

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT, SWAT.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 578/2024

Date of presentation of Appeal.....29.03.2024
Date of Hearing.....04.11.2024
Date of Decision.....04.11.2024

Muhammad Idrees, Ex-Junior Clerk, SDEO (Male), Adenzai, Dir Lower**Appellant**

Versus

1. The Director, E&SE, Directorate of Education, Near Malik Saad BRT Station, Firdous, Peshawar.
2. The District Education officer (Male) E&SE, Dir Lower**(Respondents)**

Present:

Mr. Ashraf Ali Khattak, Advocate.....For appellant
Mr. Muhammad Jan, District Attorney.....For respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as narrated by the appellant in his memorandum of appeal, are that he, while serving as a Junior Clerk at GGHS Kotigram, faced allegations that he submitted fraudulent documents to halt the salaries of Headmistress Zaitoon Begum, Lubna Kanwal (SST IT) and Mst. Sarwat Begum (SST General). He was also accused of preparing a fake retirement order for Headmistress Zaitoon Begum and a fraudulent transfer order for Mst. Sarwat Begum, falsely showing her transfer from GGHS Kotigram to

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GGHS Nulo Malakand by forging the signature of Deputy Director (Female). Additionally, he allegedly issued a letter of DDO's (Drawing and Disbursing Officer) authorization for a contract teacher using an illegal and falsified signature of Headmistress Zaitoon Begum. Consequently, he was penalized with compulsory retirement vide order dated August 22, 2022. Feeling aggrieved, the appellant filed a departmental appeal, which was not resolved within the required 90 days. He then escalated the matter to this Tribunal, resulting in Service Appeal No.1670 of 2022. On November 7, 2023, this Tribunal set aside the compulsory retirement order, reinstated the appellant with the direction to the competent authority to conduct a proper inquiry under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011, within 60 days of receiving the copy of this judgment. It was also ordered that if the inquiry was not conducted within 60 days period, the appellant would be deemed reinstated in service with all back benefits effective from August 22, 2022. He was summoned to appear before an inquiry committee on December 15 and 16, 2023. During these sessions, the appellant allegedly requested a charge sheet and formal allegations in compliance with the directions of this Tribunal but he was instead asked to sign a blank document, which he refused. The inquiry committee subsequently sent questionnaires to the appellant via WhatsApp, to which he submitted written responses along with supporting documentation. When the 60-day inquiry period lapsed with no further action, the

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appellant filed Execution Petition No.64/2024 before this Tribunal. He then received a show cause notice, which he claimed was improperly delivered. However, on January 27, 2024, the appellant was again penalized with compulsory retirement. Following this, he submitted a departmental appeal, which was rejected on March 27, 2024. As a result, he filed the instant appeal before this Tribunal, seeking redressal for his grievances.

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 was not treated in accordance with the law, rules and policies, violating Articles 3, 4 and 10A of the Constitution of Islamic Republic of Pakistan. He next contended that the inquiry was not conducted in compliance with the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011, as directed by this Tribunal. He further contended that despite explicit directions for a fresh inquiry following proper procedures, the inquiry was conducted in a cursory manner without due process, rendering the resultant penalty invalid. He also contended that the appellant was not served with a charge sheet or statement of allegations in either the initial or subsequent inquiries, denying him a fair defense as required by Rule 10 of the E & D Rules, 2011. Furthermore, the appellant was not allowed to cross-examine prosecution witnesses, violating Rule 11 of the E & D Rules, 2011.

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He next argued that the right to a fair hearing was breached, as the appellant was not given a proper opportunity for a personal hearing, rendering the impugned orders void. He further argued that the appellant was denied access to the inquiry report, which is essential for preparing a defense, contrary to Rule 4(c) and Article 10A of the Constitution. He also argued that the appellant was not issued a proper final show-cause notice and the communication via WhatsApp was inadequate and unofficial. He next added that the inquiry committee's use of questionnaires was unsupported by applicable rules, making the process legally unsound. He further added that only speculative evidence was used against the appellant, failing to meet the prosecution's burden of proving guilt beyond a reasonable doubt. In the last, he requested that the impugned orders may be set aside and that the appellant may be reinstated in service with all back benefits.

4. On the other hand, the learned District Attorney for the respondents opposed the contentions of learned counsel for the appellant and argued that the appellant had a history of engaging in irregular activities through fake and unauthorized letters, which previously led to his removal from service. His reinstatement in 2009 was conditional upon a new inquiry, which was not pursued at that time. The recent inquiry, however, resulted in the major penalty of "compulsory retirement" due to similar misconduct. He further contended that following the judgment of this Tribunal dated 07-11-2023, a proper inquiry was conducted within the stipulated

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60-day period. The inquiry committee recommended upholding the major penalty of compulsory retirement, which was enforced by the competent authority on 27-01-2024. He also contended that the appellant was duly informed of the inquiry and given multiple opportunities to participate. Although the appellant requested additional time to submit his statement, he ultimately refused, despite being given four chances and a final warning to respond by 31-12-2023. He next argued that the appellant was reinstated solely to enable the proper conduct of the inquiry, as ordered by this Tribunal, countering the appellant's claims of unfair treatment. He added that the appellant was provided ample opportunities to record his statement but instead sought to delay the process. Although formal charge sheets were not issued, a show-cause notice was served based on the inquiry's findings. However, the appellant neither responded to the notice nor appeared for a personal hearing. He further added that four fair opportunities were provided to the appellant in line with Article 10-A of the Constitution of Pakistan to ensure due process. He also stated that the appellant's visit to the school on a Sunday, a known holiday, was perceived as an attempt to avoid engaging in the inquiry process. Finally, he asserted that the judgment of this Tribunal dated 07.11.2023 was fully implemented with the issuance of the office order on 27-01-2024, which was submitted to this Tribunal in a timely manner. He concluded that the respondents acted in full compliance with legal procedures and this Tribunal's direction, providing the appellant

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with sufficient opportunity to defend himself and thereby upholding the imposed penalty.

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

6. The available record shows that the appellant challenged the disciplinary order of compulsory retirement issued on 22-08-2022 before this Tribunal in Service Appeal No.1670 of 2022. This Tribunal, in its judgment dated 07-11-2023, set aside the disciplinary order and reinstated the appellant, directing the competent authority to conduct a proper inquiry in accordance with the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011. This Tribunal specified that the inquiry be completed within 60 days of receiving the judgment, failing which the appellant would be deemed reinstated with all back benefits effective from 22-08-2022. Upon examination of the available record, it is evident that the mandated inquiry process was not followed according to the E&D Rules. The E&D Rules explicitly require that a government servant facing disciplinary proceedings must be provided a charge sheet and a statement of allegations to enable him to prepare a defense. The inquiry committee failed to provide these essential documents to the appellant, instead subjecting him to extensive verbal questioning without formal documentation. This approach, which bypassed a written charge sheet and statement of allegations, compromised the appellant's


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right to a fair defense, rendering the inquiry procedurally deficient under Rule 10 of the E&D Rules. Furthermore, Rule 11 of the E&D Rules mandates that statements from prosecution witnesses be recorded in the presence of the accused and that the accused be granted an opportunity for cross-examination. However, in this case, the inquiry committee did not follow these standard procedures, conducting the inquiry without providing the appellant a chance to confront or question any witnesses. Instead, the appellant was subjected to a series of undocumented, verbal interrogations, which prevented him from engaging effectively in his defense and further undermined the inquiry's procedural legitimacy. A core principle underlying disciplinary proceedings is the right to a fair hearing, encapsulated in the maxim *audi alteram partem*, meaning "hear the other side." This principle, which is embedded within both the E&D Rules and constitutional guarantees, requires that an adverse decision not be made without allowing the individual a fair chance to respond to allegations. This Tribunal's judgment dated 07-11-2023 explicitly required that the fresh inquiry be conducted in full compliance with the E&D Rules, emphasizing a need for procedural transparency and integrity. The inquiry conducted by the respondents, however, deviated substantially from this directive, resulting in a procedurally defective inquiry. Notably, when a show-cause notice was eventually issued, it was sent to the appellant via WhatsApp by a senior clerk, rather than through a formal, legally prescribed

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method. The DEO's refusal to provide the appellant with relevant documents and inquiry records further obstructed transparency and procedural integrity. This irregularity compounded the appellant's inability to effectively respond and challenge the proceedings. In disciplinary matters, it is a well-established principle that a disciplinary order must be a "speaking order"—an order that provides clear reasoning and specific findings on each issue addressed. The impugned orders in this case lacked detailed reasoning, evidence of thoughtful examination, or specific findings, which raises serious concerns about their objectivity and fairness. The absence of substantial grounds and explanations indicates a potential predisposition against the appellant, rather than a decision based on a thorough and impartial investigation. The inquiry committee's reliance on a questionnaire process instead of providing a formal charge sheet—an approach not sanctioned by the E&D Rules—reveals a disregard for statutory procedure. The deviation from these required procedures not only compromises the inquiry's legality but suggests an arbitrary, unfair approach inconsistent with due process.


7. We conclude that the disciplinary process was flawed by numerous procedural lapses, indicating that the process was neither properly structured nor adhered to established rules. In view of what has been stated above, the imposed penalty of compulsory retirement lacks a legal basis and is deemed unsustainable. Such a

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penalty, when imposed through flawed processes, cannot be justified and is thus set aside to uphold justice and fairness.

8. In light of the above findings, the impugned orders are set-aside, the appellant is reinstated into service for the purpose of inquiry and the matter is remanded back to the respondents with explicit directions to conduct a proper inquiry. This inquiry must be completed within a 90-day timeframe from the date of receipt of copy of this judgment, providing a clear directive to ensure a fair and comprehensive examination of the case without undue delay. The issue of back benefits will depend on the outcome of the forthcoming proper inquiry. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Camp Court, Swat and given under our hands and the seal of the Tribunal on this 04th day of November, 2024.*

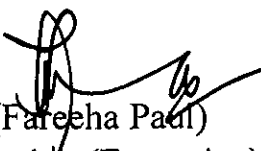
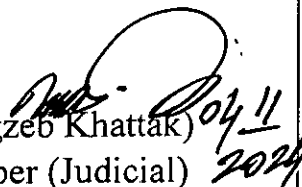

AURANGZEB KHATTAK
Member (Judicial)
Camp Court, Swat


FAREEHA PAUL
Member (Executive)
Camp Court, Swat

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 578/2024

Muhammad Idrees versus The Director, E&SE, Education Department Directorate of Education, Near Malik Saad BRT Station, Firdous, Peshawar and 01 another.

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<p><u>Order-06</u> 04th November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Appellant alongwith Mr. Ashraf Ali Khattak, Advocate.2. Mr. Muhammad Jan, District Attorney on behalf of respondents. <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, he impugned orders are set-aside, the appellant is reinstated in^{to} service for the purpose of inquiry and the matter is remanded back to the respondents with explicit directions to conduct a proper inquiry. This inquiry must be completed within a 90-day timeframe from the date of receipt of copy of this judgment, providing a clear directive to ensure a fair and comprehensive examination of the case without undue delay. The issue of back benefits, will depend on the outcome of the forthcoming proper inquiry. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><i>Pronounced in open Court at Camp Court, Swat and given under our hands and the seal of the Tribunal on this 04th day of November, 2024.</i></p> <p style="text-align: center;"> (Fareeha Paul) Member (Executive) Camp Court, Swat</p> <p style="text-align: right;"> (Aurangzeb Khattak) Member (Judicial) Camp Court, Swat</p>

01st July, 2024

Appellant is present in person. Mr. Umair Azam, Additional Advocate General for the respondents present.

Vide office order dated 01.04.2024 of Registrar of this Tribunal, respondents No. 1 & 4 have been deleted from the penal of respondents being un-necessary/improper parties.

Joint para-wise comments on behalf of respondents No. 2 & 3 have been received through office. Copy of the same handed over to the appellant. Be put up for arguments before the D.B on 04.09.2024 at Camp Court, Swat. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar

(Aurangzeb Khattak)
Member (Judicial)
Camp Court, Swat

Naeem Amin

- 04.09.2024
1. Appellant in person present. Mr. Umair Azam learned Additional Advocate General for the respondents present.
 2. Appellant requested for adjournment on the ground that his counsel is busy before the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 04.11.2024 before D.B at Camp Court, Swat. P.P given to the parties.

SCANNED
KPST
Peshawar

Kaleemullah

(Rashida Bano)
Member (J)
Camp Court, Swat

(Kalim Arshad Khan)
Chairman
Camp Court, Swat

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, AT CAMP COURT, SWAT.

Service Appeal No. 578/2024

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.....**Appellant**

Versus

1. The Director, E&SE, Education Department Directorate of Education, Near Malik Saad BRT Station, Firdous, Peshawar.
2. The District Education officer (Male) E&SE, Education Department, Dir Lower.
.....**(Respondents)**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ WITH RULE 19 OF THE KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY & DISCIPLINE) RULES, 2011 AGAINST THE IMPUGNED ORDER ENDORSEMENT NO. 664-70 DATED 27.01.2024 PASSED BY RESPONDENT NO. 3 AND THE IMPUGNED REJECTION ORDER ENDORSEMENT NO. 3436 DATED 27.03.2024, PASSED BY RESPONDENT NO. 2, WHEREBY HE REJECTED THE DEPARTMENTAL APPEAL OF THE APPELLANT.


PRESENT


1. Mr. Ashraf Ali Khattak, Advocate.....For appellant.
2. Mr. Muhammad Jan, District Attorney.....For respondents.

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	Rs. 100/-	Total	Rs. Nil

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 04th day of November 2024.


Fayeema Paul
Member (Executive)
Camp Court, Swat


Aurangzeb Khattak
Member (Judicial)
Camp Court, Swat
04/11/2024