

05th March, 2024

1. Mr. Umar Farooq Mohmand, Advocate for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

2. Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments.

Adjourned. To come up for arguments on 06.05.2024 before the D.B at Camp Court Swat. Parcha Peshi given to the parties.



(Salah-ud-Din)
Member (J)
Camp Court Swat



(Kalim Arshad Khan)
Chairman
Camp Court Swat

SCANNED
KPST
Peshawar

Naeem Amin

06.05.2024 01. Counsel for the appellant present. Mr. Umair Azam, Additional AG for the respondents present.

02. Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Absolute last chance is given for arguments, failing which no other opportunity will be granted and the case will be decided without the arguments. To come up for arguments on 03.06.2024 before the D.B at camp court, Swat. PP given to the parties.



(Fareeha Paul)
Member(E)
Camp Court, Swat.



(Rashida Bano)
Member(E)
Camp Court Swat

SCANNED
KPST
Peshawar


Fazle Subhan, P.S


03rd June, 2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present.

2. Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 02.09.2024 before the D.B at camp court Swat. P.P given to the parties.

SCANNED
KIPST
Peshawar


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)
Camp Court Swat

Kamranullah

S.A #.1891/2022

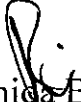
ORDER

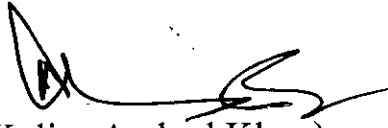
2nd Sep. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Heard.

2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed with costs. Consign.

3. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 2nd day of September, 2024.*


(Rashida Bano)
Member (J)
Camp Court, Swat

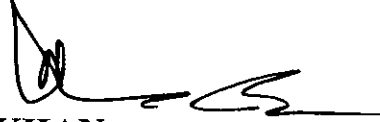

(Kalim Arshad Khan)
Chairman
Camp Court, Swat

Mutazem Shah

Service Appeal No.1891/2022 titled "Usman Khan Vs. The Secretary Food, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

8. In view of the above, instant service appeal is dismissed with costs. Consign.

9. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 2nd day of September, 2024.*



KALIM ARSHAD KHAN

Chairman
Camp Court, Swat



RASHIDA BANO

Member (Judicial)
Camp Court, Swat

Mutazem Shah

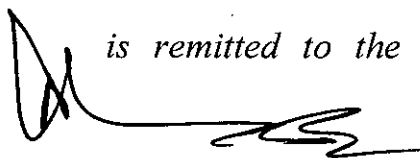
conduct de-novo inquiry within 90 days of the receipt of this judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. The issue of back benefits shall be subject to the outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room."

6. In the said judgment, the Tribunal had directed for conducting de-novo inquiry, as there were some lacunas in the order dated 21.04.2015. Accordingly, the respondents conducted de-novo inquiry by fulfilling the formalities, as directed by the Tribunal, issued the impugned order dated 01.09.2022 and converted major penalty into minor penalty of stoppage of three annual increments for a period of three years. During the inquiry, the appellant was not cross examined but he was provided ample opportunity of participation and defence. The inquiry proceedings do not suffer from any defect.

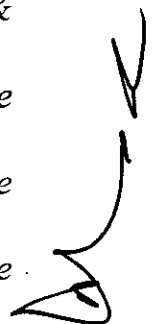
7. As the respondents have issued show cause notice to the appellant on 25.08.2022 and conducted de-novo inquiry, wherein, inquiry officer, after conducting inquiry, has given his recommendations for imposing the impugned penalty. Therefore, the impugned minor penalty of stoppage of three annual increments for three years and treating intervening period as extraordinary leave, suits to the circumstances of the case.

dispensing with the inquiry, failed to show any such reasons. The respondents have very candidly violated the set norms and rules and conducted the proceedings in an authoritarian manner. We have observed that the appellant was kept deprived of affording appropriate opportunity of defense. No regular inquiry was conducted as is required under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. It is a well settled legal proposition duly supported by numerous judgments of the Apex Court that for imposition of major penalty, regular inquiry is a must. We smack malafide on the part of respondents as no inquiry was conducted, no charge sheet with statement of allegations were issued and no evidence was recorded. The case is still lying in the Anti-Corruption Court which has not been decided so far but this aspect of the issue was also not taken care of. The trial is still pending and the appellant's guilt has not yet been proved.

7. The preceding discussion vividly transpires that the appellant was not treated in accordance with law. As such, the instant service appeal is partially accepted. Appellant is reinstated into service. Case is remitted to the Department with direction to

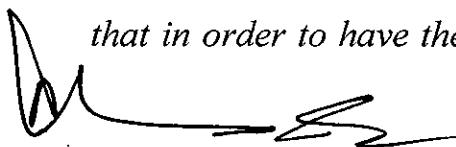


wheat, Mr. Arshid Hussain, Assistant Food Controller, Mastuj and Mr. Riaz Ahmad, Food Grain Inspector were appointed to conduct physical verification of wheat at PR Centre Boni and Kushum with direction to submit authentic report regarding stock of wheat and other dead articles. One Riaz Ahmad Food Grain Supervisor/Incharge PR Center Mulkoh was directed to take over the charge of PR Centers Booni and Kushum from appellant in addition to his own vide order dated 02.10.2014. The present appellant then submitted an application to the Director Food for further posting but to no avail and it was on 06.11.2014 when the competent authority dispensed with the inquiry and directly served him with a show cause notice. From the above, it is evident that the competent authority while invoking jurisdiction of Rule-5 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 dispensed with the inquiry and directly served him with a show cause notice dated 06.11.2014. Rule-5(1) (a) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provides that reasons are required to be recorded in writing in case the inquiry is dispensed with but the respondents while



21.04.2015, he was removed from service, however, he preferred a departmental appeal which was also turned. Therefore, the appellant approached this Tribunal by filing Service Appeal No.1029/2016. The Tribunal vide its judgment dated 26.01.2022, decided the case of the appellant in the following manner:

"6. From the record, it is evident that appellant Usman Khan was appointed as Food Grain Supervisor (BS-06) vide Director Food Khyber Pakhtunkhwa office order dated 24.11.2008 in Food Department and initially was posted in the office of District Food Controller, Chitral. The District Food Controller, Chitral reported vide letter dated 10.06.2014 reported the matter that during physical verification carried out in the current financial year, a quantity of 789 bags wheat valuing Rs.2761500/- was short detected against appellant and the Director Food was apprised by the District Food Controller, Chitral to forward the case to Director Anti-Corruption Establishment Khyber Pakhtunkhwa, Peshawar for further necessary action. The appellant was also directed vide letter No.1553 dated 06.06.2014 to deposit Government dues within a week time. It merits a mention here that in order to have the factual position of stock of



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case, as per averments of appeal, are that appellant was initially appointed as Food Grain Supervisor (BPS-06) vide order dated 24.11.2008; that vide order dated 21.04.2015, he was removed from service by the respondents; that feeling aggrieved filed departmental appeal followed by Service Appeal No.1029/2016; that this Tribunal vide judgment dated 26.01.2022, set aside the impugned order and reinstated the appellant for the purpose of de-novo inquiry; that after issuing show cause notice and conducting de-novo inquiry, vide impugned order dated 01.09.2022, minor penalty of stoppage of three annual increments for the period of three years; that feeling aggrieved of the impugned order, he filed departmental appeal but the same was rejected on 17.10.2022, therefore, he filed the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.

3. We have heard learned counsel for the appellant, learned counsel for private respondent and learned District Attorney for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney, for respondents, controverted the same by supporting the impugned order.

5. Perusal of record reveals that appellant was serving in the Food Department as Food Grain Supervisor. Vide order dated

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR
AT CAMP COURT, SWAT

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
RASHIDA BANO ...MEMBER (Judicial)

Service Appeal No.1891/2022

Date of presentation of appeal.....07.12.2022
Dates of Hearing.....02.09.2024
Date of Decision.....02.09.2024

Mr. Usman Khan, Food Grain Supervisor (BPS-17), District Food Controller Office, District Upper Chitral.
.....(*Appellant*)

Versus

1. **The Secretary Food**, Government of Khyber Pakhtunkhwa, Civil Secretariat, Khyber Pakhtunkhwa Peshawar.
2. **The Director Food**, Khyber Pakhtunkhwa, Peshawar.
3. **The District Food Controller**, Chitral Lower and Upper
.....(*Respondents*)

Present:

Mr. Umar Farooq Mohmand, Advocate.....For the appellant
Mr. Muhammad Jan, District AttorneyFor respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 01.09.2022 WHEREBY MINOR PENALTY OF STOPPAGE OF THREE ANNUAL INCREMENT FOR A PERIOD OF THREE YEARS WAS IMPOSED UPON THE APPELLANT AND ALSO TREATED THE INTERVENING PERIOD AS LEAVE WITHOUT PAY AND AGAINST THE APPELLATE ORDER DATED 17.10.2022 (COMMUNICATED ON 07.11.2022) WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.

