

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 7586/2021

Date of presentation of Appeal.....13.10.2021
Date of Hearing.....27.09.2024
Date of Decision.....27.09.2024

Misbah Ud Din (Naib Qasid) S/o Farid Ud Din, R/o Moh: Kaji Khel,
Village P/o Ziarat Kaka Sahib Tehsil & District Nowshera.
.....*Appellant*

Versus

1. Government of Khyber Pakhtunkhwa through Secretary (E&S) Education Civil Secretariat Peshawar.
2. Director (E&S) Education Khyber Pakhtunkhwa, Elementary & Secondary School Directorate G.T Road Peshawar.
3. District Education Officer (Male) G.T Road Nowshera Saddar, District Nowshera.....(*Respondents*)

Present:

Syed Aziz Ud Din Kaka Khel, Advocate.....For appellant
Mr. Muhammad Jan, District Attorney.....For respondents
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JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as alleged by the appellant in his memorandum of appeal, are that the appellant was appointed as Naib Qasid at Govt. Middle School Bahadar Khel, Nowshera on 21-09-2006. According to the appellant, he faithfully discharged his duties, incurring no complaints until January 2020, when he was verbally order to perform his duty at the office of Respondent No. 3. Subsequently, on 20-11-2020, a show cause notice was issued and served on 01-12-2020, to which the appellant promptly

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responded. However, on 20-01-2021, Respondent No. 3 issued a notification of compulsory retirement of the appellant. Feeling aggrieved, the appellant filed departmental appeal, which was dismissed on 07-10-2021. The appellant has now approached this Tribunal through filing of instant appeal for redressal of his grievance.

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 highlighted several critical procedural lapses, arguing that the impugned orders were null and void ab-initio, having been issued without adhering to codal formalities. He emphasized that no charge sheet or final show cause notice was furnished and no regular inquiry was conducted to warrant such severe disciplinary action. He contended a breach of natural justice, citing legal precedents to fortify his claim that he was condemned unheard. Counsel for the appellant also argued that the punishment of compulsory retirement is excessively harsh, especially considering the appellant's dedication, even during the pandemic when other activities were restricted. In the last, he argued that the appeal in hand may be accepted by reinstating the appellant into service with all back benefits.

4. On the other hand, the learned District Attorney for the respondents argued that the appellant, initially posted as Naib Qasid at GMS Bahadar Khel, had a history of unapproved absences, having failed to report to his new assignment at GHSS Ziarat Kaka Sahib. He next contended that the appellant remained absent from duty and was drawing salaries regularly and upon a subsequent inquiry, oral instructions were given for him to


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report to DEO (M) Nowshera. He further contended that despite leniency extended, the appellant once again absented himself starting 14-03-2020, leading to his compulsory retirement. He also contended that all legal and codal formalities were fulfilled, therefore, the appellant was rightly awarded the punishment of compulsory retirement from service. In the last, he argued that the appeal in hand, being meritless, is liable to be dismissed with costs.

5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

6. The perusal of the case file reveals that the appellant was appointed as a Naib Qasid at Govt. Middle School Bahadar Khel, Nowshera, vide order dated September 21, 2006. In January 2020, the appellant was verbally directed to serve at the office of Respondent No. 3 without formal order, indicating an arbitrary use of authority lacking procedural transparency and proper oversight. On November 20, 2020, Respondent No. 3 issued show cause notice to the appellant. The appellant responded to the show notice on December 4, 2020, negating the allegations leveled against him. Available on the record is copy of inquiry report (undated) conducted by Janas Khan, the Principal of GHS Deh Bahadur, Peshawar. However, the appellant was not afforded an opportunity to participate in the inquiry proceedings. This omission is stark violation of the principles of natural justice as established in precedent case law, specifically the judgment reported as 2008 SCMR 1369, which underlined the necessity of pre-emptive engagement in all relevant inquiry actions. Furthermore,

the appellant was also not issued charge sheet, further contravening legal standards as highlighted in the reported judgment of Supreme Court of Pakistan 2009 SCMR 615. A charge sheet is vital in ensuring that the appellant understands the specific allegations against him and can adequately defend himself. Without it, the fairness and transparency of the procedural undertaking were compromised. On January 20, 2021, Respondent No. 3 issued a notification of compulsory retirement of the appellant from service without providing him with a personal hearing. The absence of a final show cause notice prior to imposing harsh penalty also appeared to violate the procedural standards established in the ruling of 2009 PLC (CS) 176, which stipulates that employees must be clearly notified of allegations against him before significant punitive actions are taken. In consideration of the procedural failures delineated above and their cumulative impact on the appellant's rights, it is determined that the actions of Respondent No. 3 were procedurally flawed. The lack of opportunity for a personal hearing, absence of a formal charge sheet and the failure to issue a final show cause notice prior to the imposition of compulsory retirement rendered the process inherently unjust. Thus, it is concluded that the appellant was deprived of due process in the matter concerning his compulsory retirement.


7. In view of the above, the impugned notification of compulsory retirement of the appellant issued on January 20, 2021 as well as rejection of departmental appeal dated October 07, 2021, are hereby quashed and the appellant is reinstated in service with the direction to the respondents to conduct de-novo inquiry in the matter. The de-novo

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Service Appeal No.7586/2021 titled "Misbah Ud DDin Versus Government of Khyber Pakhtunkhwa through Secretary (E&S) Education Civil Secretariat Peshawar and others", decided on 27.09.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Ms. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

inquiry is to be conducted within a period of 03 months from the date of receipt of copy of this judgment, ensuring adherence to proper legal procedures and affording the appellant the full rights to due process and a fair hearing. The issue of back benefits shall be subject to the outcome of 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 27th day of September, 2024.*


AURANGZEB KHATTAK
Member (Judicial)

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RASHIDA BANO
Member (Judicial)


Naeem Amin

ORDER

27th Sept, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the impugned notification of compulsory retirement of the appellant issued on January 20, 2021 as well as rejection of departmental appeal dated October 07, 2021, are hereby quashed and the appellant is reinstated in service with the direction to the respondents to conduct de-novo inquiry in the matter. The de-novo inquiry is to be conducted within a period of 03 months from the date of receipt of copy of this judgment, ensuring adherence to proper legal procedures and affording the appellant the full rights to due process and a fair hearing. The issue of back benefits shall be subject to the outcome of 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 27th day of September, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak)
Member (Judicial)

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