply to the charge sheet coupled with statement of allegations before the inquiry officer on 18.09.2019. An enquiry was conducted against the appellant by the enquiry officer wherein it was categorically mentioned that allegation of taking money from the complainant could not be proved. Thereafter, show cause notice was issued to the appellant which was also replied by him wherein the appellant once again refuted the charges and clarified his position. Appellant was dismissed from service with immediate effect vide impugned notification dated 06.07.2020 by the respondents.

7. Perusal of charge sheet reveals that, charge against the appellant was that he acted as intermediary/agent between the litigant and ex-judicial officer Mr. Nisar Kamal and ex-judicial officer used his cell phone number for conversation with litigant's complaints against the ex-judicial officer produced audio recordings before Peshawar High Court from which the factum of appellant to act as intermediary is established one Kifayat ullah was complainant who filed complaint against ex-judicial officer in Peshawar High Court. He appeared before inquiry officer who although recorded his examination of chief on 11.02.2020 but despite so many opportunities he did not bother to attend the inquiry for cross examination despite so many opportunities for establishing misconduct of the appellant and his involvement as intermediary between litigant and ex-judicial officer which could only be



further argued that it was incumbent upon the competent authority to verify the cell phone from the relevant mobile operator in order to streamline the allegations against the appellant. He further argued that no regular inquiry was conducted in the matter rather fact finding inquiry was conducted. He submitted that no opportunity of personal hearing was afforded to the appellant and he was condemned unheard. Lastly, he submitted that wrong done by the other, cannot be attributed to the appellant because nothing erroneous was ever done by the appellant. He requested that instant appeal might be accepted as prayed for.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law/rules and the allegation leveled against the appellant were correct/true and duly established during inquiry proceedings. He further contended that inquiry was conducted by the inquiry officer in accordance with the law and it was established that the appellant acted as an agent on behalf of Ex-Judicial Officer and admittedly received things on his behalf from the complainant, namely, Kifayatullah. Moreover, the audio recordings and all conversations speak volumes about the unreasonable and unfair attachment of the appellant with the Ex-Judicial Officer.

6. Perusal of record reveals that appellant was performing his duties as Driver with Additional District & Session Judge-III, Lakki Marwat, when he received an explanation letter dated 14.09.2019. Appellant submitted his reply dated 19.09.2019 wherein he explained his position regarding the allegations. On 12.10.2019 a charge sheet coupled with statement of allegations was served



“On acceptance of this service appeal, the impugned dismissal order dated 06.07.2020 be set aside as being harsh, discriminatory, illegal and unlawful and appellant be reinstated in service appeal with all back benefits with such other relief as may deem fit in the circumstances of the case may also be granted.”

2. Brief facts of the case, as given in the memorandum of appeal are that appellant was performing duty as Driver with Additional District & Judge-III, Lakki Marwat. During service, charge sheet alongwith statement of allegation was served upon the appellant to which he replied and all the negated allegations. Thereafter, show cause notice was issued which was also reply by him wherein he again refuted the allegations. Respondents vide impugned notification dated 06.07.2020 dismissed the appellant from service. Feeling aggrieved, he filed departmental appeal on 18.07.2020, which was not responded, hence the present service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that he has not been treated in accordance with law and rules. He further argued that the impugned order passed by the respondents is illegal, unlawful, void, is against the principle of natural justice, hence liable to be set aside. He further argued that the procedure adopted by the enquiry officer as well as the authority is totally defective and unlawful under the (Efficiency & Disciplinary) Rules, 2011. He



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 12791/2020

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

Gul Tiaz, Ex-Driver, District Courts, Lakki Marwat R/o Baz Kalay, Srail
Norang, Lakki Marwat.

... (Appellant)

VERSUS

1. Hon'ble Administrative Judge, Peshawar High Court, Peshawar, through Registrar, Peshawar High Court, Peshawar
2. District & Sessions Judge, Lakki Marwat.
3. Registrar, Peshawar High Court, Peshawar.

... (Respondents)

Bilal Ahmad Kakazai
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....26.10.2020
Date of Hearing.....29.05.2024
Date of Decision.....29.05.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

