

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**'PESHAWAR.**

BEFORE: **AURANGZEB KHATTAK** ... **MEMBER (Judicial)**  
**RASHIDA BANO** ... **MEMBER (Judicial)**

**Service Appeal No. 1095/2019**

Date of presentation of Appeal.....27.08.2019  
Date of Hearing.....26.09.2024  
Date of Decision.....26.09.2024

**Nigar Ali S/o Bahar Ali, Ex-Chowkidar GDC Kohat.**

.....*Appellant*

Versus

1. The Secretary Higher Education KPK Peshawar.
  2. The Director Higher Education KPK Peshawar.
  3. The Principal Government Degree College KDA Township Kohat.
- .....(*Respondents*)

Present:

Syed Mudasir Pirzada, Advocate.....For appellant  
Mr. Muhammad Jan, District Attorney.....For respondents

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** Facts of the case, as alleged by the appellant in his memorandum of appeal, are that he was appointed as Chowkidar at the Government Degree College, KDA Township, Kohat. However, challenges arose when he became embroiled in a criminal case, which led to his removal from service vide order dated 05.12.2018 with effect from 08.09.2018 by respondent No. 3. He after his acquittal in the criminal case on April 13, 2019, filed departmental appeal on 20.05.2019, which was not responded. Hence, he has now approached this Tribunal through filing of instant appeal for redressal of his grievances.

2. The respondents were summoned, who contested the appeal by filing their respective written replies/comments.

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3. The learned counsel for the appellant contended the appellant was removed from service by respondent No. 3 due to a fabricated criminal case, without any lawful or cogent reason and without inquiry into the allegations, resulting in the issuance of the impugned order. He next contended that while the appellant was incarcerated, the departmental proceedings against him were conducted in his absence, therefore, there was no inquiry, no show cause notice and no charge sheet issued. He further contended that the appellant faced a major punishment of removal from service without a hearing, without the opportunity for cross-examination and without any statements being recorded from individuals pertaining to the charges against him. He also contended that the appellant after being acquitted by the learned Judicial Magistrate of Kohat on April 13, 2019, he submitted a departmental representation on May 4, 2019, which remained unconsidered and un-entertained by Respondent No. 2. He next argued that there was no evidence on record indicating that the appellant had committed any offenses or had a criminal history, as not a single negative entry was available in his record. He further argued that the impugned removal order of the appellant was contrary to the canon of law and violated principles of natural justice as there was no legal cogent reason provided for the removal of the appellant from service. He also argued the appellant is a poor and the sole provider for his large family, relying on his income to support his infant children. In the last, he argued that the appeal in hand may be accepted as prayed.

4. On the other hand, the learned District Attorney for the respondents opposed the contentions of the learned counsel for the appellant and contended that the appellant served the department to the complete dissatisfaction of higher authorities and his services were transferred from

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Govt. Girls Postgraduate College, Kohat, to Govt. Degree College KDA Township, Kohat, on administrative grounds, due to the inquiry committee's recommendations stating that he was unsuitable for a female institution. He next argued that the appellant demonstrated inappropriate behavior towards the Principal and staff at Govt. Degree College, KDA Township, Kohat and statements from the in-charge of Class-IV, Mr. Zia Ahmad, along with the appellant's own admissions, exhibited this conduct. He further contended that the appellant remained willfully absent from duty and used harsh and inappropriate language towards colleagues and his continuous misconduct resulted in multiple warning letters, with the last warning issued subsequent to a fact-finding inquiry that addressed a physical assault on a tube well operator, for which the appellant issued an undertaking. He also contended that the appellant was removed from service effective September 8, 2018, after being caught in the act of damaging government property and attempting theft, with all codal formalities properly followed. He next argued that the appellant was provided an opportunity for a personal hearing through letter No. 378 dated October 23, 2018 and his statement was also recorded, however, he was unable to satisfy the competent authority during this process. He further argued that all departmental proceedings were conducted lawfully and in accordance with established procedures. He also argued that an inquiry committee was formed on September 9, 2018 and the appellant was suspended from service by letter No. 325-26 on the same date. He next added that the inquiry committee recorded the appellant's statement while he was in jail. He further added that a show cause notice and statement of allegations were served and relevant witness statements were taken and the allegations were ultimately proven against the appellant, leading to the

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imposition of a penalty. In the last, he argued that the appeal in hand may be dismissed with cost.

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


6. The perusal of the record shows that the appellant was serving as a Chowkidar at the Government Degree College KDA Township Kohat. Disciplinary proceedings were initiated against him on the allegations of theft and damage to government property. These allegations culminated in a criminal case, leading to the suspension of the appellant and subsequent arrest. The appellant was suspended from service on September 9, 2018, and on the following day, September 10, 2018, FIR No. 913 was registered against him under Section 406 of the Pakistan Penal Code (PPC) at Police Station Jangle Khel. The appellant was arrested at that time and subsequently detained. There is no evidence in the case file indicating that the charge sheet, the statement of allegations, or the final show-cause notice were personally served to the appellant. This absence is significant given that the appellant was incarcerated due to the criminal proceedings and therefore could not defend himself against the departmental allegations. The appellant was acquitted of the criminal charges on April 13, 2019, by Judicial Magistrate-I, Kohat. The acquittal inherently carries an honorable status and cannot be deemed dishonorable unless contested and overruled by higher authorities. There are no records to suggest that the prosecution or the concerned departmental authority appealed the acquittal, which has thus attained finality. This further substantiates the appellant's claims regarding unfair treatment in the disciplinary proceedings. We emphasize the importance of fundamental rights enshrined in the legal framework, such as


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the right to a fair hearing and due process. The lack of opportunity for the appellant to present his defense or participate in the inquiry process, coupled with actions taken in his absence, raises serious concerns regarding the integrity of the disciplinary proceedings. Given the aforementioned procedural irregularities and the acquittal status of the appellant, the conducting of de-novo inquiry is warranted. This will afford the appellant a proper opportunity to respond to the allegations against him and ensure that he is treated fairly in accordance with the law.

7. Consequently, we set aside the impugned orders, reinstate the appellant and remit the matter back to the competent authority with the direction to conduct a de-novo inquiry in compliance with laws and rules. This inquiry must be completed within sixty (60) days from the receipt of copy of this judgment. The appellant shall be duly informed and involved in the inquiry proceedings, thus guaranteeing him an adequate opportunity for self-defense and personal hearing. The determination of back benefits for the appellant shall be contingent upon the outcome of this new de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.


8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 26<sup>th</sup> day of September, 2024.*

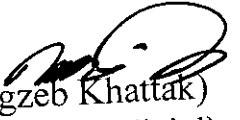
  
**AURANGZEB KHATTAK**  
Member (Judicial) 26/09/2024

  
**RASHIDA BANO**  
Member (Judicial)

**ORDER**  
26<sup>th</sup> Sept, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Sohrab, Lecturer alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, we set aside the impugned orders, reinstate the appellant and remit the matter back to the competent authority with the direction to conduct a de-novo inquiry in compliance with laws and rules. This inquiry must be completed within sixty (60) days from the receipt of copy of this judgment. The appellant shall be duly informed and involved in the inquiry proceedings, thus guaranteeing him an adequate opportunity for self-defense and personal hearing. The determination of back benefits for the appellant shall be contingent upon the outcome of this new 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 26<sup>th</sup> day of September, 2024.*

  
(Rashida Bano)  
Member (Judicial)

  
(Aurangzeb Khattak)  
Member (Judicial)

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