

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

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

Service Appeal No. 2209/2023

Mr. Muhammad Adnan, Ex-Senior Scale Stenographer Establishment and  
Administration Department, Government of Khyber Pakhtunkhwa.  
.....(*Appellant*)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Minister, Peshawar.
2. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. The Secretary to Government of Khyber Pakhtunkhwa E&SE Department, Civil Secretariat, Peshawar. .... (*Respondents*)

Mr. Muhammad Asif Yousafzai,  
Advocate ... For appellant

Mr. Naseerud Din Shah, ... For respondents  
Assistant Advocate General

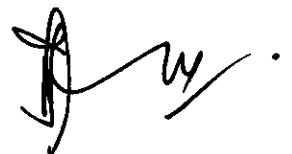
Date of Institution.....25.10.2023

Date of Hearing.....08.10.2024

Date of Decision..... 08.10.2024

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal has been instituted by the appellant under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 17.07.2023, whereby he was removed from service and against the order dated 10.10.2023, whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, the impugned orders dated 17.07.2023 and 10.10.2023 might be set aside and the



appellant be reinstated into service with all back benefits, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts, as given in the memorandum of appeal, are that the appellant was working in the Elementary & Secondary Education Department. His services were surrendered through a letter dated 10.11.2022 by the Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa wherein it was stated that he was involved in issuing fake transfer orders of two Subject Specialists and that he allegedly demanded Rs. 60,000/- from them. Mr. Abdul Haq was appointed as Inquiry Officer to conduct inquiry. Charge sheet and statement of allegations was served upon the appellant and he was called for personal hearing on 09.01.2023 but without giving any chance of cross examination, he was recommended for minor penalty. Show cause notice was served upon the appellant on 05.12.2023 which was duly replied by him in which he rebutted all the allegations levelled against him. Vide impugned order dated 17.07.2023, he was removed from service. Feeling aggrieved, he preferred departmental appeal which was rejected on 10.10.2023; hence the instant service appeal.

03. Respondents were put on notice who submitted written reply/comments. We heard the learned counsel for the appellant and learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

04. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders were against the law, facts, norms of justice and not tenable in the eyes of law. No opportunity of cross-examination was



given to him. He further argued that the Inquiry Officer recommended minor penalty while without any reason major penalty of removal from service was imposed upon the him. He argued that no opportunity was afforded to the appellant to cross examine the two Subject Specialists produced against him and that the penalty of removal from service was very harsh and not commensurate with the charges levelled against him. He requested that the appeal might be accepted as prayed for.

05. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that under Rule 11(1) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, if any witness was produced by one party, the other party should be entitled to cross examine but in the instant case no witness was produced by any party, therefore, the appellant could not raise objection about the opportunity of cross examination of the witnesses. He further argued that tentative major penalty of dismissal from service was recommended in the show cause notice, however, the appellant could not satisfy the competent authority and hence major penalty of removal from service was imposed upon him under the law. He requested hat the appeal might be dismissed.

06. From the arguments and record presented before us, it transpired that the appellant was removed from service on the charges of issuing fake posting/transfer notification of two Subject Specialists, Mr. Samiullah and Mr. Matiullah, and demanded a reasonable amount from both of them. An inquiry was conducted based on which he was awarded major penalty of removal from service. Perusal of inquiry report showed that statements of two Subject Specialists had been recorded by the Inquiry Officer but the appellant

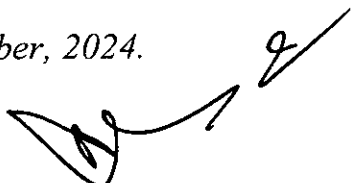


was not given any opportunity to cross examine both of them. It would have been in the fitness of the matter that the Inquiry Officer should have provided the opportunity of cross-examination to the appellant in order to fulfil the requirements of a fair trial.

07. In view of the above discussion, the matter is remitted back to the respondent department to conduct denovo inquiry in the matter under the rules by fully associating the appellant in the inquiry process and to provide him fair opportunity to present his case and cross-examine the witnesses. The entire process of inquiry shall be completed within sixty days of the receipt of copy of this judgment. The appellant is reinstated into service for the purpose of denovo inquiry. The matter of back benefits shall be subject to the outcome of denovo enquiry. Cost shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 08<sup>th</sup> day of October, 2024.*

  
(FAREEHA PAUL)  
Member(E)

  
(KALIM ARSHAD KHAN)  
Chairman

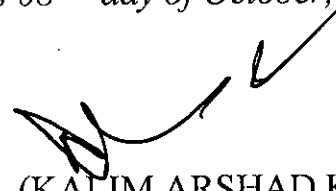
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08.10.2024 01. Mr. Muhammad Asif Yousafzai, Advocate for the appellant present. Mr. Naseerud Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the matter is remitted back to the respondent department to conduct denovo inquiry in the matter under the rules by fully associating the appellant in the inquiry process and to provide him fair opportunity to present his case and cross-examine the witnesses. The entire process of inquiry shall be completed within sixty days of the receipt of copy of this judgment. The appellant is reinstated into service for the purpose of denovo inquiry. The matter of back benefits shall be subject to the outcome of denovo enquiry. Cost shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 08<sup>th</sup> day of October, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
Chairman