

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 7846/2021

Date of presentation of Appeal.....06.12.2021
Date of Hearing.....24.09.2024
Date of Decision.....24.09.2024

**Muhammad Sohail, Computer Operator (BPS-16) O/o District Public
Prosecutor Swabi.....Appellant**

Versus

1. The Secretary to Government of Khyber Pakhtunkhwa, Prosecution Department, Civil Secretariat Peshawar.
2. The Director General (Prosecution) Khyber Pakhtunkhwa, Peshawar.
3. The District Public Prosecutor, Swabi, Khyber Pakhtunkhwa.
.....(Respondents)

Present:

Miss. Uzma Syed, Advocate.....For appellant
Mr. Naseer-ud-Din Shah, Assistant Advocate GeneralFor respondents
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): Brief facts of the case as alleged by the appellant in his memorandum of appeal are that, he while serving as Computer operator in the office of Directorate of Prosecution Department was transferred to District Public Prosecutor Office Buner on October 9, 2020. However, shortly after joining his new assignment, he fell ill on October 26, 2020. After this incident, the Director General of Prosecution issued a notice to him under Rule 9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 on November 19, 2020. In response, on November 26, 2020,

the appellant submitted an application detailing his serious medical condition, which was aggravated by the risk associated with COVID-19 and requested a transfer to a location closer to his home. Despite his thorough reply to the charge sheet, in which he categorically denied the allegations against him, he faced continued examination. He applied for medical leave and during the inquiry conducted, the inquiry officer acknowledged his illness. Following this, a subsequent show cause notice was issued based on the findings, to which the appellant responded by denying any wrongdoing. A medical board was convened to assess the appellant's health, confirming that he was suffering from celiac disease and recommended a transfer to a closer station for better support. Nevertheless, the appellant received another show cause notice on the same allegations, without a new charge sheet being issued. He once again denied the allegations in his response. On April 17, 2021, the appellant filed another application for medical leave. However, the impugned orders dated May 31, 2021, imposed penalties on him, which included censure and categorizing his absence as leave without pay from October 26, 2020, to May 31, 2021. Additionally, a separate penalty of stoppage of three annual increments was unfairly applied without adequate justification of procedural rigor. Following these decisions, the appellant filed a departmental appeal, which was dismissed on October 20, 2021, with the formal notification received on November 6, 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.


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3. The learned counsel for the appellant contended that the first show cause notice issued to the appellant, followed by a second show cause notice based on the same grounds, lacked legal footing. He next contended that once the impugned order was issued and a penalty of censure was imposed on the appellant, the subsequent penalty of stoppage of three annual increments carried no legal value as it effectively amounted to double jeopardy, thereby being void ab initio. He further contended that the appellant was denied the fundamental right to a personal hearing prior to the imposition of penalties. He also contended that the essential legal principle is that no individual should be penalized without an opportunity to defend themselves, making the lack of a personal hearing a severe procedural flaw. He next argued that the maxim "Audi Alteram Partem" asserts that no one should be vexed twice for the same cause, and therefore, the second impugned order dated 31.05.2021, which imposed a penalty of stoppage of increment, lacked legal justification, as the appellant had already been penalized under previous orders. He further argued that the appellant's right to medical leave should not have been denied based on Rule 13 of the Revised Leave Rules, 1981, which stipulates that medical leave must generally be granted with pay unless extraordinary circumstances warrant otherwise, therefore, the authority failed to adhere to the established rules and improperly refused medical leave to the appellant. He also argued that the appellant's situation was a direct infringement of Article 10-A of the Constitution of the Islamic Republic of Pakistan, which guarantees the right to a fair trial. He made reference to superior court rulings in cases (2019 CLC 1750; PLJ 2018 TRC Services 138 and PLJ 2019 TRC Services PAGE 1) which

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reiterated that medical leave should not be unjustly denied without proper legal justification and procedural adherence. It was also asserted that the appellant, as a civil servant, had been unjustly treated under the law. The failure to provide a fair hearing and the improper penalization underlined a disregard for established legal norms, which should concern this honorable court. Lastly, he argued that the appeal n hand may be accepted as prayed for.

4. On the other hand, learned Assistant Advocate General for the respondents contended that the appellant had displayed a lethargic attitude while serving as a Computer Operator, leading to multiple explanations being requested from him due to his frequent absences from duty. He next contended that the appellant was transferred to District Buner vide order dated 09-10-2020 but the appellant failed to comply the order despite the lapse of 7 days and was unwilling to relinquish his charge. He further contended that due to his non-compliance, respondent No. 02 had no option but to relieve the appellant from his duties through an order dated 16-10-2020 and the District Public Prosecutor, Buner also submitted reports regarding the appellant's absence, emphasizing his continued disregard for duty. He also contended that upon assuming his new position on 23-10-2020, the appellant again disappeared from his duty station, therefore, another absence report was filed, indicating his unexcused absence from 26-10-2020 to 02-11-2020. He next argued that in response to these absences, a notice under Rule 9 of the Khyber Pakhtunkhwa Govt. Servants (Efficiency and Discipline) Rules, 2011, was issued on 19-11-2020 directing the appellant to resume duty within 15 days but despite this notice, the appellant did not return to duty and

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instead submitted application on medical grounds, which was subsequently denied. He further argued that an inquiry was then initiated, and a charge sheet was issued to him. He also argued that the appellant was provided with the opportunity for a personal hearing but he submitted another application for two months' medical leave, which was not granted due to the pending inquiry. He next submitted that the inquiry officer, after a thorough investigation, concluded that the allegations against the appellant were proved, therefore, a final show-cause notice was issued to the appellant to which the appellant responded with requests for reassignment and personal hearings, presenting his medical history; however, these requests were associated with procedural shortcomings and deficiencies. He further submitted that due to continuous absence and refusals to assume duties in District Buner despite repeated directives, respondent No. 02 had to issue two show-cause notices and imposed penalties in accordance with the law and rules, which were upheld. He also submitted that the appellant was transferred to District Public Prosecutor Office, Swabi due to unrelenting absenteeism at Buner and his subsequent departmental appeal against this decision was rejected. He also added that the appellant continued to display a casual attitude towards his duties even after the transfer, as reported by District Public Prosecutor, Swabi, thereby justifying further departmental action. In the last, he argued that all the legal and codal formalities were fulfilled, therefore, the appeal in hand being meritless is liable to be dismissed with cost.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The principle of double jeopardy, though commonly associated with criminal law, applies broadly within administrative and disciplinary proceedings to prevent an individual from being punished more than once for the same offense. As alleged by the appellant, he was initially penalized after a show cause notice was issued on January 20, 2021. Despite providing alleged adequate medical evidence and a compelling response, the department issued a second show cause notice based on the same grounds without introducing new charges or evidence. The subsequent imposition of penalties on May 31, 2021, penalizing the appellant twice for the same alleged misconduct contravened the due process. Furthermore, the penalty of stopping three annual increments was imposed upon the appellant without proper legal grounding. Key to administrative justice is the right to a fair hearing, a right enshrined in Article 10-A of the Constitution of the Islamic Republic of Pakistan, which guarantees due process and the right to be heard. The appellant was not given a meaningful personal hearing before decisive penalties were imposed. This denial of the opportunity to present his case violated principles of natural justice. A procedural misstep of this magnitude compromises the integrity of disciplinary procedures and effectively silences an individual's defense. Evidence presented, including medical board findings, allegedly confirmed the appellant's health issues, justifying his need for medical leave. The regulations stipulate that medical leave, especially when corroborated by credible medical evidence, should be granted with pay. This denial reflects a lack of empathy and adherence to reasonable employee welfare standards, demonstrating procedural unfairness. The sequence of actions taken by

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the department—ranging from the issuance of multiple, charges to the imposition of repeat penalties—underscored a pattern of mismanagement and legal unsoundness. The faulty procedural approach and lack of adherence to proper legal channels signaled an administrative failure, emphasizing the need for adherence to fair processes, compliance with regulations, and respect for employee rights. Conclusively, these findings reveal systemic issues within the handling of the appellant's case, underscoring the importance of fairness, legal basis, and procedural integrity in administrative proceedings.

7. Consequently, the impugned orders are set-aside, emphasizing the need for regular inquiry aligned with legal provisions and the principles. The matter is remanded back to the respondents for a comprehensive regular inquiry within three months. Respondents are further directed to conduct a thorough assessment of all presented evidence, ensuring justice for the appellant. 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 24th day of September, 2024.*


AURANGZEB KHATTAK
Member (Judicial)

24/09
2024.


RASHIDA BANO
Member (Judicial)


ORDER

24th Sept, 2024

1. Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the impugned orders are set-side, emphasizing the need for regular inquiry aligned with legal provisions and the principles. The matter is remanded back to the respondents for a comprehensive regular inquiry within three months. Respondents are further directed to conduct a thorough assessment of all presented evidence, ensuring justice for the appellant. 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 24th day of September, 2024.*



(Rashida Bano)
Member (Judicial)



(Aurangzeb Khattak)
Member (Judicial) 24/09/2024.