


FORM OF ORDER SHEET

Court of _____

Appeal No. 1684/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01 /10/2024	<p>The appeal of Mr. Asad Ali resubmitted today by Mr. Muhammad Asif Yousafzai Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 04.10.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

The appeal of Mr. Asad Ali received today i.e on 18.09.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Page nos. 10 to 14 of the appeal are illegible.

No. 801 /Inst./2024/KPST,

Dt. 19/9 /2024.

Amir Tullah
ADDITIONAL REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

M.Asif Yousafzai Adv.
High Court at Peshawar.

Respected Sir,

All objections are closed.

(11)

1-10-2024

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL No. 1184/2024

Asad Ali ----- APPELLANT

VERSUS

The Director Education (E&SE), KPK etc.

RESPONDENTS

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APPELLANT

Asad Ali
Asad Ali

THROUGH:-

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT
OF PAKISTAN.

S. Noman Ali Bukhari
(S. NOMAN ALI BUKHARI)

ADVOCATE HIGH COURT
OF PESHAWAR.

&

Hilal Zubair
(HILAL ZUBAIR)

ADVOCATE

Room No. FR-08, 4th Floor.
Bilour Plaza Peshawar Cantt.
Cell # 0333-9103240

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR. (7)

SERVICE APPEAL No. 1184 /2024

Asad Ali Ex- PST
GPS Bazar Killi, Rustum Mardan.

APPELLANT

VERSUS

1. The Director Education (E&SE) Khyber Pakhtunkhwa near Firdous Chowk, Peshawar.
2. The District Education Officer (Male) Mardan

RESPONDENTS

.....
APPEAL UNDER SECTION-4 OF THE KP SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 09.05.2024 WHEREBY THE PENALTY OF COMPULSORY RETIREMENT WAS IMPOSED UPON THE APPELLANT AND AGAINST NOT TAKING ANY DECISION/ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER:-

THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 09.05.2024 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH HIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

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RESPECTFULLY SHEWETH:

FACTS:-

1. That the appellant was serving as PST in GPS, Bazar Kaly Mardan and was removed from service on 5-02-2010 on the basis of misconduct against which the appellant filed service appeal No. 758/2010 in this August Tribunal which was partially accepted on 11.02.2014 and the appellant was reinstated and to face denovo inquiry. **Copy of the judgment is attached as annexure -A**
2. That after conclusion of inquiry report on 30.08.2014 the penalty of compulsory retirement from service was imposed upon the appellant and against the said penalty the appellant filed service appeal No. 1386/2014 which was decided on 13.12.2016 by the Honorable Service Tribunal and the August Service Tribunal partially accepted the appeal and set aside the impugned order of compulsory retirement with the direction of proper denovo inquiry with absolute opportunity to the appellant of defence and cross examination. **Copy of Judgment dated 13.12.2016 is attached as Annex-B.**
3. That on the basis of judgment of Service Tribunal, the appellant was reinstated on 18.01.2017 and denovo inquiry was conducted against the appellant in which no proper opportunity of defence was provided to the appellant, also whereas, no statement was recorded in the presence of the appellant nor the appellant was given the opportunity of cross examination but despite that the appellant was held responsible by the inquiry officer. **Copy of Inquiry report is attached as Annex-C.**
4. That show cause notice was issued to the appellant on 25.02.2017 and the appellant properly replied the show cause notice in which he denied all allegations.
5. That 2nd Show Cause Notice was issued on 10.08.2017 to the appellant on the same issue which was properly replied the appellant denied all allegations.
6. That penalty of compulsory retirement was imposed upon the appellant on 13.12.2017 against which he preferred departmental appeal on 28.12.2017 which was rejected on 27.02.2018 and communicated to the appellant 12.03.2018. **Copy of order dated 13.12.2017, departmental appeal and rejection order are attached as Annex-D, E & F.**

7. That the appellant filed service appeal No. 448/2018 against the order dated 13.12.2017 whereby the Service Tribunal was kind enough to accept the appeal of the appellant and direct the respondent to conduct denovo inquiry within stipulated period of 90-days. **Copy of the Judgment dated 03.11.2023 is attached as Annex-G.**
8. That on the basis of judgment of Service Tribunal, the appellant was reinstated for purpose of denovo inquiry. It is pertinent to mention here that denovo inquiry was conducted against the appellant in which no proper opportunity of self defence was provided to the appellant, whereas, no statement was recorded in the presence of the appellant neither the appellant was given the opportunity of cross examination but despite that the appellant was held responsible by the inquiry officer. **Copy of Inquiry report is attached as Annexure-H.**
9. That on the basis of improper inquiry the respondent department issued an order dated 09.05.2024 in which the old penalty (Compulsory retirement) remained intact, from which the appellant felt aggrieved and filed department appeal on 22.05.2024, but the same was not responded within stipulated period of 90-days. **Copy of order dated 09.05.2024 & departmental appeal are attached as Annex-I & J.**
10. That now the appellant comes to this august Tribunal on the following grounds amongst the others.

GROUND:-

- A. That the impugned order dated 09-05-2024 is against the law, rules facts and material record , therefore not tenable and liable to be set aside.
- B. That according to the judgments of superior courts, that if order was not passed in accordance with law that will be consider as illegal void order.
- C. That the impugned order is totally against the spirit of Article 10A of the Constitution of the Islamic Republic of Pakistan, and also against the well settled principle of “ *Audi Alteram Partem* ”.
- D. That the appellant was deprived from personal hearing which is totally against the judgment of superior Court. 2006 SCMR 164.

- E. That according to the new judgment of Service Tribunal in service appeal No. 100/2023 that procedure of inquiry given in END Rules 2011 must be followed.
- F. That inquiry report based on surmises and conjectures which is totally against the judgment of superior Court, 2023 PLC(CS)650.
- G. That inquiry report based on ill will and malafide intentions of the high up's which seems that they dragged the appellant in false cases without giving the opportunity of self defence and show cause notice which is also against the law and well settled precedents of superior courts.
- H. That no regular inquiry was conducted against the appellant as no proper chance of defence was provided to the appellant. Moreover, neither statements were recorded in the presence of the appellant nor gave him the opportunity of cross examination, which is clear violation of law and rules and also violation of direction of august Service Tribunal, therefore the impugned order is liable to be set aside on this ground alone.
- I. That no charge sheet was issued to the appellant before imposing major punishment of Compulsory Retirement , which is the violation of law and rules.
- J. That the penalty of compulsory retirement is very harsh which is passed in violation of law and, therefore, the same is sustainable in the eyes of law.


It is therefore, most humbly requested that on acceptance of this departmental appeal the impugned order dated 09.05.2024 may be set aside and reinstate the appellant with all back and consequential benefits.

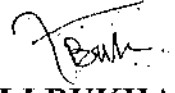
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APPELLANT


Asad Ali

THROUGH:-


(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT
OF PAKISTAN.


(S. NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT
OF PESHAWAR.


&
(HILAL ZUBAIR)
ADVOCATE

6

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL No. /2024

Asad Ali ----- **APPELLANT**

VERSUS

The Director Education (E&SE), KPK etc.

RESPONDENTS

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

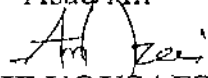

DEPONENT



LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE
3. Any other case law as per need.


APPELLANT

THROUGH:-

Asad Ali

(M. ASIF YOUSAFZAD)
ADVOCATE SUPREME COURT
OF PAKISTAN.


(S. NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT
OF PESHAWAR.
&

(HILAL ZUBAIR)
ADVOCATE

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

7

SERVICE APPEAL No. /2024

Asad Ali -----**APPELLANT**

VERSUS

The Director Education (E&SE), KPK etc.

RESPONDENTS

.....

AFFIDAVIT

I, Asad Ali S/o Fanoos Khan Ex-PST, GPS Bazar Killi, Rustum Mardan (Appellant), do hereby solemnly affirm and declare that the contents of this Appeal are true and correct to the best of my knowledge and belief.

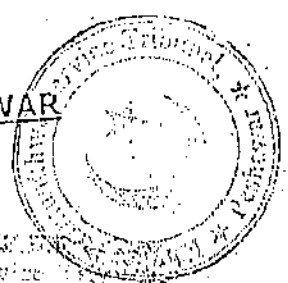

DEPONENT

Asad Ali

IDENTIFIED BY:

**(M. ASIF YOUSAFZAD)
ADVOCATE SUPREME COURT
OF PAKISTAN.**

BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR



A 8

APPEAL NO. 758 /2010

N.W.F.P. Service Tribunal Peshawar
Sd/- 2/9
Date 15/4/10

Mr. Asad Ali (Ex-PST)
GPS, Bazar Killi, Rustam Mardan.
APPELLANT

VERSUS

1. The Secretary Education (ES&E), NWFP, Peshawar.
 2. The Director Education Officer (ES&E), NWFP, Peshawar.
 3. The District Coordination Officer, Mardan.
 4. The E.D.O. (E&SE), Mardan.
- RESPONDENTS

APPEAL UNDER SECTION -4 OF THE NWFP SERVICE TRIBUNAL ACT 1974 READ WITH SECTION 10 OF THE RSO-2000 AGAINST THE ORDER DATED (5.1.2010) WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE AND AGAINST NO TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN STATUTORY PERIOD.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED MAY BE SET ASIDE BEING PASSED IN VIOLATION OF LAW, RULES, AND NORMS OF JUSTICE AND THE APPELLANT MAY BE RE INSTATED WITH ALL BACK BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

ATTESTED
15/4/10

- FACTS:
1. That the appellant joined the respondent department in the year 1997 and has more than 12 years service at his credit.
 2. That on 2.11.2009 the appellant was served with a show cause notice for explaining his position against the charges mentioned

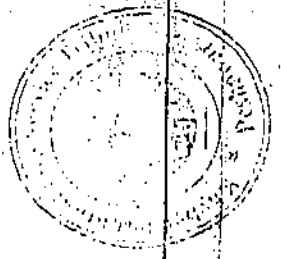
ATTESTED

S.No. of order or proceedings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
<p>18-2-2011 18-2-2011 18-2-2011</p> <p><i>[Handwritten signatures and initials]</i></p> <p><i>[Large handwritten signature]</i></p> <p>Copy</p>	<p>11.2.2014</p> <p>18.2.2014</p>	<p align="center"><u>Appeal No. 758/2010</u> <u>(Asad Ali-Vs-Secretary, E&SF, KPK, Peshawar and others)</u></p> <p>Appellant with counsel and AAG for the respondents present.</p> <p>After arguing the case at some length, a consensus appeared with regard to the non-sustainability of the impugned order dated 5.1.2010 whereby major penalty of removal from service was imposed upon the appellant on the basis of preliminary inquiry, without a regular inquiry, preceded by charge sheet and statement of allegations in accordance with the mandatory provisions of NWFP (KPK) Removal from Service (Special Powers) Ordinance, 2000. There are no two opinions that major penalty can be imposed only after conduct of regular inquiry and service of charge sheet and statement of allegations, whatever the nature of allegation may be.</p> <p>In view of the above, without entering into discussion on other merits of the appeal, the appeal needs to be partially accepted for denovo departmental/ inquiry proceedings in accordance with law/rules. Therefore, the appeal is partially accepted and while setting aside the impugned order dated 5.1.2010, the appellant is reinstated in service to face denovo departmental proceedings. However, in view of gravity of charge against the appellant, he shall remain suspended during the departmental/ inquiry proceedings, which shall be conducted by the competent authority in the respondent-department strictly in accordance with law by providing proper opportunity of defence and hearing to the appellant. The departmental/inquiry proceedings be conducted within the period prescribed by the law.</p> <p>There shall, however, be no order as to costs ///</p> <p align="center">ANNOUNCED 11.2.2014</p> <p align="right"><i>[Handwritten signatures]</i></p> <p align="center">ATTACHED</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO. 1386/2014

Date of institution ... 01.12.2014
Date of judgment ... 13.12.2016



Asad Khan (Ex-PST)
GPS, Bazar Killi, Rustam, Mardan.

... (Appellant)

VERSUS

1. The Secretary Education (E&SE) KPK, Peshawar.
2. The Director Education (E&SE) KPK, Peshawar.
3. The District Education Officer (Male) Mardan.

... (Respondents)

APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 30.08.2014 AND NOT TAKING ACTION
ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN
STATUTORY PERIOD OF 90 DAYS.

Mr. Muhammad Asif Yousafzai, Advocate.
Mr. Muhammad Jan, Government Pleader

.. For appellant.
.. For respondents.

MR. ASHFAQUE TAJ
MR. MUHAMMAD AAJIB NAZIR

.. MEMBER (JUDICIAL)
.. MEMBER (JUDICIAL)

JUDGMENT

ASHFAQUE TAJ MEMBER: Asad Khan, Ex-PST hereinafter called appellant has preferred this service appeal against the order dated 30.08.2014 vide which penalty of compulsory retirement from service was imposed upon him.

2. Brief facts of the case are that the appellant was earlier removed from service on 05.01.2010 on the charges of immoral activities. That against the removal order appellant filed an appeal in this Service Tribunal which was partially accepted on 11.02.2014 and appellant was reinstated and placed suspended to face de-novo inquiry.

AMRATA

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR

Service appeal No. 1386/2014

Date of Institution01.12.2014

Date of Judgment13.12.2016

Asad Khan Ex-PST
GPS, Bazar Killi, Rustam, Mardan.

VERSUS

1. The Secretary Education (E&SE) KP, Peshawar.
2. The Director Education (E&SE) KP, Peshawar.
3. The District Education officer (Male), Mardan.

-----RESPONDENTS

**APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 30.08.2014 AND NOT TAKING
ACTION ON THE DEPARTMENTAL APPEAL OF THE
APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.**

Mr. MUHAMMAD ASIF YOUSAFZAI, Advocate

---FOR APPELLANT

Mr. Muhammad Jan, Government Pleader

--FOR RESPONDENTS.

MR. ASHFAQUE TAJ

---MEMBER (JUDICIAL)

MR. MUHAMMAD AAMIR NAZIR

---MEMBER (JUDICIAL)

JUDGMENT

ASHFAQUE TAJ MEMBER:- Asad Khan, Ex-PST hereinafter called appellant has preferred this service appeal against the order dated 30.08.2014 vide which penalty of compulsory retirement from service was imposed upon him.

2. Brief Facts the case are that the appellant was earlier removed from service on 05.01.2010 on the charges of immoral activities. That against the removal order appellant filed an appeal in this service tribunal which was partially accepted on 11.02.2014 and appellant was reinstated and placed suspended to face denovo inquiry. That after conclusion of inquiry report on 30.08.2014 the penalty of compulsory retirement from service was imposed upon the appellant and hence the instant appeal.

3. At the very outset learned counsel for the appellant contended that earlier the Worthy Service Tribunal has remanded the case for denovo departmental proceedings on 11.02.2024 with the following directions:-

"In view of the above, without entering into discussion on other merits of the appeal, the appeal needs to be partially accepted for denovo departmental inquiry proceeding in accordance with law/rules. Therefore, the appeal is partially accepted and while setting aside the impugned order dated 05.01.2010, the appellant is reinstated in service to face denovo departmental proceedings. However, in view of gravity of charge against the appellant, he shall remain suspended during the departmental/inquiry proceedings, which shall be conducted by the competent authority and in the respondent department strictly in accordance with law, by providing proper opportunity of defence and hearing to the appellant. The departmental/inquiry proceedings be conducted within the period prescribed by the law. There shall, however, no order as to costs".

He submitted that compliance of order of this Tribunal was still awaited and that the appellant was standing on the stage where he was left earlier. That no proper opportunity had been extended to him in

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denovo inquiry for producing his defence and that neither the appellant was associated with the inquiry proceedings nor his statement recorded in presence of the appellant. Even the chance of cross examination was not provided to the appellant which was clear violation of the judgment of this Tribunal and norms of justice.

4. On the other hand, the learned Government Pleader Mr. Muhammad Jan stated that in compliance of decision passed by the Honorable Service Tribunal in Appeal No. 758/2010 dated 11.02.2014 the appellant was reinstated in service on 24.4.2014 and kept suspended for departmental inquiry. A two members inquiry committee was constituted, which after recording detail statements of accused official and other witnesses and vide detail inquiry report dated 16.7.2011 held guilty of the accused official. Proper opportunity was accorded by issuing a proper show cause notice and that all codal formalities were fulfilled and he was further dispensed with inquiry by the competent authority and this time major penalty was impose i.e of compulsory retirement from service vide impugned order dated 30.08.2014, hence requested that this service appeal devoid of merit may be dismissed.

5. Perusal of earlier judgment of this Tribunal dated 11.02.2014 transpires that earlier the appellant was removed from service vide order dated 05.01.2010 on the basis of preliminary inquiry without a regular inquiry and it was held that major penalty of removal from service could not be imposed without regular inquiry. This time, albeit two members inquiry committee was constituted, who after recording statements of different connected people held the accused official guilty on 16.07.2014 and show cause notices were issued, resulting in shape of compulsory retirement. This inquiry was conducted prior to issuing show cause notice to the appellant. No proper opportunity of defence was provided, in shape of cross examination in this inquiry so it could be safely assumed that appellant was not associated with inquiry. In show cause notice at Para-4 the competent authority held that he had sufficient documentary evidence against appellant so he dispense with the inquiry. This dispensation with inquiry and taking action on the basis of inquiry report, without proper opportunity of cross examination are against the directions of this Tribunal rather it has brought the judgment of this Tribunal to naught.

6. We are of the firm opinion that the charge against the appellant is serious in nature, which needs to be unearthed by way of proper inquiry. Earlier decision of this Tribunal is still intact and the respondents have to comply in scrupulous and veracious manner. Therefore, the appeal in hand is partially accepted and the impugned order dated 30.08.2014 of compulsory retirement is set-aside. The appellant is once again reinstated in service and accordingly he shall remain suspended. Proper denovo departmental inquiry be proceeded with absolute opportunity to appellant and of cross examinations and in case of non compliance of the direction of this Tribunal would be suffice to decide the appellant in hand on the available record on merit. No order as to costs. File be consigned to the record room.

ANNOUNCED
13.12.2016

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That after conclusion of inquiry report on 30.08.2014 the penalty of compulsory retirement from service was imposed upon the appellant and hence the instant appeal.

3. At the very outset learned counsel for the appellant contended that earlier the Worthy Service Tribunal has remanded the case for de-novo departmental proceedings on 11.02.2014 with the following directions:-

"In view of the above, without entering into discussion on other merits of the appeal, the appeal needs to be partially accepted for de-novo departmental/inquiry proceedings in accordance with law/rules. Therefore, the appeal is partially accepted and while setting-aside the impugned order dated 03.01.2010, the appellant is reinstated in service to face de-novo departmental proceedings. However, in view of gravity of charge against the appellant, he shall remain suspended during the departmental/inquiry proceedings, which shall be conducted by the competent authority and in the respondent-department strictly in accordance with law, by providing proper opportunity of defence and hearing to the appellant. The departmental/inquiry proceedings be conducted within the period prescribed by the law. There shall, however, be no order as to costs."

He submitted that compliance of order of this Tribunal was still awaited and that the appellant was standing on the stage where he was left earlier. That no proper opportunity had been extended to him in de-novo inquiry for producing his defence and that neither the appellant was associated with the inquiry proceedings nor his statement recorded in presence of the appellant. Even the chance of cross examination was not provided to the appellant which was clear violation of the judgment of this Tribunal and norms of justice.

4. On the other hand, the learned Government Pleader Mr. Muhammad Jan stated that in compliance of decision passed by the Hon'ble Service Tribunal in Appeal No. 758/2010 dated 11.02.2014 the appellant was reinstated in service on 24.04.2014 and kept suspended for departmental inquiry. A two members inquiry committee was constituted, which after recording detail statements of accused official and other

ATTESTED

Khairat Pasha
Services

ATTESTED

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service and accordingly he shall remain suspended. Proper de-novo departmental inquiry

30.08.2014 of compulsory retirement is set aside. The appellant is once again reinstated in

Therefore, the appeal in hand is partially accepted and the impugned order dated

still intact and the respondents have to comply in scrupulous and veracious manner

which needs to be unearthed by way of proper inquiry. Earlier decision of this Tribunal is

We are of the firm opinion that the charge against the appellant is serious in nature,

judgment of this Tribunal to nullify.

cross-examination are against the directions of this Tribunal rather it has brought the

inquiry and taking action on the basis of inquiry report, without proper opportunity of

evidence against appellant so he dispensed with the inquiry. This dispensation with

notice at para-4 the competent authority held that he had sufficient documentary

could be safely assumed that appellant was not associated with inquiry. In show-cause

opportunity of defence was provided, in shape of cross-examination in this inquiry so it

was conducted prior to issuing show-cause notice to the appellant. No proper

causes notices were issued, resulting in shape of compulsory retirement. This inquiry

different connected people held the accused official guilty on 16.07.2014 and show-

two members inquiry committee was constituted, who after recording statements of

removal from service could not be imposed without regular inquiry. This time, albeit

of preliminary inquiry without a regular inquiry and it was held that major penalty of

earlier the appellant was removed from service vide order dated 05.01.2010 on the basis

2. Pendency of earlier judgment of this Tribunal dated 11.02.2014 transpires that

this service appeal devoid of merit may be dismissed.

retirement from service vide impugned order dated 30.08.2014, hence requested that

competent authority and this time major penalty was imposed i.e. of compulsory

that all codal formalities were fulfilled and he was further dispensed with inquiry by the

official. Proper opportunity was accorded by issuing a proper show-cause notice and

witnesses and vide detail inquiry report dated 16.07.2011 held guilty of the accused

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be proceeded with absolute opportunity to appellant of defence and of cross examination
and in case of non-compliance of the direction of this Tribunal would be suffice to decide
the appeal in hand on the available record on merit. No order as to costs. File be consigned
to the record room.

ANNOUNCED
13.12.2016

1. *Sgt Ashfaq Me Toj, Member*
(M) *Sgt M. Anwar Noor, Member*

Stamp: *Secretary*
Government of Punjab
Islamabad

Date of Presentation of Application *05-01-2017*
Number of Pages *1600*
Caption Fee *10-00*
Court Fee *2-00*
Total *12-00*
Name of Applicant *Sgt Ashfaq Me Toj*
Date of Completion *05-01-2017*
Date of Delivery of Judgment *05-01-2017*

ATTESTED

Inquiry report

In compliance with DEO(M) Mardan No.237-38 dated 11-01-2017, the undersigned visited GPS Bazar and conducted Denove inquiry on 30-01-2017.

Proceeding:

The PSHT of GPS ^{Bazar} was informed vide letter no.24 dated 27-01-2017 to inform all the relevant personnel to be present on the due date i.e 30-01-2017.

The undersigned visited on 30-01-2017, all the relevant persons were present as detail below.

1. Syed Muhammad Ayub Ex-PSHT GPS Bazar.
2. Rehman Zada Ex-PST GPS Bazar
3. Amjad Ali Ex-PST GPS Bazar
4. Nigar Ali chowkidar GPS Bazar
5. Muhammad Kashif, Student.
6. Muhammad Shoaib, Uncle of the student.
7. Mr. Farhad F/O the student was not present, according to Muhammad Shoaib uncle of Student: He is Wapda employee, performing his duties in Kohat.

a. Statement of Syed Muhammad Ayub Ex-PSHT GPS Bazar.

Syed Muhammad Ayub stated that this incident was occurred about 08 years ago, on 18-03-2009. What he has written 8 years ago is still intact. He was on duty in GMS Bazar in connection with 5th class exam. In the previous statement, he has stated that in the light of Character of Asad Ali, this incident is true as he involved in such cases. *no case*

b. Statement of Rehman Zada Ex-PST GPS Bazar.

This incident was occurred on 18-03-2009. According to him, when he reached the school, Asad Ali was present in school and related the story. Kashif (student) and his uncle Shoaib also came to school. According to him, he has not seen Mr. Asad Ali in objectionable position.

c. Statement of Amjad Ali Ex-PST GPS Bazar.

According to Amjad Ali PST, when he came to school, Asad Ali was present in the school and he said that he has punished the student due to his late coming to school and the student has gone to home. Meanwhile M. Shoaib uncle of Kashif along with Kashif came to school.

We, Rehman Zada and Amjad ali tried to make reconciliation between them but invain and they reported the case to ADO circle Shamshad Ali.

d. Statement of Muhammad Kashif

According to the statement of Kashif, when we came to school, no teacher was present except Asad ali who called me to fill the water cooler and the cooler was in office. Asad Ali asked me to see out side the school Gate whether any student or teacher is there or otherwise and then come back. When he came back the teacher Asad Ali has opened his trouser, seeing that he ran

ATTESTED

home and related the story to his mother and uncle Muhammad Shoaib. He and his Shoaib came to school, where Mr. Asad Ali was standing near the gate.

e. Statement of Muhammad Shoaib Uncle of Student Kashif

According to Him he was taking tea in his home while his Bhabhe came and related about the incident. He along with Kashif came to school where Asad Ali was standing near the gate, at that time Kashif was about 12-13 years old. When he came to school he tried to beat him but he ran away to his home and sent Jarga of elders of village but he refused for reconciliation. Mr. Shoaib(uncle) also said that if he is innocent, why he sent Jarga of elders, why he begged for exoneration and if there is no safety to a child in the school, who will provide him the safety. He also stated that he has committed such like Sin in GPS Shaheedan also. *Any record of Jarga*

f. Statement of Chowkidar Mr. Nigar Ali

Chowkidar was terminated from service at that time and the school was running without chowkidar.

g. Statement of Asad Ali, the accused

He stated that he had not asked the student Kashif for filling the cooler. Actually according to Asad Ali, he has beaten the student Kashif on coming late to school and he warned him for taking revenge. According to him being rural population and illiteracy the people tries to have opportunity for taking revenge and this incident also based on such basis. This is only blame according to him. He also stated that on one side(north) the school boundary wall was not available and the residents of the village used to go through the school and on other side in the presence of so many students how it was possible to do so. *No cross*

On cross examination, he denied of bringing water on Kashif and stated that a few days ago he has punished the student on late coming, on which he has warned him for taking revenge. On the question of opening the trouser, he said that he cannot imagine about this.

Findings:

In the light of all the statements and despite lapse of about 8 years, the student Kashif, his uncle and the Ex-Head teacher of the school are still stand on their statements which proves the occurrence of incident.

W. S. Khan
W. S. Khan
SDEO(M) Katlang/Inquiry Officer

ATTESTED

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN

NOTIFICATION

Ijaz Ali Khan District Education officer (Male) Mardan as Competent Authority under the Khyber Pakhtunkhwa Government servants (Efficiency & Discipline) Rules, 2011, do hereby serve Mr. Asad Ali PST GPS Bazar Rustam, follows:

- Where As Mr. Asad Ali PST GPS Bazar Rustam involved in immoral activities.
- And Where As a Derve inquiry was conducted in the light of Honorable Service Tribunal Khyberpakhtunkhwa Pesliawar decision issued on 13-12-2016.
- And Where As In the light of inquiry report, a show cause notice regarding involvement in immoral activities penalty was tentatively proposed under rules 4(b) of Khyberpakhtunkhwa Govt servant rules 2011.
- And where As your response to the show cause notice was not satisfactory.
- And Where As you were directed to attend the office of the undersigned for personal hearing.
- And where As you attend the office of the undersigned for personal hearing.
- And where As the Competent Authority is not satisfied from your written statement at the time of personal hearing, after having considered the charges and evidence on record.
- And Where As you found guilty of gross misconduct under KPK Govt servant E&D rules 2011.

Now in exercise of the power conferred to me under rules 4(b) sub rules (II) of the KPK Govt servant rules 2011, being competent authority is pleased to impose the major penalty of Compulsory Retirement the service upon Mr. Asad Ali PST GPS Bazar Rustam w.e.f 05-01-2017.

void order
No limit
was there

SA
(Ijaz Ali Khan)
District Education Officer
(Male) Mardan

Endst: No. 11061/R P.F

Dated 13/12/2017

Copy forwarded to the:-

1. Registrar, Service Tribunal Khyberpakhtunkhwa Pesliawar for information in Service appeal No. 1386/2014.
2. SDEO(M) Mardan
3. District Accounts Officer Mardan.
4. Mr. Asad Ali PST GPS Bazar Rustam.

[Signature]
District Education Officer
(Male) Mardan

ATTACHED

[Handwritten initials]

To
The Director (E&SE),
Khyber Pakhtunkhwa Peshawar.

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 13.12.2017, WHEREBY THE APPELLANT WAS COMPULSORY RETIREMENT FROM SERVICE.

Respected Sir,

1. That the appellant was removed from service on 5.1.2010 on the charges on immoral activities against which the appellant filed service appeal which was partially accepted on 11.2.2014 and the appellant was reinstated and placed to face denovo inquiry. After conclusion of inquiry report on 30.08.2014 the penalty of compulsory retirement from service was imposed upon the appellant.
2. That against the compulsory retirement the appellant again filed service peal No.1386/2014 which was decided on 13.12.2016 by the Honourable Service Tribunal and the august Service tribunal partially accept the appeal and set aside the impugned order of compulsory retirement reinstate the appellant and proper departmental inquiry be proceeded with absolute opportunity to the appellant of defence and cross examination.
3. That on the basis of judgment of Service Tribunal, the appellant was reinstated on 18.1.2017 and show cause notice was issued to the appellant on 25.2.2017 in which DEO (male) Mardan mentioned that the competent authority is hereby pleased to dispense with conduct denovo inquiry. The appellant properly replied the show cause notice in which he denied all allegations.
4. That denovo inquiry was conducted against the appellant in which no proper opportunity of defence was provided to the appellant as no statement was recorded in the presence of the appellant neither the appellant has given the opportunity of cross examination but despite that the appellant was held responsible by the inquiry officer.
5. That 2nd show cause notice was issued to the appellant on the same issue which was properly replied the appellant in which he denied all allegations.
6. That on the basis of improper inquiry the appellant was once again compulsory retired from service vide order dated 13.1.2017. *copy of order dated 13.1.2017 is attached as Annexure B.*

695
29/12/17

ATTESTED

7. That now the appellant wants to file departmental appeal against the order dated 13.12.2017 on the following grounds.

GROUNDS:

- A) That the impugned order dated 13.12.2017 is against the law, rules, facts and material on record, therefore not tenable and liable to be set aside.
- B) That no regular inquiry was conducted against the appellant as no proper chance of defence was provided to the appellant as neither statements were recorded in the presence of the appellant nor gave him the opportunity of cross examination, which is clear violation of law and rules and also violation of direction of august Service Tribunal, therefore the impugned order is liable to be set aside on this ground alone.
- C) That no charge sheet was issued to the appellant before imposing major punishment of dismissal from service, which is the violation of law and rules.
- D) That two show cause notices were issued to the appellant for same allegations which is not permissible under the law.
- E) That the penalty of compulsory retirement is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- F) That the appellant has been condemned unheard and has not been treated according to law and rules.

It is therefore, most humbly requested that on acceptance of this departmental appeal the impugned order dated 13.12.2017 may be set aside and reinstate the appellant with all back and consequential benefits.

Date: 28 - 12 - 17

Appellant
Asad Ali Ex- PST,
Rustam Mardan.

ATTESTED

19



**DIRECTORATE OF ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA.**

No. 726/F.No. 162/Vol: XI/Appeal of
PST(M) General,
Dated Peshawar the 27/2/2018.

To,

The District Education Officer (M)
Mardan.

Subject:- **DEPARTMENTAL APPEAL.**

Memo:-

I am directed to refer to your letter No. 880 dated 30.01.2018 on the subject cited above and to state that the appeal of Mr. Asad Ali Ex-SPST GPS Rustam Mardan in light of DEO(M) Mardan report is hereby rejected. ✓

I am further directed to ask you to inform the teacher concerned accordingly.

[Signature]
Deputy Director (E&S)
Elementary & Secondary Edu.
Khyber Pakhtunkhwa Peshawar.
23/2/18

Endst: No. _____

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN

Endst: No. 21041-5 / Dated: 12-3-2018 ✓

Copy for information is forwarded to the:-

1. Director E&SE Khyberpakhtunkhwa Peshawar with above cited letter No. and date.
2. SDEO(M) Mardan.
3. Asad Ali s/c Fanoos Khan, Ex-PST GPS Rustam R/O Moh: Juna Khel, Village Bazar, P/o Rustam

[Signature]
DISTRICT EDUCATION OFFICER
(MALE) MARDAN

ATTESTED

Grand clauses Act
2(A)
will take
no spending
order

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 448/2018

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Asad Ali Ex-Primary School Teacher, Rustam Mardan.
..... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education Department Peshawar.
3. District Education Officer (Male), Mardan.

.... (Respondents)

Mr. Muhammad Asif Yousafzai
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....04.04.2018

Date of Hearing.....03.11.2023

Date of Decision.....03.11.2023

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:

“On acceptance of this appeal, the impugned orders dated 27.02.2018 and 13.12.2017 may be set aside and the appellant may be reinstated into service with all back and consequential benefits.”

2. Brief facts of the case; as given in the memorandum of appeal, are that appellant was earlier removed from service on 05.01.2010 on the charges of immoral activities. That against the removal order appellant filed an appeal in this Tribunal which was partially accepted and appellant was

(21)

reinstated and was placed under suspension to face de-novo inquiry. After conclusion of inquiry, major penalty of compulsory retirement from service was imposed upon the appellant as a consequence of inquiry report vide order dated 30.08.2014. On the basis of judgment of this Tribunal, the appellant was reinstated on 18.01.2017 and denovo enquiry was conducted against the appellant as in which neither statement was recorded in the presence of the appellant nor the appellant was given the opportunity of cross examination and appellant was held responsible by the inquiry officer and again major penalty of compulsory retirement from service was imposed upon the appellant vide order dated 13.12.2017. Feeling aggrieved he preferred departmental appeal on 28.12.2017 which was rejected on 27.02.2018, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that impugned orders are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside. He contended that no proper/regular inquiry was conducted by the respondents and even no opportunity of self-defence was provided to him. He further contended neither the appellant was associated with the inquiry proceedings nor statement was recorded in the presence of appellant and even the chance of cross examination was not provided to the appellant which was clear violation of the norms of justice

5. Learned District Attorney contended that the appellant was treated in accordance with law and rules. He further contended that respondents fully

obeyed the directions of this Tribunal in true letter and spirit, conducted another enquiry about the subject matter, and after conducting proper denovo enquiry, the allegations were proved and the appellant again declared to be compulsory retired after fulfilment of all codal formalities. (22)

6. Perusal of earlier judgments transpires that earlier the appellant was removed from service vide order 05.01.2010 on the basis of preliminary inquiry without conducting a regular inquiry and it was held that major penalty of removal from service could not be imposed without regular inquiry. Thereafter, two members inquiry committee was constituted, who after recording statements of different connected people held the accused official guilty on 16.07.2014 and show cause notices were issued, into compulsory retirement. This inquiry was conducted prior to issuance of show cause notice to the appellant. No proper opportunity of defense was provided, in shape of cross-examination in this inquiry. It could be safely assumed that appellant was not associated with inquiry proceedings. In show cause notice it was held by the authority that he had sufficient documentary evidence against appellant, so he dispensed with the inquiry. This dispensation with of inquiry and taking action on the basis of inquiry report, without proper opportunity of cross examination are against the direction of this Tribunal rather it has brought the judgment of this Tribunal to naught.

7. We note it with great concern, that despite giving direction twice by this tribunal respondents dispensed with inquiry which is amounts to set upon the order/direction of this tribunal and falls within definition of non compliance. This behavior/attitude of the respondents are arbitrary in nature, showing disregard to orders of this

tribunal. Respondents are warned to remain careful in future and obey order of this Tribunal in its true letter and spirit.

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8. As a sequel to above discussion, we are unison to set aside the impugned orders and reinstate the appellant into service for the purpose of denovo inquiry with direction to provide opportunity of cross examination and self defense to the appellant with further direction to conclude the inquiry within 90 days after receipt of copy of this judgment. Costs shall follow the event: Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 3rd day of November, 2023.

(MUHAMMAD ARBAR KHAN)
Member (E)

(RASHIDA BANO)
Member (J)

Kallemullah

[Handwritten signature]

Date of Payment
Number
Quantity
Unit
Total
Amount
Date of Receipt
Over all

21-12-23

21-12-23
21-12-23

Title: De Novo Inquiry in Respect of Mr. Asad Ex PST GPS Bazar Rustam Mardan.

Inquiry Committee: 1. Mr. Javed Iqbal Principal GHSS Khadi Killi
2. Mr. Syed Ikram SDEO Tehsil Takht Bhai
3. Mr. Sajid Khan departmental Representative Litigation.

Procedures: In compliance to honorable DEO order Endstt: No.331-32 dated 16/01/2024, the inquiry committee proceeded to GPS Bazar Rustam to conduct de novo inquiry in light of judgments of honorable service Tribunal Khyber Pakhtoonkhwa service Tribunal Peshawar in service appeal No.448/2018 dated 3-11-2023 in r/o Mr. Asad Ali s/o Fanus Khan Ex-PST GPS Bazar Rustam.

Statement of the accused and witnesses were recorded as:

Mr. Asad Ali Ex PST (Accused) Statement:

On 18th March 2009, I attended the school in the morning and there were 180 students present at that time. All the students were busy in different activities in the school. The school was exposed to everyone as there was no boundary wall. I belong to the same vicinity, where the school is situated. The people are usually jealous and have enmity with one another in a village. Being jealous, they are always in search of an opportunity to blame others.

Owing to the above statement I am not involved in immoral activities. The student, Kashif has blamed me. Being relative of us, his family has personal grudges with me and there is also a land dispute between us. So they blamed me with false allegations and I am innocent. Please have a mercy on me.

• The statement was fully crossed. (Copy attached)

Kashif Ali statement: (The Victim)

He is abroad (Malaysia) as confirmed by his family so his statement was not recorded.

Chowkidar Nigar Ali's Statement:

It is stated that on 18th March, 2009, I was out of the school in connection with submitting the staff statement and electricity bill in SDEO Office Mardan. When I came back the school was off.

The statement was fully crossed. (Copy attached)

Muhammad Shoaib statement (Victim's uncle):

I am the uncle of victim student Muhammad Kashif, I accompanied with Kashif on that day after the incident happened. I am the eye witness of the incident. I as head of the family

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forgive Mr. Asad Ali s/o Fanoos Khan. So, I do not want to prosecute the case further and my nephew will honor my statement but I am not pretty sure that he will agree to my statement as he is abroad (Malaysia) in pursuit of earning bread and butter.

The statement was fully crossed. (Copy attached)

Farhad Statement (Victim's Father)

I, Mr. Farhad S/O Karim dad village Bazar Rustam stated that I am the father of Kashif Ali (Victim), he is abroad (MyLashia) presently. He further stated that on the incident day I was in Kohat and was performing my duty in WAPDA. My brother Muhammad Shoaib was there in the village. All these things happened in my absence. I agree with the statement of my Brother and son and do not know more than that. However, the family of Asad Ali has not approached us for reconciliation.

The statement was fully crossed. (Copy Attached)

Rahman Zada CT (Ex PST GPS Bazar):

I, Mr. Rahman Zada s/o Khan Zada resident of village Laindy Rustam Ex PST GPS Bazar (presently working as CT at GMS Sori Malandri) know nothing about the incident. When I came to school on that day I was told that Mr. Asad Ali has punished a student of 4th class on late coming and he went to home to inform his elders.

The statement was fully crossed (Copy attached)

Muhammad Ayub (Ex. PSHT) Statement:

Muhammad Ayub Ex PSHT died a natural death who was also eye witness to the incident and in the previous inquiry his statement was against Mr. Asad Ali. His death was confirmed (Through written statement) from the present PSHT Mr. Javed Ahmad bearing CNIC No. 161011211112-5. (Statement attached)

Amjad Ali (Ex. PST) statement:

Mr. Amjad Ali Ex PST also died. His death was confirmed (Through written statement) from the present PSHT Mr. Javed Ahmad bearing CNIC No. 161011211112-5

Stamp paper:

A photocopy of stamp paper is produced by Mr. Asad Ali Ex PST GPS Bazar Rustam in which the family of Mr. Kashif Ali has signed an accord (Affidavit) on 17-7-2017 with Mr. Asad Ali. According to that written deed their hostility is ended for ever between them. The authentication of stamp paper needed as its original copy is lying in the main file in DEO office Mardan.

Facts Findings:


1. Mr. Asad Ali was appointed as PST on 23-6-1997 Vide Endstt:1176-1590.
2. He took over charge on 26-6-97.
3. He was suspended from service vide DEO office Endstt: No.1266-68 dated 23-11-2005.
4. He was instated DEO office Vide No. 7071-33 dated 11-5-2006.
5. He was compulsory retired under DEO ENDstt: No.1101/G dated 13-12-2017.
6. No FIR has been lodged against the accused.
7. An affidavit is signed in the form of truce.
8. Two eye witnesses are died.
9. The remaining witnesses give statement in Mr.Asad Ali's favor.
10. The victim Kashif Ali is abroad (Malayshia).
11. His family including; father and uncle have forgiven him.

Conclusion:

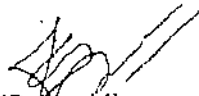
1. Mr. Kashif, the accused is not present.
2. Mr. Nigar, Chowkidar of the scool knew nothing about the case.
3. Mr. Raham zada Ex PST stated that on late coming the accused, Mr.Kashif was punished and he went back to home.
4. Two witnesses are exempted due to their natural death.
5. The accused uncle stated that he has pardon Mr. Asad.
6. The party is already reconciled and recorded their written statements in the affidavit.
7. Although, it was a criminal case but the complainant has not lodged an FIR.

Conclusion:

In the light of the above facts/details the case may be decided please.


 MR. Javed Iqbal
 PRINCIPAL
 (Chairman INQUIRY COMMITTEE)

PRINCIPAL
GHSS Khadi Killi
Takht Bhai Mardan


 MR. Ayed Ikram
 SDEO Takht Bhai
 (Member)
 SDEO (M)
 Takht Bhai
 Mardan



OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) MARDAN



OFFICE ORDER

In light of directions of Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar in service appeal No:448/2018, this office has nominated an inquiry committee to conduct de-novo inquiry in the case of Mr. Asad Ali Ex-PST OPS Bazar who was compulsory retired from service in 2017 in immoral acts with student of his school.

As per inquiry report, detail of the case is:

- Two eye witness of the incident are now died, so their statements could not be recorded.
- The elder of family (Uncle of student) stated that he along with his nephew named Kashif arrived on date of incident but now has forgiven the accused Mr. Asad Ali Ex-PST OPS Bazar. However as per his statement that his nephew Mr. Kashif is abroad and it is not necessary that he will also agree to forgive the accused Mr. Asad Ali.
- Mr. Kashif who was student and main victim of the case is now abroad, so his statements could not be recorded.

According to the 02 last points which clarify that due to missing of victim (Mr. Kashif who was student at that time) and forgiveness of his Uncle but not necessarily by the victim raised a clear point that incidents was occurred at that time.

Keeping in view of the above, the undersigned is agreed with the previous proceedings/actions taken against Mr. Asad Ali Ex-PST OPS Bazar by the then Competent authority i.e DEO(M) Mardan.

(Zahid Muhammad)
District Education Officer
(Male) Mardan

Ends: No. 2541 P.f Dated 29-05-2024

Copy forwarded to the:-

- Registrar, Service Tribunal Khyberpakhtunkhwa Peshawar for information and further orders please.
- SDEO(M) Rustam.
- District Accounts Officer Mardan.
- Mr. Asad Ali PST OPS Bazar Rustam.


District Education Officer
(Male) Mardan

To,

The Director (E&SE),
Khyber Pakhtunkhwa, Peshawar.

J 29
2

Through Proper Channel:

Subject: DEPARTMENTAL APPEAL AGAINST THE ORDER
9-05-2024 WHEREBY THE APPELLANT WAS
COMPULSORY RETIRED FROM SERVICE .

Respected Sir,

1. That the appellant was removed from service on 5-01-2010 on the charges of immoral activities against which the appellant filed service appeal which was partially accepted on 11.02.2014 and the appellant was reinstated and placed to face denovo inquiry. After conclusion of inquiry report on 30.08.2014 the penalty of compulsory retirement from service was imposed upon the appellant.
2. That against the compulsory retirement the appellant again filed service appeal NO. 1386/2014 which was decided on 13.12.2016 by the Hon'ble Service Tribunal and the august Service Tribunal partially accepted the appeal and set aside the impugned order of compulsory retirement, reinstate the appellant and proper departmental inquiry be proceeded with absolute opportunity to the appellant of self defence and cross examination.
3. That on basis of judgment of Service Tribunal, the appellant was reinstated on 18.01.2017 and show cause notice was issued to the appellant on 25.2.2017 in which DEO (MALE) Mardan mentioned that the competent authority is hereby pleased to dispense with conduct denovo inquiry. The appellant properly replied the show cause notice in which he denied the entire allegation properly.
4. That denovo inquiry was conducted against the appellant in which no proper opportunity of defence was provided to the appellant as no statement was recorded in the presence of the appellant neither the appellant has given the opportunity of cross examination but despite that the appellant was held responsible by the inquiry officer.
5. That on basis of improper inquiry the appellant was once again compulsory retired from service vide order dated 13-12-2017. Upon which the appellant filed department appeal on

No: 1787
22-05-2024

28-12-2017, which was rejected by the respondent department on 27-2-2018, from which the appellant feeling aggrieved and file service appeal NO.448/2018, the Honorable Tribunal was kind enough to partially accepted the appeal of the appellant vide judgment dated 03.11.2023 and set aside the impugned order of compulsory retirement, reinstate the appellant and proper departmental inquiry be proceeded with absolute opportunity to the appellant of self defence and cross examination.

- 6. That denovo inquiry was conducted against the appellant and again which no proper opportunity of defence was provided to the appellant as no statement was recorded in the presence of the appellant neither the appellant has given the opportunity if cross examination but despite that the appellant was held responsible by the inquiry officer, and passed an order on 9-05-2024. Wherein the previous order of the appellant was upheld. Despite that the previous proceeding was set aside by the Honorable Tribunal.
- 7. That now the appellant feeling aggrieved wants to file department appeal against the order dated 9-05-2024, on the following grounds .

GROUNDS:

- A. That the impugned order dated 9-05-2024 is against the law, rules facts and material record , therefore not tenable and liable to be set aside.
- B. That according to the judgments of superior courts, that if order was not passed in accordance with law that will be consider as illegal void order.
- C. That the impugned order is totally against the sprite of article 10A of constitution of Islamic republic of Pakistan, and also against the well settled principal of laws that "*Audi Alterm Pertum*".
- D. That the appellant was deprived from personal hearing which is totally against the judgment of superior court. 2006 SCMR 164.
- E. That according to the new judgment of service tribunal service appeal No. 100/2023 that procedure of inquiry given in END Rules 2011 must be followed.

- F. That inquiry report based on surmises and conjectures which is totally against the judgment of superior court, 2023 PLC(CS)650.

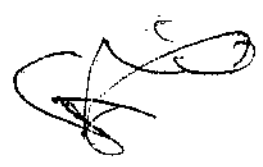
- G. That inquiry report based on ill will and malafide intensions of the high up's which seems that they dragged the appellant in wrong cases with giving the opportunity of self defence and show cause notice which is also against the law and well settled precedents of superior courts.

- H. That no regular inquiry was conducted against the appellant as no proper chance of defence was provided to the appellant as neither statements were recorded in the presence of the appellant nor gave him the opportunity of cross examination, which is clear violation of law and rules and also violation of direction of august Service Tribunal, therefore the impugned order is liable to be set aside on this ground alone.

- I. That no charge sheet was issued to the appellant before imposing major punishment of dismissal from service, which is the violation of law and rules.

- J. That the penalty of compulsory retirement is very harsh which is passed in violation of law and, therefore, the same is sustainable in the eyes of law.

It is therefore, most humbly requested that on acceptance of this departmental appeal the impugned order dated 09.05.2024 may be set aside and reinstate the appellant with all back and consequential benefits.



APPELLANT

(Asad Ali Ex-PST
Rustam Mardan.

VAKALAT NAMA

NO. _____ /2023

IN THE COURT OF lep Service Tribunal Peshawar.

Asad Ali

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Gauis lep.

(Respondent)
(Defendant)

I/We, Asad Ali

Do hereby appoint and constitute M. Asif Yousafzai, Advocate Supreme Court of Pakistan & Syed Noman Ali Bulhari, Advocate High Court & Hilal Zubair Advocate to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

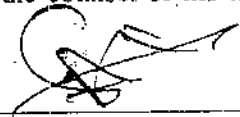
I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.


AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us.

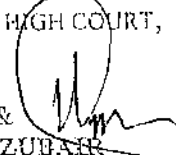

Dated _____ /2023


(CLIENT)

ACCEPTED


(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
OF PAKISTAN.
(BC No. 10-7327)

& 
(S. NOMAN ALI BULHARI)
ADVOCATE HIGH COURT,


& 
HILAL ZUBAIR
Advocate

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell No. 0302-5548451
0333-9103240
0306-5109438
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