

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR

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

Service Appeal No.11149/2020

Date of presentation of Appeal.....23.09.2020
Date of Hearing.....11.09.2024
Date of Decision.....11.09.2024

Mr. Muhammad Qasim Jamal, Assistant Director Technical (BPS-17), Directorate General Mines and Mineral Khyber Pakhtunkhwa, Peshawar.....(***Appellant***)

Versus

1. **The Government of Khyber Pakhtunkhwa** through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **The Secretary** Mines and Minerals Development Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Director General** Mines and Minerals Development Department, Khyber Pakhtunkhwa, Peshawar.....(***Respondents***)

Service Appeal No.11151/2020

Date of presentation of Appeal.....23.09.2020
Date of Hearing.....11.09.2024
Date of Decision.....11.09.2024

Mr. Kamran Ahmad, Assistant Director (BPS-17), Directorate General Mines and Mineral Khyber Pakhtunkhwa, Peshawar.....(***Appellant***)

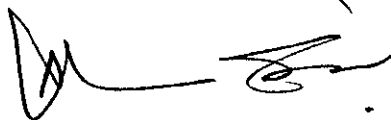
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3. **The Director General** Mines and Minerals Development Department, Khyber Pakhtunkhwa, Peshawar.....(***Respondents***)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellants
Mr. Muhammad Jan, District Attorney.....For respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDERS DATED 04.03.2020 WHEREBY MINOR PENALTY OF



STOPPAGE OF THREE ANNUAL INCREMENTS FOR THREE YEARS HAS BEEN IMPOSED ON THE APPELLANTS AND AGAINST THE APPELLATE ORDERS DATED 24.08.2020 WHEREBY THE DEPARTMENTAL APPEALS OF THE APPELLANTS HAVE BEEN FILED/REJECTED ON NO GOOD GROUNDS.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, the above two appeals, are jointly taken up, as both are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

02. Brief facts of the cases as per averments of the appeals, are that appellants were serving as Assistant Directors in the Mines & Minerals Development Department; that vide order dated 26.07.2019, they were placed suspended which suspension period was further extended vide order dated 05.11.2019; that and inquiry was conducted by the department and vide impugned orders dated 04.03.2020, they were awarded minor penalties of stoppage of annual increments for three years with accumulative effect; that feeling aggrieved, they filed departmental appeals on 29.04.2020, but the same were regretted/filed vide order dated 24.08.2020, hence, the instant service appeals.

03. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies



raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants.

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

05. 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).

06. Record shows that appellants were serving as Assistant Directors in the Mines & Minerals Development Department. For their alleged poor performance, they were placed under suspension for ninety day, which suspension was extended for ninety days. In the meanwhile, show cause notices were issued to them and inquiry was conducted, wherein, the Inquiry Committee held both the appellants guilty of misconduct. Considering the recommendation of the Inquiry Committee, the Competent Authority i.e. Secretary to Government of Khyber Pakhtunkhwa, Mines and Minerals Development Department, vide impugned order dated 04.03.2020, imposed upon the appellants minor penalties of stoppage of increments for three years. Their departmental representations, made against the impugned orders, were also regretted. So, they had no way but to approach this Tribunal.



07. Inquiry has been conducted by the respondents, but the same is bereft of the details as to who had pointed out the alleged misconduct of the appellants. In this regard, no statement of any witness regarding the alleged acts of omission or commission was recorded. Moreover, no record was obtained, nor discussed to justify the recommendation of the Inquiry Committee, therefore, we hold that inquiry was not conducted in accordance with law and rules. The inquiry proceeding is thus full of dents.

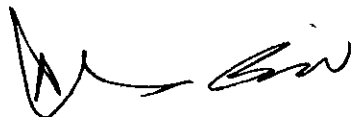
08. The Supreme Court of Pakistan in a case reported as 2023 SCMR 603 titled "*Federal of Pakistan through Chairman Federal Board of Revenue FRB House, Islamabad and others*" held that

"8. The primary objective of conducting departmental inquiry is to grasp whether a clear-cut case of misconduct is made out against the accused or not. The guilt or innocence is founded on the end result of the inquiry. The learned Service Tribunal may observe whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). In a regular inquiry, it is a precondition that an evenhanded and fair opportunity should be provided to the accused and if any witness is examined against him then a fair opportunity C.A.33-K/2018 5 should also be afforded to cross examine the witnesses. In a departmental inquiry on the charges of misconduct, the standard of proof is that of balance of probabilities or preponderance of evidence. Where any authority regulates and performs its affairs under a statute which requires the compliance of the principles of natural justice then it should have been adhered to inflexibly.

12. As a fall back argument, the learned counsel for the appellant insisted that if the learned Tribunal had detected some discrepancy or lacuna in the inquiry



proceedings due to non-recording of evidence or not affording the right of cross examination to the respondent, then the right avenue was to remand the matter to the competent authority to conduct de novo inquiry, rather than granting the relief of reinstatement with conversion of major penalty into minor penalty. In our considerate insight, the remand of a case to the lower fora cannot be claimed as a vested right, but it is always the province of the Court or Tribunal to first figure out whether any material error or defect was committed by the Court in the order or judgment which really and adversely affected the corpus of the case and caused serious prejudice or injustice to the party requesting remand on some essential questions of law or fact which was ignored by the courts below while deciding the lis. In our analysis, we have not found any error on the part of the learned Tribunal, rather it is the inquiry officer who had committed grave procedural errors. We are sanguine that the inquiry officer cannot be expected to be trained as a judicial officer, but when the inquiry is conducted under some statute or enabling rules, then it is the onerous duty and responsibility of the C.A.33-K/2018 9 inquiry officer that he should be conversant with the applicable rules before accepting and performing the task of an inquiry officer and should also observe the principle of natural justice and due process of law. Due to the defective inquiry (deliberately or undeliberately), the ultimate sufferer would be the department which initiated the departmental proceedings on the charges of misconduct. Sometimes by dint of patent faults, blunders and/or procedural lapses, the accused is exonerated with the blessing of benefit of doubt. While conducting the inquiry, the procedure and parameters provided under E&D Rules should have been followed. The purpose of remand is not to provide an opportunity to rectify the lacunas or deliberate omissions or violations in the inquiry despite availability of unequivocal rules enumerating the procedure for guidance of inquiry officer. However, we feel it appropriate to note down that the matter of a departmental inquiry should not be conducted in a cursory or perfunctory manner and in order to improvise the norms and standards of departmental inquiry under the Civil Servants Act, 1973 and E&D Rules or in other enabling Rules, it would be advantageous that a "Handbook" of inquiry procedure be compiled by the appellant with the excerpts of all




relevant Rules including the rule of natural justice and due process of law enshrined under Article 10-A of the Constitution for the step-by-step help and assistance of inquiry officers or inquiry committees so that in future, they may be well conversant with the precise procedure before embarking on the task of an inquiry and conduct the inquiry proceedings without ambiguities."

09. Therefore, the instant matter could not be remitted for filling the lacunas, when there was no statement of any witness in order to trace out their misconduct, so the circumstances of the case show that the stance of the appellants was correct while the impugned action of the department was not appropriate.

10. In view of the above situation, we are unison on acceptance of this appeal, therefore, set aside the impugned orders dated 04.03.2020. Costs shall follow the event. Copy of this judgment be placed on file of connected appeal. Consign.

11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11th day of September, 2024.*


KALIM ARSHAD KHAN
Chairman


RASHIDA BANO
Member (Judicial)