

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 13584/2020

Date of presentation of Appeal.....04.11.2020
Date of Hearing.....16.09.2024
Date of Decision.....16.09.2024

Habib Ullah S/O Atta Ullah Khan, Ex-Primary School Head Teacher (PSHT) (BPS-15), Government Primary School No. 1, Kulachi, Dera Ismail Khan.....**Appellant**

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male), Dera Ismail Khan.
4. Sub-Divisional Officer (Male), Kulachi, Dera Ismail Khan.
5. District Accounts Officer, Dera Ismail Khan.
.....(**Respondents**)

Present:

Mr. Zia-ur-Rehman Kazi, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The appellant, Habib Ullah, was initially appointed as a Primary School Teacher (BPS-07) on October 31, 1994, later on promoted to Primary School Head Teacher (PSHT) (BPS-15) and was posted at Government Primary School No. 01, Kulachi, Dera Ismail Khan. Disciplinary proceedings against the appellant were initiated following an inquiry led by Mr. Qamar Zaman and Mr. Qaisar Anwar to investigate allegations against him. The

appellant was accused of negligence for allegedly allowing a motorcycle mechanic to conduct business on school grounds, an incident captured in a viral video. Based on the inquiry's findings, a show cause notice was issued to the appellant and despite his written reply, he was compulsorily retired from service vide order dated July 16, 2020. Feeling aggrieved, the appellant filed departmental appeal, which was not responded within the statutory period of 90 days, hence the instant service appeal.

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 the inquiry process was flawed because it was conducted in an ex-parte manner, denying the opportunity to cross-examine witnesses or fully participate in the proceedings. He next contended that the allegations against the appellant were baseless and unfounded, as no credible evidence was presented or verified during the inquiry that could substantiate the charges. He further contended that the inquiry and subsequent disciplinary action were politically motivated and conducted with malicious intention, rendering the proceedings tainted and predetermined against the appellant. He next argued that the appellant has 26 years of unblemished service to his credit and that the charges, even if assumed to be valid, do not warrant the harsh penalty of compulsory retirement. He further argued that neither a departmental representative was appointed against the appellant nor was the alleged creator of the viral video examined during the inquiry proceedings, therefore, the impugned action against the appellant is harsh and liable to be declared as illegal. In the last, he argued that the appeal in

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hand may be accepted by reinstating the appellant into service with all back benefits.

4. On the other hand, the learned Deputy District Attorney for the respondents contended that the inquiry against the appellant was conducted in accordance with Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and that all the legal and codal formalities were duly followed. He next contended that the presence of the motorcycle workshop in the school was a clear violation of government policies, justifying serious disciplinary measures. He further argued that the inquiry was not ex-parte and that the appellant was given opportunity of personal hearing, however, he failed to prove his innocence regarding the charges. He also contended that the appellant was issued a show cause notice, however, his reply was found unsatisfactory, therefore, the penalty of compulsory retirement from service was rightly imposed upon him. In the last, he argued that the appeal at hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The perusal of the case file reveals that the appellant was appointed as a Primary School Teacher (BPS-07) on October 31, 1994, subsequently promoted to the post of Primary School Head Teacher (BPS-15) and was posted at Government Primary School No. 01 Kulachi, Dera Ismail Khan. The appellant was suspended from service on June 14, 2020, based on allegations related to misconduct as the custodian of GPS No. 01, after a video surfaced on social media showing a motorcycle workshop operating within the school premises. An inquiry was subsequently initiated to

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investigate the allegations against the staff of the school as well as SDEO, Kulachi, Dera Ismail Khan. On the same day of suspension, an inquiry committee was constituted, tasked with conducting a fact-finding inquiry. The committee recorded statements of the appellant, staff members of GPS No. 01 and others, including the individual who uploaded the video of the alleged incident. The evidence and statements presented during the inquiry reveal conflicting accounts regarding the involvement of the appellant and the legitimacy of the allegations. While Chowkidar Jehanzeb and Muhammad Faridon Khan witnesses corroborated the assertion that the appellant permitted a motorcycle mechanic to use school facilities, others refuted these claims, suggesting inconsistencies in statements. The record further reveals that inquiry proceedings against the appellant were conducted under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The procedure to be followed by inquiry officer or inquiry committee has been laid down in sub-rule 4 of rule-11 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, which provides that statements of witnesses and departmental representative(s), if possible, will be recorded in the presence of appellant and vice versa. However, in this case, the inquiry process lacked fairness and transparency as the appellant was not allowed to cross-examine witnesses nor was he present during critical stages of the inquiry. The failure to provide copies of statements or the inquiry report meant that the appellant was deprived of fundamental rights to a fair hearing and representation. The right to a fair inquiry is a cornerstone of natural justice, particularly when a civil servant is facing severe disciplinary actions. The inquiry committee report and related

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documentation do not provide any evidence that the statements of witnesses were recorded in the presence of the appellant. The appellant was denied the fundamental right of being present during the examination of witnesses, a procedural safeguard essential to ensure fairness in administrative proceedings. The opportunity of cross-examination is a crucial component in any inquiry as it allows the accused to challenge the credibility and reliability of the evidence presented. The Rules explicitly require that the appellant must be allowed to cross-examine witnesses. In this case, the records indicate that the appellant did not have the chance to question the witnesses, rendering the evidence elicited during the inquiry as potentially unreliable and inadmissible. The failure to provide the essential rights of presence and cross-examination constitutes a breach of the principles of natural justice. Consequently, the evidence gathered against the appellant cannot be upheld as valid for the imposition of any penalties.

7. In light of the above findings and the applicable legal framework, it is concluded that the inquiry conducted against the appellant did not comply with the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. As such, any evidence collected during the inquiry, which was conducted without affording the appellant the necessary opportunities of presence and cross-examination, cannot be legally considered as a basis for imposing any disciplinary penalty. Furthermore, Supreme Court of Pakistan in its judgment reported as 2004 SCMR 316 has emphasized that any procedure leading to a major penalty necessitates adherence to principles of natural justice, including the right to a personal hearing and effective opportunities for defense. In light of


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Service Appeal No.13584/2020 titled "Habib Ullah versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others", decided on 16.09.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Miss. Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

the irregularities stemming from the inquiry process, the lack of opportunities afforded to the appellant for a comprehensive defense and considering the substantial service of the appellant over 26 years, the decision of compulsorily retirement deemed excessively harsh.

8. Consequently, the impugned order dated July 16, 2020 is set aside. The appellant is reinstated in service and the matter is remanded back to the department for conducting a regular inquiry in full compliance with the principles of natural justice and procedural fairness as articulated. The inquiry shall be completed within a period of two (02) months from the date of receipt of copy of this judgment. The issue of back benefits of the appellant remains contingent upon the findings of the de novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 16 day of September, 2024.*

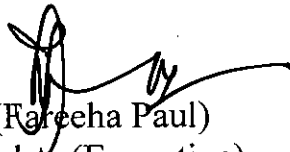

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Member (Judicial)

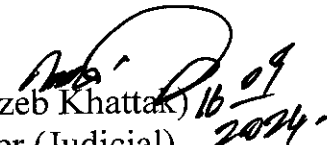

FAREEHA PAUL
Member (Executive)

ORDER

16th Sept, 2024

1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the impugned order dated July 16, 2020 is set aside. The appellant is reinstated in service and the matter is remanded back to the department for conducting a regular inquiry in full compliance with the principles of natural justice and procedural fairness as articulated. The inquiry shall be completed within a period of two (02) months from the date of receipt of copy of this judgment. The issue of back benefits of the appellant remains contingent upon the findings of the 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 16th day of September, 2024.*


(Fareeha Paul)
Member (Executive)


(Aurangzeb Khattak) 16-09-2024
Member (Judicial)