KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.443/2022

Date of presentation of Appeal.....09.03.2022
Date of Hearing.....14.10.2024
Date of Decision.....14.10.2024

Rahim Dad Khan son of Mohib Gul, Drawing Master, GMS Kayan Mansehra resident of Mohallah Hidayatullah Shah, GT Road, Peshawar.....***(Appellant)***

Versus

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **Secretary to Government of Khyber Pakhtunkhwa** Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. **Director,** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. **District Education Officer,** District Mansehra.
5. **District Education Officer,** District Battagram.
6. **District Accounts Officer** District Mansehra.
7. **District Accounts Officer,** Battagram.....(***Respondents***)

Present:
Mr. Akhtar Ilyas Khan, Advocate .....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 03.09.2021 WHEREBY THE APPELLANT HAS BEEN AWARDED MAJOR PENALTY OF DISMISSAL FROM SERVICE.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as reflected from the record, in brief is that he was appointed as Drawing Master (BPS-15) vide order dated 16.04.2013; that vide impugned

order dated 03.09.2021 was communicated to him on 13.10.2021 during the execution petition proceedings; that the appellant was earlier dismissed from service; that his service appeal No.13/2018 was allowed with direction to respondents to conduct de-novo inquiry; that the same was conducted and he was again dismissed from service vide order dated 03.09.2021; that feeling aggrieved, the appellant filed departmental appeal but the same was not responded, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents 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 and learned District Attorney 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 District Attorney controverted the same by supporting the impugned order(s).

5. The appellant's case, as outlined in the record, reveals a series of challenging circumstances surrounding his employment as a Drawing Master (BPS-15), to which he was appointed on April 16, 2013. Following his dismissal from service, the appellant successfully appealed through Service Appeal No. 13/2018, which resulted in a directive for a de-novo inquiry by the respondents. After conducting

de-novo inquiry, he was again dismissed from service via the impugned order dated September 3, 2021, which was communicated to him on October 13, 2021, during the execution petition proceedings. In response to this latest dismissal, the appellant filed a departmental appeal; however, the lack of any response from the department prompted him to pursue the current service appeal.

6. An inquiry has been conducting. Findings of the same are reproduced as under:

> *"1. Mr. Rahim Dad was interviewed, relevant documents were explored and it was observed from the appointment order kept with him that he was appointed on vacant DM post at GHS Asharban (District Battagram) by DEO (M) Battagram vide order Endst No.8804-8 dated 16.04.2013. This appointment order has seven appointee teachers. This appointment order is not in accordance with merit list for the said posts and has no record in the office. Hence cannot be verified by DEO (M) Battagram.*
> *2. The appointment order Endst No.8178-83 provided by DEO (M) Battagram for the same merit list has only five appointee teachers and name of Mr. Rahim Dad does not exist in this appointment order . This appointment order is in accordance with merit list and verified by DEO (M) Battagram as original.*
> *3. The date of approval/recommendation of District Selection Committee Battagram is same on both the appointment orders i.e. 27.12.2012.*
> *4. The name of Rahim Dad is not found in the merit list for the post of DM.*
> *5. The post is District based and the person from Peshawar cannot be appointed on this post.*
> *6. According to the report of HM GHS Asharban the teacher has no service record at GHS Asharban.*
> *7. Service Book maintained by the teacher concerned cannot be verified by the HM GHS Asharban and DEO (M) Office Battagram.*
> *8. No attendance record of the teacher concerned is found in the teacher attendance register of GHS Asharban.*
> *9. The name of the teacher concerned is not present in the Monthly Staff statement of school during his service at GHS Asharban.*
> *10. No pay record is found at GHS Asharbaan but he has drawn one month pay from Account Office Battagram.*

11. No charge report of the teacher concerned is found at GHS Asharban.
12. No academic documents of the teacher concerned are found in the DEO (M) Office Battagram.
13. Mr. Rahim Dad was transeferred from GHS Asharban (District Battagram) to GMS Kayan (District Mansehra) vide director E&SE, Khyber Pakhtunkhwa Peshawar transfer order Endst No.4372-8 dated 06.08.2014.
14. After transfer the relieving chit and Last Pay Certificate issued to the teacher concerned cannot be verified.

7. Learned counsel for the appellant raised the following questions:

1. That the appellant was not associated with the inquiry proceedings.

2. That he was not confronted with the documents referred in the inquiry report.

3. that inquiry was not conducted in accordance with relevant rules and within 90 days as directed by this Tribunal.

8. To answer the above questions, we find that statement of the appellant was recorded in the inquiry report. The documents of the Education Office were verified at the spot which show that the appellant had not remained part of the process of selection as his name does not figure anywhere in the selection process.

9. Besides, he belongs to District Peshawar and his alleged appointment in District Battagram was also not being justified because the posts against which he issued his appointment order was district level posts and only the persons domiciled in the

District Battagram could apply for the posts. The merit list and factum of domicile of the appellant were not denied or rebutted by the appellant himself nor he could place on record any advertisement or for that matter, his application for appointment etc. All the above do not entitle the appellant for the desired relief. The contention that the inquiry was not conducted in accordance with law is not well founded because the documentary evidence collected by the Inquiry Officer/Inquiry Committee was sufficient to prove the stance of the respondent department.

10. Last, but not the least, the appointment order which the appellant claims to be genuine, is issued in April 2013, wherein, seven (07) candidates were shown but the department denies the same and has rather stated that the appointment order was issued in March, 2013, which contention was also not proved otherwise by the appellant by production of any documentary evidence.

11. In view of the above discussion, we find no merits in this case, which is dismissed with costs. Consign.

12. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 14th day of October, 2024.

KALIM ARSHAD KHAN
Chairman

RASHIDA BANO
Member (Judicial)

**Mutazem Shah*2*