

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP
COURT SWAT**

Service Appeal No. 976/2019

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR MUHAMMAD AKBAR KHAN... MEMBER (E)

Mr. Hayat Khan, Ex-Lecturer Computer Science, Government Post
Graduate College, District Timergara.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. The secretary to government of Khyber Pakhtunkhwa, Higher Education department, civil secretariat, Khyber Pakhtunkhwa, Peshawar.
3. The Director Higher Education, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Umar Farooq Mohmand
Advocate

... For appellant

Mr. Umair Azam
Additional Advocate General

... For respondents

Date of Institution.....25.07.2019
Date of Hearing.....03.06.2024
Date of Decision.....03.06.2024

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:

“That on acceptance of the instant appeal, the impugned removal Notification dated 28.03.2019 and appellate order dated 24.06.2019 may very kindly be set aside and the respondents may be directed to reinstate the appellant into service with all back benefits. Any other remedy which this



august tribunal deems fit that also be rewarded in favour of the appellant.”

2. Brief facts of the case are that appellant is the employee of the respondent/department and was appointed as Lecturer (BPS-17) on contract basis vide order dated 09.09.2006 and in light of the Khyber Pakhtunkhwa Regularization of Services Act, 2009 the service of the appellant was regularized in 2012. During service, the appellant was served with a show cause notice dated 26.04.2016, wherein allegations of committing misconduct and in-efficiency were leveled upon him. He replied to a show cause notice and denied the allegations leveled against him. Thereafter, respondents imposed major penalty of removal from service upon the appellant vide impugned notification dated 28.03.2019. Feeling aggrieved, he filed departmental appeal, which was rejected, hence the instant service appeal.

3. 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.

4. We have heard learned counsel for the appellants and learned Additional Advocate General for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that appellant was the employee of the respondent department and was appointed as lecturer (BPS-17) on contract basis and in light of the Khyber Pakhtunkhwa Regularization of Services Act, 2009, the

service of the appellant was regularized in 2012. The appellant while performing his duties in the respondent department applied for higher studies of Ph.D in the University of Malakand, but the same was rejected by the respondent No.3 without any reason and clear justification. While performing his duties as Lecturer the appellant was served with a Show Cause Notice dated 26.04.2016 whereupon certain allegations of committing the mis-conduct and in-efficiency were leveled against the appellant.

7. Appellant was departmentally proceeded against on the ground of absence from duty since 01.09.2014 to 31.08.2016 and being irregular and unpunctual towards performance of their duties. Mr. Mansoor Qureshi and Professor Rehmatullah were appointed as Inquiry Officer, who submitted their report, where after appellant was awarded major penalty of removal from service vide impugned order dated 28.03.2019.

8. Perusal of inquiry report reveals that only Principal Professor Nisar Ahmad appeared before them and produces only attested copy of Biometric attendance record on the basis of which inquiry committee held appellant responsible for misconduct without inquiring the matter in accordance with law. Appellant was awarded with major penalty of removal from service with providing chance of self defence, cross examination which is the most important requirement of fair trial and inquiry.

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

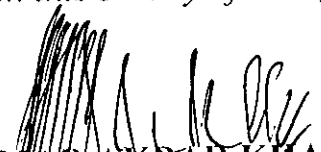



and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In the 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.

In our humble view, no regular inquiry was conducted by the inquiry committee, who only on the basis of Biometric report given their finding, which is violation of rules.

10. For what has been discussed above, we are unison to reinstate the appellant for the purpose of fresh inquiry against the appellant with direction to provide chance of self defence and cross examination upon all concerned who deposed against the appellant including principal, respondents are directed to conclude inquiry within 90 days after receipt of this order. Costs shall follow the event. Consign.


11. *Pronounced in camp court, Swat and given under our hands and seal of the Tribunal on this 3rd day of June, 2024.*



(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court, Swat


(RASHIDA BANO)
Member (J)
Camp Court, Swat

ORDER
03.06.2024

1. Learned counsel for the appellant present. Mr. Umair Azam, learned Additional Advocate General alongwith Mr. Imran, Assistant, for the respondents present.
2. For what has been discussed above, we are unison to reinstate the appellant for the purpose of fresh inquiry against the appellant with direction to provide chance of self defence and cross examination upon all concerned who deposed against the appellant including principal, respondents are directed to conclude inquiry within 90 days after receipt of this order. Costs shall follow the event. Consign.
3. *Pronounced in camp court, Swat and given under our hands and seal of the Tribunal on this 3rd day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court, Swat


(RASHIDA BANO)
Member (J)
Camp Court, Swat

*M.Khan