

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 516/2021

Date of presentation of Appeal.....08.01.2021
Date of Hearing.....25.09.2024
Date of Decision.....25.09.2024

Sher Ahmad S/o Mardana Khan, Office Assistant DC Office, Lower Chitral,*Appellant*

Versus

- 25/09/2024*
1. Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary, at Civil Secretariat, Peshawar.
 2. Secretary Finance Government of K.P.K at Civil Secretariat, Peshawar.
 3. Commissioner Malakand Division at Saidu Sharif, Swat.
 4. Deputy Commissioner/DC, Chitral.....(**Respondents**)

Present:

Mr. Asad Ullah Khan Yousafzai,For appellant
Mr. Naseer-ud-Din Shah, Assistant Advocate GeneralFor respondents
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JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as narrated by the appellant in his memorandum of appeal, are that he joined services in the respondent department as Junior Clerk in the year 1989. Prior to his current position, he served as In-charge of the record room of Judicial Council, Chitral. He allegedly refused to attest a document presented by Syed Jalal Shah, which was purportedly bogus and dated back to 1904, allegedly prepared by Mr. Muhammad Ali Shah. His refusal led to the initiation of a complaint against him. Subsequently, disciplinary proceedings were initiated against him, resulting in the

imposition of a major penalty of reduction/demotion to a lower post of scale i.e from BPS-16 to BPS-14 vide order dated 05.11.2020, while the Naib Qasid, Amin ur Rahman, received only a minor penalty of censure. Feeling aggrieved, he submitted a departmental appeal to the Commissioner of Malakand, which was dismissed on December 10, 2020, prompting him to challenge the impugned orders before this Tribunal.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. The learned counsel for the appellant contended that the appellant acted in the interest of the state by refusing to attest the bogus document, thereby preventing the illegal appropriation of state resources. He next contended that the decision to impose a major penalty upon the appellant was discriminatory, as the Naib Qasid involved in the same proceedings received only a minor censure despite similar involvement in the incident. He further contended that the appellant's service record was exemplary, making the severity of the punishment unwarranted. He also contended that no opportunity for a personal hearing was given to the appellant during the inquiry process, which infringed upon his right to a fair procedure. He next argued that the appellant was not guilty of any misconduct and was unjustly targeted due to the influence wielded by Syed Jalal Shah. He further argued that the imposition of a major penalty shortly before the appellant's retirement could significantly affect his family's financial well-being. He also argued that the penalty imposed upon the appellant was arbitrary, harsh and violated the principles


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enshrined in the Civil Service Act, 1973 and the Efficiency and Disciplinary Rules, 2011. In the last, he argued that the appeal in hand may be accepted as prayed for.

4. On the other hand, the learned Assistant Advocate General for the respondents contended that the appellant himself had admitted in his application to the Deputy Commissioner that he had erroneously attested the bogus documents and requested leniency. He next contended that inquiries, initiated at the behest of the appellant's application, had conclusively determined his involvement in the attestation of alleged documents, necessitating disciplinary action. He further contended that the appellant's claim of being forced into the situation was unfounded, as evidence pointed towards a consistent pattern of misconduct. He also contended that, as the in-charge of records, the appellant bore ultimate responsibility for the integrity of the documents held within the record room and consequently, was appropriately penalized. He next argued that the disciplinary proceedings were conducted in accordance with established rules and protocols, providing the appellant with an opportunity to defend himself, but he failed to prove his innocence. Finally, he concluded by asserting that the appeal in hand may be dismissed with cost.

5. We have heard the arguments of learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have perused the record.

6. The perusal of the record shows that the appellant, while serving as In-charge of the record room at Judicial Council in Chitral, before taking

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on the role of Assistant BPS-16 in the Office of the Deputy Commissioner of Lower Chitral, was charged in a case of tampering with the official record. According to the appellant, he encountered a situation where Muhammad Ali Shah prepared a bogus document from 1904, which Syed Jalal Shah attempted to have attested. However, upon reviewing the records, he identified the document as fraudulent and refused to attest it. Available on the record is an application written by the appellant to the Deputy Commissioner/District Collector of District Chitral, requesting the initiation of proceedings against Muhammad Ali Shah and Syed Jalal Shah, wherein the appellant himself stated that **he provided the said person, older register for inspection. He very cleverly and smartly placed a good and self-made documents, Muhrra 1905 by Shuja-ul-Mulk Mehtar Chitral Register, between the pages and that he had made a photocopy of it from the Naib Qasid and fraudulently and maliciously taken away with the attested from me.** Such an admission of the appellant carries significant weight in legal and disciplinary contexts, as it not only reflects personal accountability but also diminishes the scope for defense strategies that might argue against any involvement or intention. The acknowledgment of oversight through this admission shapes the narrative of the case. Moreover, within the framework of institutional responsibility and professional conduct, such admissions serve as a critical juncture. They offer a benchmark for evaluating the integrity and reliability of individuals tasked with maintaining document authenticity and procedural accuracy. The appellant's admission thus becomes an integral

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piece of evidence in assessing both the merit of the disciplinary action taken and the propriety of upholding such actions upon appeal. In conclusion, the appellant's admission in his application to the Deputy Commissioner is a cornerstone of the case, providing a clear acknowledgment of his role in the erroneous attestation and forming an essential basis for the disciplinary and legal outcomes that followed. This acknowledgment not only reflects the appellant's acceptance of accountability but also informs the broader discourse on professional ethics and responsibilities in administrative functions.

7. Moreover, Inquiries were initiated in the matter at the behest of the appellant's application and after thorough examining the circumstances surrounding the attestation of alleged documents. The investigation ultimately concluded that there was sufficient evidence to substantiate the appellant's involvement, which necessitated disciplinary action against him due to the serious nature of the allegations. Following the completion of the inquiries, disciplinary proceedings were conducted in accordance with the rules. The appellant was provided opportunity to present his defense and respond to the evidence against him but he failed to prove his innocence.

8. The impugned order dated 05.11.2020, which resulted in the appellant's major penalty of reduction in pay scale from BPS-16 to BPS-14, however, raises concerns regarding compliance with Fundamental Rule (F.R.) 29. This rule stipulates that when a government servant is reduced to a lower grade or post due to misconduct or inefficiency, the authority must explicitly state the duration of the

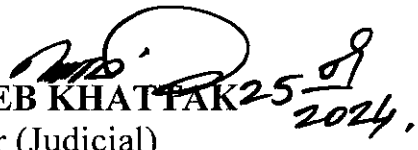

25/09/2024.


Service Appeal No.516/2021 titled "Sher Ahmad versus Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary, at Civil Secretariat, Peshawar and others", decided on 25.09.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Ms. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

reduction. In this case, the order dated 05.11.2020 did not specify how long the demotion would remain in effect. The clarity intended by F.R. 29 is essential for ensuring that individuals understand the duration of any sanctions imposed.

9. In view of the above, we partially accept the appeal by modifying the impugned order dated 05.11.2020 to the extent that the penalty of reduction/demotion from BPS-16 to BPS-14 shall remain effective for five years with effect from 05.11.2020. Parties are left to bear their own costs. File be consigned to the record room.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25th day of September, 2024.*


AURANGZEB KHATTAK
Member (Judicial)



RASHIDA BANO
Member (Judicial)

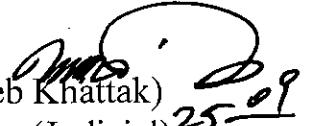
Naeem Amin

ORDER

25th Sept, 2024

1. Appellant alongwith his counsel 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, we partially accept the appeal by modifying the impugned order dated 05.11.2020 to the extent that the penalty of reduction/demotion from BPS-16 to BPS-14 shall remain effective for five years with effect from 05.11.2020. 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 25th day of September, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak)
Member (Judicial) 25-09-2024.