

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, ABBOTTABAD.

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(F)

Service Appeal No. 257/2024

Zulqarnain Chowkidar, District Food Office, Manshra.
.....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Food Department Peshawar.
2. Director Food Khyber Pakhtunkhwa, Peshawar.
3. Deputy Director Food Hazara Division; Abbottabad.
4. District Food Controller, Mansehra.
5. Assistant Food Controller PRC, Abbottabad Road, Manshra.
..... (Respondents)

Mr. Muhammad Arshad Khan Tanoli,
Advocate ... For appellant

Mr. Asif Masood Ali Shah, ... For respondents
Deputy District Attorney

Date of Institution.....14.12.2023

Date of Hearing.....23.09.2024

Date of Decision..... 23.09.2024

Service Appeal No. 258/2024

23.09.2024

Umar Saeed Chowkidar, District Food Office, Mansehra. .
.....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Food Department Peshawar.
2. Director Food Khyber Pakhtunkhwa, Peshawar.
3. Deputy Director Food Hazara Division, Abbottabad.
4. District Food Controller, Mansehra.
5. Assistant Food Controller PRC, Abbottabad Road, Mansehra.
..... (Respondents)

Mr. Muhammad Arshad Khan Tanoli,
Advocate ... For appellant

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CONSOLIDATED JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of the instant appeal as well as the connected Service Appeal No. 258/2024, titled “Umar Saeed Chowkidar District Food Office, Mansehra and others”, as in both the appeals common questions of law and facts are involved.

02. The service appeals have been instituted by the appellant under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 25.07.2023 whereby he was removed from service. It has been prayed that on acceptance of the appeal, the impugned order dated 25.07.2023 might be set aside and the respondents be directed to reinstate the appellant in service from the date of his removal from service with all service back benefits, alongwith any other remedy which the Tribunal deemed appropriate.

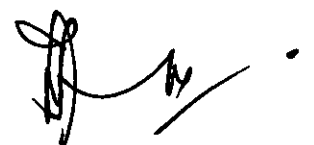
03. Brief facts, as given in the memorandum of appeal, are that the appellant was serving as Chowkidar and posted at Provincial Reserve Centre (PRC) Abbottabad Road, Manshra under the control of respondent No. 4. Respondent No. 5 paid a visit at Provincial Reserve Centre on 01.04.2023 and obtained signature of the appellant on blank paper with assurance to check attendance for onwards submission to respondent No. 4. On the same day, respondent No. 5 fabricated a report regarding wheat theft of 40 bags from Godown No. 6 which were found loaded into Suzuki Vehicles. He wrote a



confessional statement of theft on the blank paper which was obtained by him from the appellant on the pretext of checking of attendance. He reported the fabricated incident of theft to high ups and as a result, respondent No. 3 suspended the appellant vide order dated 01.04.2023 and also constituted an Inquiry Committee to probe into the matter. Charge sheet was issued to the appellant but the Inquiry Committee constituted earlier was reconstituted on 14.04.2023. The appellant submitted his statement wherein he denied the allegations and highlighted the fraud committed by respondent No. 5. Respondent No. 3 issued show cause notice dated 12.07.2023 wherein the allegation of theft of 40 bags from Godown No. 6 was leveled against the appellant. He properly replied the same on 17.07.2023. Two letters dated 17.07.2023 and 19.07.2023 were issued for personal hearing of the appellant but in fact it was not conducted and respondent No. 3 imposed major penalty of removal from service on him vide impugned order dated 25.07.2023. Feeling aggrieved, he filed departmental appeal which was not responded; hence the instant service appeal.

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

05. Learned counsel for the appellant after presenting the case in detail argued that the impugned order of removal from service dated 25.07.2023 was malafide, discriminatory, against the law and liable to be set aside. He argued that no incident of theft took place from the Provincial Reserve Centre Godown No. 6. He argued that neither two loaded vehicles were taken into



possession nor FIR was registered and that the entire episode was aimed at giving service loss to the appellant. He further argued that opportunity of cross-examining respondent No. 5 was not provided to the appellant and without recording evidence and proving allegations against him, he was removed from service. He requested that the appeal might be accepted as prayed for.

06. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that respondent No. 5 caught the appellant red handed with 40 bags of wheat, 50 Kgs each, being carried in two Suzuki Ravi vehicles bearing No. CR 5303 and C-5700 moving out of the Provincial Reserve Centre Mansehra on 01.04.2023. The appellant gave confessional statement of theft of wheat bags before respondent No. 5 in the presence of the witnesses voluntarily. Respondent No. 5 prepared a report of the incident and brought the matter before his high ups. The appellant was suspended from service and inquiry committee was constituted on 14.04.2023 and the allegations were proved against him. Show cause notice was issued as per rules and after observing the codal formalities he was removed from service. Learned DDA requested that the appeal might be dismissed.


07. Arguments and record presented before us transpired that both the appellants were posted as Chowkidar at the Provincial Reserve Centre (PRC) Abbottabad Road, Mansehra and were accused of theft of 40 bags of wheat from the Godown. A copy of inquiry report presented before us showed that Inquiry Committee, in its findings, itself stated that physical verification of stock by the Inquiry Officers showed no loss to the government in terms of wheat stock. It was further noted that appellants were not given an




opportunity to cross-examine respondent No. 5, Assistant Food Controller PRC, Mansehra, who allegedly caught the appellants red handed and prepared the report for his high ups, based on which the inquiry was conducted. The inquiry report was also silent on inspection conducted by the Inquiry Committee of the two vehicles used for transportation. Moreover, if there was a theft of any stock, no FIR was registered by the concerned authority. That made the entire inquiry process faulty and one could safely arrive at a conclusion that the inquiry committee could not prove charges leveled against the appellants. When there was no loss to the government and the stock of wheat was also complete, then one failed to understand why anyone could be held guilty of any theft that actually did not take place, as is evident from the enquiry report.

08. In view of the above discussion, the impugned order is set aside and the appellants are reinstated into service with all back benefits. Cost shall follow the event. Consign. Copy of this judgment be placed on file of connected service appeal.

09. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 23rd day of September, 2024.*


(FAREEHA PAUL)
Member(E)
Camp Court Abbottabad


(KALIM ARSHAD KHAN)
Chairman
Camp Court, Abbottabad


SA 257/2024


23.09 2024

01. Mr. Muhammad Arshad Khan Tanoli, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the impugned order is set aside and the appellant is reinstated into service with all back benefits. Cost shall follow the event. Consign.

03. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 23rd day of September, 2024.*


(FARZEHA PAUL)
Member (E)
Camp Court, A/Abad


(KALIM ARSHAD KHAN)
Chairman
Camp Court, A/Abad

Fazle Subhan PS