

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**RASHIDA BANO** ... **MEMBER(Judicial)**

***Service Appeal No.7673/2021***

Date of presentation of Appeal.....26.10.2021  
Date of Hearing.....03.10.2024  
Date of Decision.....03.10.2024

**Mr. Saeed Ur Rehman** Accounts Assistant (BPS-12), city Museum, Peshawar.....(***Appellant***)

Versus

1. **The Secretary** Sports, Tourism, Youth Affairs and Archaeology & Museums Department, Khyber Pakhtunkhwa, Peshawar.
2. **The Director** Archaeology & Museums, Khyber Pakhtunkhwa, Peshawar.....(***Respondents***)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellant  
Mr. Naseer Ud Din Shah, Assistant Advocate General .....For respondents

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**SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDERS DATED 17-06-2021 WHEREBY MINOR PENALTY OF WITHHOLDING PROMOTION OF THE APPELLANT FOR THE PERIOD OF THREE YEARS HAS BEEN IMPOSED AND AGAINST THE IMPUGNED INACTION OF THE RESPONDENTS BY NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.**

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**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Facts of the case of the appellant, gathered from memorandum and grounds of appeal are that the appellant was serving as Assistant Accountant (BPS-12) in the respondent department; that a committee was constituted vide order



dated 10.09.2020 to probe the matter of up gradation for the appellant and misappropriation in accounts committed by him; that in response to the said office order, he submitted his reply to the Chairman of the Inquiry Committee; that a audit report inquiry was submitted on 03.11.2020 and a show cause notice was issued to the appellant on 04.12.2020; that vide impugned order dated 17.06.2021, the appellant was awarded minor penalty of withholding of promotion for three years; that feeling aggrieved, he filed departmental appeal but the same remained un-responded, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who 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.

3. We have heard learned counsel for the appellant, learned Assistant Advocate General for respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

5. In the case at hand, the appellant, an Assistant Accountant (BPS-12) in the respondent department, contends that the disciplinary proceedings against him were

unjustified. A committee was established on September 10, 2020, to investigate his potential upgradation and alleged misappropriation of funds. In response to this inquiry, the appellant submitted a detailed reply to the Inquiry Committee. Following an audit report submitted on November 3, 2020, the appellant received a show cause notice on December 4, 2020. Ultimately, the impugned order dated June 17, 2021, resulted in a minor penalty of withholding his promotion for three years. The appellant, dissatisfied with this decision, filed a departmental appeal, which went unanswered, prompting him to lodge the current service appeal. The appellant's grievances primarily revolve around the fairness and transparency of the inquiry process and the appropriateness of the penalty imposed.

6. It is worth to mention that the department claims as inquiry has been conducted under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 rules, but we find that is an audit report and not proper inquiry. Proper inquiry has been guided by the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 in the following manner:

***"11. Procedure to be followed by inquiry officer or inquiry committee.—(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the***

*charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.*

*(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry ex-parte.*

*(3) The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.*

*[(4) Statements of witnesses shall be recorded in the presence of accused and departmental representative.]*

*(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.*

*(6) If the accused absents himself from the inquiry on medical grounds, he shall be deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him, is sanctioned on the recommendations of a Medical Board; provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.*

*[(7) The inquiry officer or the inquiry committee, as the case may be, shall complete the inquiry within sixty days or within such an extended period, which the competent authority may allow on the request of the inquiry officer or inquiry committee, as the case may be, for reasons to be recorded and shall submit his or its report to the competent authority within seven days of the date of completion of inquiry. The inquiry report must contain clear findings as to whether the*



*charge or charges have been proved or not proved and specific recommendations regarding exoneration or imposition of minor or major penalty or penalties upon the accused."*

7. The appellant has not been treated in accordance with the relevant rules, what to talk about further proceedings of inquiry etc. as the above procedure has not been adopted by the department.

8. Keeping in view the above circumstances, impugned order dated 17.06.2021 is set aside and the respondents are directed to conduct de-novo inquiry, to be conducted strictly in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, within 60 days of the receipt of this judgment. Costs shall follow the event. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3<sup>rd</sup> day of October, 2024.*



**KALIM ARSHAD KHAN**  
Chairman



**RASHIDA BANO**  
Member (Judicial)

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

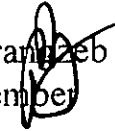
Mr. Umer Farooq Mohmand, junior to Mr. Noor Muhammad Khattak, Advocate present. Mr. Muhammad Jan, District Attorney for the respondents present.

Junior counsel for the appellant seeks an adjournment on the grounds that senior counsel is not available. Adjourned. To come up for arguments on 03/10/2024 before the D.B. Parcha Peshi given to the parties.

SCANNED  
KPST  
Peshawar



(Rashida Bano)  
Member (Judicial)



(Aurangzeb Khattak)  
Member (Judicial)

\*Naeem Amin\*

S.A #.7673/2021

**ORDER**

3<sup>rd</sup> Oct. 2024

1. Learned counsel for the appellant and Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents present. Heard.
2. Vide our detailed judgment of today placed on file, impugned order dated 17.06.2021 is set aside and the respondents are directed to conduct de-novo inquiry, to be conducted strictly in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, within 60 days of the receipt of this judgment. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3<sup>rd</sup> day of October, 2024.*



(Rashida Bano)  
Member (J)



(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah\*