

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.2281/2023

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Mr. Izhar Ullah, Ex-Patwari Halqa Regi Lalma S/o Israr Khan R/o Katla Khel
Suleman, Badha Bir, Peshawar.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar at Civil Secretariat, Peshawar.
2. Commissioner, Peshawar Division, Peshawar.
3. Deputy Commissioner, Peshawar.
4. Additional Deputy Commissioner, Peshawar.
5. Assistant Commissioner (AC) Hassan Khel, Peshawar.

... (Respondents)

Muhammad Adeel Butt
Advocate

...

For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

...

For respondents

Date of Institution.....16.10.2023
Date of Hearing.....12.09.2024
Date of Decision.....12.09.2024

CONSOLIDATED 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:



“It is therefore, most humbly prayed that on the acceptance of appeal both the impugned orders may pleased be set aside and the appellants, may please be reinstated in to service with all back and consequential benefits. Any other remedy deems fit may also please be granted under the circumstances.”

2. Through this single judgment we intend to dispose of instant service appeal as well as connected **Service Appeal No. 2282/2023** titled **“Raj Wali Vs. SMBR”** as in both the appeals common question of law and facts are involved.
3. The brief facts of the cases, as articulated in the memoranda of appeals, indicate that the appellants served as Patwari in the respondent department. The appellants were dismissed from service on 21.06.2023 by respondent No. 3, without conducting a formal inquiry as mandated by the Efficiency and Discipline (E&D) Rules, 2011, based solely on an anonymous complaint. Feeling aggrieved by the impugned order, the appellants filed departmental appeals on 20.07.2023; however, these appeals were rejected by respondent No. 2 without providing any cogent reasons, which were communicated to the appellants on 13.10.2023. Consequently, the appellants have initiated the current service appeals.
4. On receipt of the appeals and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants.
5. We have heard learned counsels for the appellants and learned Deputy District Attorney for the respondents.



6. The learned counsels for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals, while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

7. Perusal of the record reveals that the appellants served as Patwari in the respondent department and major penalty of dismissal from service was awarded to the appellants by respondent No.3 vide impugned order dated 21.06.2023. Perusal of impugned order reveals that regular inquiry was dispensed without giving/mentioning any reasons for its dispensing with by respondent No.3 and appellants were awarded major penalty of dismissal from service on the basis of fact summary, which is against the rules and laws.

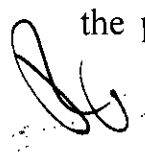
8. Perusal of record further reveals that it is fact finding summary inquiry, as no charge sheet or statement of allegation was given nor any chance of cross examination upon complaint was provided to the appellants. It has been held in 2022 SCMR 745 that:

*“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."

No charge sheet or statement of allegations was issued to the appellants by the competent authority beside no chance of defense i.e. cross-examination was afforded to the appellants which is against the rules and verdicts of Supreme Court.

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.

10. For what has been discussed above, we are unison to set aside the impugned orders with direction to conduct proper regular inquiry by providing proper opportunity of defense i.e. cross examination to the appellants to defend themselves within 90 days after receipt of this order. The appellants are reinstated for the purpose of inquiry. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of September, 2024.*




KALIM ARSHAD KHAN
CHAIRMAN



(RASHIDA BANO)
MEMBER (J)

Post Script
09th August, 2024


Later on, Mr. Muhammad Adeel Butt, Advocate for the appellant put appearance and requested for short adjournment. Mr. Muhammad Jan, District Attorney also put appearance on behalf of the respondents. Therefore, in presence of the both the parties, the date given as 14.10.2024 was changed to 12.09.2024.


(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

ORDER

- 12.09.2024
1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Muhammad Hamza, District Kanungu and Faqir Khan, Superintendent, for the respondents present.
 2. Vide our detailed judgment of today placed on file, we are unison to set aside the impugned orders with direction to conduct proper regular inquiry by providing proper opportunity of defense i.e. cross examination to the appellants to defend themselves within 90 days after receipt of this order. The appellants are reinstated for the purpose of inquiry. Costs shall follow the event. Consign.
 3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of September, 2024.*


KALIM ARSHAD KHAN
CHAIRMAN


(RASHIDA BANO)
MEMBER (J)

*M.Khan