

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7300/2021

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

Muhammad Shoaib son of Sardar Muhammad Zaman (Chokidar/Class-IV Civil Dispensary Dakkan Tatrila), resident of Dakan Tatrila Nagri Bala District Abbotabad.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa Peshawar.
3. District Health Officer Abbotabad.

... (Respondents)

Mr. Hamayun Khan
Advocate

... For Appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For Respondents

Date of Institution.....13.08.2021

Date of Hearing.....22.07.2024

Date of Decision.....22.07.2024

JUDGMENT

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

“That on acceptance of instant service appeal order dated 23.09. 2019 passed by respondent No.3 may kindly be declared null and void. Against the law and facts which is liable to be set aside.

Any other relief which this honorable tribunal deems fit and



proper in the circumstances of the case may also be granted to the appellant in the best interest of justice and fair play.

2. Through the instant service appeal we intend to dispose of the instant service appeal as well as connected service appeal No. 7301/2021 titled "Mumtaz Khan Vs. Health Department" as in both the appeals common question of law and facts are involved.

3. Brief facts of the case are that appellants were appointed as Chowkidar/Sweeper in the respondent department in year 2008 and since their appointment they performed their duties with full devotion. On 24.12.2018 appellants were transferred from Civil Dispensary DakkanTatrila to Civil Dispensary Kisala Abbottabad. On 26.02.2019 respondent No.3 again transferred the appellants to Type-D Hospital Havelian Abbottabad. On 27.02.2019 respondent No.3 withdrew the order dated 26.02.2019. On 20.04.2019, respondent No.3 directed the appellants to resume duty at Type-D Hospital, Havelian and they were relieved from CD Dakhan Tatrila. Upon the direction of respondent No. 3, they went to Type-D Hospital Havelian for assuming charge, where incharge of the Hospital refused the same. On 23.09.2019, respondent No.3 issued impugned order whereby, appellant were directed to report for duties at Type-D Hospital Havelian, and period of duties w.e.f 08.01.2019 (254 days) was treated extra ordinary leave without pay and stopped one annual increment and also direction was issued for deduction of salary. This order was communicated to the appellant on 30.04.2020. Feeling aggrieved, they filed departmental appeal which was not responded to, hence the present service appeals.

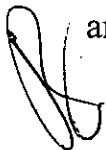


4. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

5. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

6. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

7. Perusal of record reveals that appellants were appointed as Chowkidar and Sweeper in the respondent department in year 2008. On 24.12.2018, appellants were transferred from Civil Dispensary DakhanTatrila to Civil Dispensary Kisala Abbottabad. On 26.02.2019 respondent No.3 again transferred the appellants to Type-D Hospital Havelian Abbottabad. They were awarded penalty of stoppage of one annual increment by treating 254 days i.e absence period as extra ordinary leave without pay alongwith deduction of salary of absence period from 08.01.2019 to 18.09.2019 vide order dated 23.09.2019 the impugned punishment was awarded to the appellant on the basis of inquiry report of Mr. Waheed Zaman Khan, Senior Medical officer incharge Police Hospital Abbotabad received to respondents vide diary No.4186 dated 11.09.2019. Perusal of inquiry report of Dr. Waheed Zaman reveals that it is a fact finding inquiry and no charge sheet and statement of allegation was issued to the appellants nor any chance of





self defence was provided to the them. It is has been held in 2022 SCMR 745 that:

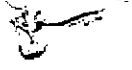
“Regular inquiry and preliminary/fact finding inquiry --- Distinction---Regular inquiry was triggered after issuing show cause notice with statement of allegations and if the reply was not found suitable then inquiry officer was appointed and regular inquiry was commenced (unless dispensed with for some reasons in writing) in which it was obligatory for the inquiry officer to allow evenhanded and fair opportunity to the accused to place his defence and if any witness was examined against him then a fair opportunity should also be afforded to cross-examine the witnesses-- Whereas a discrete or fact finding inquiry was conducted at initial stage but internally to find out whether in the facts and circumstances reported, a proper case of misconduct was made out to initiate disciplinary proceedings.”

8. For what has been discussed above, we are unison to set aside the impugned order and direct the respondents to conduct proper inquiry by issuing charge sheet, statement of allegation and most importantly to provide chance of self-defence to the appellants within sixty days of the receipt of copy of this order. Costs shall follow the event. Consign.

9. *Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal on this 22nd of July, 2024.*


(FAREEHA PAUL)
Member (E)
Camp Court Abbottabad



(RASHIDA BANO)
Member (J)
Camp Court Abbottabad




ORDER

22.07.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to set aside the impugned order and direct the respondents to conduct proper inquiry by issuing charge sheet, statement of allegation and most importantly to provide chance of self-defence to the appellant within sixty days of the receipt of copy of this order. Costs shall follow the event. Consign.
3. *Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal on this 22nd of July, 2024.*


(FAREENA PAUL)
Member (E)
Camp Court Abbottabad


(RASHIDA BANO)
Member (J)
Camp Court Abbottabad