

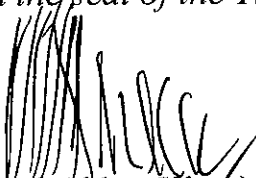
Due


to public Holiday the case
is adjourned to 5/9/2024. ~~Ret~~ Reader

ORDER

05th Sept, 2024

1. Appellant alongwith his counsel present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the Notification dated 31/08/2021 to the extent of appellant is set-aside and the matter is remitted back to the department with the direction to the respondents to conduct a de-novo inquiry in line with legal and procedural mandates, ensuring the appellant 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 03 months from the date of receipt of copy of this judgment. The issue of back benefits, if any, 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 05 day of September, 2024.*



(Muhammad Akbar Khan)
Member (Executive)



(Aurangzeb Khattak) 05/9/2024
Member (Judicial)

Service Appeal No 7938/2021 titled "Muhammad Ismail versus Govt. of Khyber Pakhtunkhwa through chief Secretary, Civil Secretariat, Peshawar and others", decided on 05.09.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

department with the direction to the respondents to conduct a de-novo inquiry in line with legal and procedural mandates, ensuring the appellant 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 03 months from the date of receipt of copy of this judgment. The issue of back benefits, if any, 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 05day of September, 2024.*


AURANGZEB KHATTAK
Member (Judicial)


MUHAMMAD AKBAR KHAN
Member (Executive)

Naeem Amin

these allegations, an inquiry was initiated. The inquiry resulted in a recommendation for penalties, leading to a Notification dated 31/08/2021, from the Chief Engineer (South) of the PHE Department, imposing a recovery of Rs. 685,752/- and withholding of two annual increments for two years. After a careful examination of the circumstances surrounding the issuance of the charge sheet by the Secretary Public Health Engineering Department, it has become evident that significant questions remain regarding the legitimacy of the disciplinary proceedings initiated against the appellant. The absence of actionable charges from the Deputy Commissioner of Karak, who was the rightful custodian of the project's funds, points to potential flaws in the chain of command and authority essential for initiating such actions. Furthermore, the appellant has provided evidence affirming that all contractor claims were diligently scrutinized and validated in accordance with legally sanctioned procedures, reinforcing the argument for meticulous oversight and adherence to quality standards throughout the project. Furthermore, the lack of a final show-cause notice adds to the procedural deficiencies in the disciplinary process. This Tribunal noted that discrepancies in records could suggest capriciousness rather than justified disciplinary measures. Given the complexities of procedural adherence, factual deliberations on the issue in question, the case is remanded to the respondent authorities for a comprehensive de-novo inquiry against the appellant. They are further directed to ensure the appellant is accorded all procedural rights.

7. In view of the above, the Notification dated 31/08/2021 to the extent of appellant is set-aside and the matter is remitted back to the

05/09/2024

the de-novo inquiry also provided all accused officials the chance to present their defense. He also argued that after the detailed inquiry, it was determined that a total amount of Rs. 6,857,515/- needed to be recovered from the officials to prevent losses to the public exchequer and the appellant share of this recoverable amount is Rs. 685,752/-. In the last he argued that all the legal and coal formalities were fulfilled, therefore, the appeal in hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have perused the record.

6. The perusal of case file would show that the appellant served as a Sub-Engineer in the Public Health Engineering Department (PHE) in Karak from 2013 to 2019, during which time he worked in various sub-divisions under the Divisional Officer. In the fiscal years 2015-2016, a project titled "Developmental Schemes out of Production Bonus Funds" was sanctioned, entailing six different water supply schemes with an administrative approval amount of 16.800 million and a technical sanction of 17.016 million, funded through the Production Bonus (Gas Royalty District Karak). The project was awarded to Mr. Habib-ur-Rehman, a government contractor. As per standard protocols, the Deputy Commissioner of Karak served as the principal accounting officer responsible for administrative discipline and financial control concerning the utilization of the district funds. In November 2020, the appellant received a show cause notice outlining allegations comprising inefficiency, misconduct, and corruption. Following his detailed response on December 4, 2020, which refuted

05/09/2024

discrepancies and that the second running bill, which was allegedly retrenched, was not prepared by him. He next argued that no financial loss to the government exchequer was incurred, as the project was still ongoing and the existing funds would allow for necessary recoveries from future contractor bills. He further argued that the appellant actively supervised the project implementation, ensuring compliance with quality standards. He also argued that the inquiry proceedings were challenged for lacking proper procedural adherence and that the disciplinary actions seemed to stem from personal grievances by the XEN, who acted without consultation with the Deputy Commissioner. In the last he argued that the Notification dated 31/08/2021 to the extent of appellant may be set-aside.

4. On the other hand, learned Assistant Advocate General for the respondents contended that the appellant was issued a charge sheet along with a statement of allegations outlining specific acts of omission, commission, and irregularities. He next contended that an inquiry committee was constituted to conduct proceedings as stipulated by the Khyber Pakhtunkhwa (E&D) Rules 2011. He further contended that on the basis of findings of the inquiry committee, show cause notice was issued to the appellant and others, to which the appellant submitted his reply, however the same was found unsatisfactory. He also contended that following the initial inquiry and upon the Competent Authority approval, a de novo inquiry was ordered. He next argued that a fresh charge sheet was issued to the appellant and others and another inquiry committee was constituted, comprising Mr. Mehmood Aslam and Eng. Naveed Khan. He further argued that

Production Bonus (Gas Royalty District Karak). The Deputy Commissioner of Karak, as the principal accounting officer, technically administered these funds. The appellant was issued a show cause notice on 30/11/2020, wherein he was charged of inefficiency, misconduct, and corruption. After submitting his defense via a detailed reply, an inquiry was initiated, which culminated into penalty of recovery of Rs. 685,752/- as well as withholding of two annual increments from the appellant for a period of two-year vide Notification dated 31/08/2021. Feeling aggrieved, the appellant filed 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.

*Amir
05/09/2024*

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.
3. The learned counsel for the appellant contended that charge sheet was issued to the appellant by the Secretary Public Health Engineering Department, whereas the Deputy Commissioner Karak, the actual custodian of the funds, did not levy any charges against the appellant, which indicates that the allegations were initiated without proper authority. He next contended that the allegations of inefficiency and misconduct against the appellant were baseless as the contractor's claims were thoroughly examined and validated by the Sub Divisional Officer (SDO) and the Accountant of the divisional office, hence all the payments adhered strictly to the approved Administrative Approval/Technical Sanction (AA/TS). He further contended that the procedures followed in clearing the contractor's claims, affirming that the first running bill, prepared by the appellant, was cleared with no

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
MUHAMMAD AKBAR KHAN... MEMBER (Executive)

Service Appeal No.7938/2021

Date of presentation of Appeal.....28.12.2021
Date of Hearing.....05.09.2024
Date of Decision.....05.09.2024

Muhammad Ismail, Sub-Engineer, Public Health Engineering
Division Nowshera.**Appellant**

Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa, through Secretary Public Health Engineering Department, Civil Secretariat Peshawar.
3. Executive Engineer Public Health Engineering Department, Nowshera.
4. Superintendent Engineer, Public Health Engineering Circle (PHE Circle), Peshawar.
5. Chief Engineer (South) Public Health Engineering Department, Khyber Pakhtunkhwa, Hayatabad, Peshawar.....(**Respondents**)

Present:

Mr. Muhammad Amin Ayub, Advocate.....For appellant
Mr. Naseer-ud-Din Shah, Assistant Advocate GeneralFor respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The appellant Muhammad Ismail, while serving in the PHE Karak as Sub-Engineer from 2013 to 2019, performed duties in various Water Supply Schemes, including a significant project titled 'Developmental Schemes out of Production Bonus Funds,' administratively approved for a total cost exceeding Rs. 33 million. The project was awarded to Mr. Habib-ur-Rehman, a government contractor, with funds sourced from the

05/09/2024