

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

Service Appeal No.12445/2020

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

**Mr. Misal Khan, Ex-Beldar, O/O the Executive Engineer, Malakand
Irrigation Division, Malakand.**

.... (*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Irrigation Department, Civil Secretariat, Peshawar.
2. The Chief Engineer (North), Irrigation Department, Peshawar.
3. The Executive Engineer, Malakand Irrigation Division, Malakand.

... (*Respondents*)

Umar Farooq Mohmand
Advocate

... For appellant

Mr. Umair Azam
Additional Advocate General

... For respondents

Date of Institution.....08.09.2020
Date of Hearing.....04.09.2024
Date of Decision.....04.09.2024

JUDGMENT

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

“On acceptance of this service appeal, the impugned order dated 29.04.2020 may very kindly be set aside and the

appellant may be reinstated into service with all back



benefits. Any other remedy which this August Tribunal deems fit that may also be awarded in favour of the appellant.”

3. Brief facts of the case are that appellant was appointed as Beldars vide order dated 31.10.2011 and subsequently vide impugned order dated 04.11.2011, appointment order of the appellant was withdrawn. Feeling aggrieved, appellant filed departmental appeal followed by filing writ petition No. 767-M/2016 before the Peshawar High Court, Mingora Bench which was decided alongwith other connected writ petitions vide consolidated judgment dated 11.12.2018. Appellant after obtaining the judgment submitted the same before concerned authority for implementation but the authority filed CPLA which was also disposed of vide judgment dated 10.03.2020. On 02.02.2020, respondents issued a show notice, which was replied by the appellant, thereafter respondent vide impugned order dated 29.04.2020 terminated the appellant from service. Feeling aggrieved, he filed departmental appeal, which was not responded, 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. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned order passed by the respondents is against the law, facts, norms of natural justice, hence liable to be set aside. He further argued that no charge sheet and statement of allegation was issue before issuance of impugned order. He



submitted that neither regular inquiry was conducted nor chance of personal hearing was afforded to the appellant and he was condemned unheard. He requested that instant appeal might be accepted as prayed for.

5. Conversely, learned Additional Advocate General contended that appellant has been treated in accordance with law and rules. He further contended that the appellant was appointed on employees son quota as Beldar vide order dated 31-10- 2011, but neither he submitted charge report nor any duty was assigned to him. He further contended that father of the appellant was retired on his own request at the age of 57 years vide order dated 10.10.2011. As per policy of Government of Khyber Pakhtunkhwa Establishment Department circular dated No. SOR-I (S&GAD)4-1/80(Vol-III), dated 23.05.2000, 25% quota reserved for those Class-IV employees who retired at the age of superannuation or invalidation, therefore, his appointment order was rightly withdrawn by the respondents. He requested that instant appeal might be dismissed.

6. Perusal of record reveals that appellant through instant appeal requested for setting aside impugned order 29.04.2020 vide which appellant was terminated from service by the respondents. Initially offer of appointment as Beldar was issued by the respondent on 31.10.2011 upon the recommendation of Departmental Selection Committee on contract basis but said order was withdrawn on 04.11.2011 by the authority. Appellant filed writ petition bearing No. in Hon'ble Peshawar High Court, Peshawar which was decided on 11.12.2018 and respondents were directed to reinstate the appellant into service by setting aside order dated 04.11.2011. Respondents were left at liberty to initiated departmental proceedings against the petitioners, if it



appears to them that he has procured his appointment through illegal means and has committed any sort of misconduct. Respondents challenged said order in Hon'ble Peshawar High Court in CPLA, which was maintained vide order dated 10.03.2020 by the apex court with addition that proceedings be concluded within 2 months however, after 2 months it may reinstate them if proceedings are not concluded, on the basis of which a show cause notice was issued to the appellant on 02.04.2020 with the allegations that;

2. *"That your father Mr. Zarif Khan was retired as mate on 30.09.2011 on his own request vide orfice order No. 1973/62-M dated 10.10.2011. Therefore, being not eligible, his name is not entered in the merit list of retired employees for reservation of 25% Employees Son Quota. This certainly shows that you have managed your appointment through illegal means by concealing the facts"*

7. Appellant filed reply of show cause notice, wherein he admitted the allegations levelled against him and failed to satisfy inquiry committee in respect of his appointment as Class-IV on employees son quota despite the fact that father of the appellant was retired on his own request at the age of 57 years vide order dated 10.10.2011 before attaining the age of superannuation i.e 60 years. As per policy of Government of Khyber Pakhtunkhwa Establishment Department circular dated No. SOR-I (S&GAD)4-1/80(Vol-III), dated 23.05.2000, 25% quota reserved for those Class-IV employees who retired at the age of superannuation or invalidation, therefore, his appointment order was rightly withdrawn by the respondents.

9. As only offer of appointment was issued by respondents as a result of which appellant has not assumed charge of the post beside offer of

appointment was withdrawn on the 4th day of its issuance, therefore, there is no need to issue proper charge sheet and statement of allegations.

10. For what has been discussed above, the appeal in hand is dismissed being devoid of merits. Costs shall follow the event. Consign.

11. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 4th day of September, 2024.*



(KALIM ARSHAD KHAN)

Chairman
Camp Court, Swat



(RASHIDA BANO)

Member (J)
Camp Court, Swat

ORDER

04.09.2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present.

2. Vide our detailed judgment of today placed, the appeal in hand is dismissed being devoid of merits. Costs shall follow the event.

Consign.

3. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 4th day of September, 2024.*



(KALIM ARSHAD KHAN)
Chairman
Camp Court, Swat



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