

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**AT CAMP COURT, SWAT.**

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

**Service Appeal No. 1304/2023**

Date of presentation of Appeal.....12.06.2023  
Date of Hearing.....05.11.2024  
Date of Decision.....05.11.2024

**Abdul Salam, C.T. Government High School Paindai Matta Swat.**  
.....**Appellant**

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education K.P Peshawar.  
2. Director Elementary and Secondary Education K.P Peshawar.  
3. District Education Officer Male Swat.  
4. Mr. Hazrat Rahman Principal Government Higher School Balogram Swat (Chairman Enquiry Committee).  
5. Muhammad Javid Principal Government High School Ghailagai (Barikot) Swat. (Member Enquiry Committee).  
.....**(Respondents)**

Present:

Mr. Umar Khitab, Advocate.....For appellant  
Mr. Muhammad Jan, District Attorney.....For official respondents  
.....

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** The facts of the case, as narrated by the appellant in his memorandum of appeal, are that he served as a Primary School Head Teacher (PSHT) from November 14, 2014 to November 30, 2017, at GPS Chari Beha Matta Swat and was promoted to C.T. post at GHS Beha Swat on February 28, 2019. Respondent No. 3, the District Education Officer Male, Swat, transferred a total budget of Rs. 1,454,000/- to GPS Chari Beha

05/11/2024

Matta Swat between 2014 to 2017, with various expenditures reported, including petty repairs and stationery. An enquiry officer allegedly reported the budget allotment as Rs. 2,070,280/- instead of Rs. 1,454,000, leading to confusion regarding financial responsibilities. Appellant faced an order for recovery of Rs. 469,306/- despite his challenges. On November 28, 2019, the appellant was removed from service by Respondent No. 3. He contested this removal before this Tribunal and this Tribunal vide judgment dated September 15, 2022, ordered a de novo enquiry to be conducted within 60 days with direction to the respondents to associate the appellant with the inquiry proceedings by providing him fair opportunity of defence. The appellant was reinstated into service for the purpose of the enquiry on December 23, 2022 but the period between his removal and reinstatement was treated as without pay, which he contested. The reinstatement order was questioned as potentially fraudulent, with concerns about proper documentation and adherence to procedural norms. Nonetheless, on February 20, 2023, the appellant was reinstated into service, with a recovery of Rs. 200000/- and received a censure. His intervening period was treated as leave without pay and he was adjusted at GHS Paindy as CT with immediate effect. Feeling aggrieved to the extent of imposing penalty of censure, recovery of Rs. 200000/- as well treating the intervening period as leave without pay, the appellant filed a departmental appeal on March 10, 2023, which was not responded to

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*05/11/2024.*

within the statutory period of 90 days. Consequently, he approached this Tribunal for redressal of his grievance.

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 neither issued any charge sheet/statement of allegation or show-cause notice nor afforded an opportunity to be heard prior to the issuance of the impugned order, as no written communication or notice was provided. Consequently, the appellant was condemned unheard, violating the principles of natural justice. He next contended that the impugned paragraphs in the reinstatement order were issued with malicious intent, resulting in undue punishment against the appellant, which is fundamentally unjust. He further contended that the appellant was innocent and that proper procedural norms were not followed by the concerned authorities. The lack of adherence to such norms renders the impugned paragraphs illegal and void ab-initio. He also contended that no proper enquiry was conducted under the Government Servants (Efficiency & Discipline) Rules, 2011, thereby undermining the validity of the proceedings against the appellant. He next argued that the enquiry against the appellant is baseless and devoid of substantive proof, infringing upon the legal and fundamental rights guaranteed by the service laws, judicial precedents and the Constitution of the Islamic Republic of Pakistan, 1973. He further argued that the appellant submitted an application for reinstatement

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05/11/2024*

(Office Diary No. 4665 dated 21/2/2023) before Respondent No. 3, who subsequently issued a reinstatement order (No. 7716-21 dated 20/3/2023) prior to conducting a de novo enquiry. He also argued that had a de novo enquiry been initiated promptly following the appellant's earlier application (dated 19/9/2019), the appellant would not have faced removal or the subsequent financial and emotional distress from 28/11/2019 to 19/2/2023, during which the appellant went without pay. He next added that the actions of Respondent No. 3 and the enquiry committee contravene to the applicable laws, service rules and fundamental rights. In the last, he argued that appeal in hand may be accepted as prayed.

4. On the other hand, the learned District Attorney for the respondents opposed the contentions of learned counsel for the appellant and contended that the Enquiry Committee summoned relevant individuals, including Ex-ASDEO and Inayat ur Rahman PST and properly collected their statements as part of the investigative process, ensuring that necessary testimonies were included in the enquiry report. He next contended that the enquiry report was submitted to the office of Respondent No. 03 on February 15, 2023, indicating prompt action and follow-through on the findings of the enquiry. He further contended that the reinstatement order was issued by Respondent No. 03 on February 20, 2023, prior to the appellant's application dated February 21, 2023, therefore, the application was rendered infructuous and does not warrant consideration. He also contended that the appellant appears to evade responsibility by

*05/11/2024*

focusing on technicalities, attempting to obscure his illegalities and irregularities. This approach is not acceptable in the eyes of the law and does not provide a valid defense. He next argued that the latest enquiry, conducted in response to the direction of this Honorable Tribunal, imposes a duty on the appellant to accept the recommendations of the enquiry committee, which were executed in good faith and with proper procedure. He further argued that the appellant was given adequate notice to present his statement within seven days but he failed to provide a response, demonstrating a lack of engagement with the process that cannot be attributed to the respondents. He also argued that the thorough enquiries have already been conducted in the matter and the respondents had no reason to conduct a de novo enquiry solely based on the appellant's whims and wishes. The findings and recommendations from the enquiry stand as sufficient for any determination. In the last, he argued that the appeal in hand being meritless may be dismissed with cost.

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 served as PSHT from November 14, 2014 to November 30, 2017, before being promoted to C.T. post at GHS Beha Swat on February 28, 2019. During his service as PSHT, Respondent No. 3 allocated a budget of Rs. 14,54,000/- to GPS Chari Beha Matta Swat. A subsequent enquiry revealed that this allocation was allegedly reported as Rs.20,70,280/-

  
05/11/2024

leading to issuance of a recovery order against the appellant for Rs. 4,69,306/- as well as removal order. Appellant contested his removal and recovery order dated November 28, 2019, before this Tribunal. This Tribunal, in its judgment dated 15.09.2022, set aside the impugned orders and reinstated the appellant for the purpose of inquiry, directing the respondents to conduct a proper inquiry in accordance with the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011. Upon reviewing the inquiry conducted thereafter, it is evident that the mandated procedures as outlined in the Government Servants (Efficiency & Discipline) Rules, 2011 were substantially violated. Rule 10 of the Government Servants (Efficiency & Discipline) Rules, 2011 stipulates that a government servant facing disciplinary proceedings must be provided with a charge sheet and a statement of allegations. However, the inquiry committee, constituted on January 5, 2023, did not furnish these essential documents to the appellant. Instead, the committee relied on a questioning format during the inquiry, which lacked the fundamental structure necessary for an equitable and fair process. The use of a questionnaire approach by the inquiry committee, without issuing a written charge sheet or statement of allegations, severely compromised the appellant's right to a fair defense, thereby rendering the inquiry procedurally deficient. Rule 11 of the Government Servants (Efficiency & Discipline) Rules, 2011 further mandates that statements from prosecution witnesses must be recorded in the presence of the accused, allowing the accused an opportunity for


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05/11/2024*


cross-examination. In this instance, the inquiry committee did not adhere to these critical procedures, thus denying the appellant the chance to confront or question any witnesses. This failure undermines the integrity of the inquiry and highlights a disregard for due process. The principle of audi alteram partem, which translates to "hear the other side," is inherently tied to the right to a fair hearing. This core principle mandates that no adverse decision should occur without providing the accused adequate opportunity to respond to allegations. This Tribunal's earlier judgment dated 15.09.2022 explicitly required a de-novo inquiry complying with the Government Servants (Efficiency & Discipline) Rules, 2011, yet the subsequent inquiry significantly deviated from this requirement, manifesting as procedurally flawed. The failure of the inquiry committee to follow established statutory procedures undermines the legitimacy of their conclusions and suggests an arbitrary and potentially punitive approach towards the appellant. We find that the inquiry conducted by the respondents failed to comply with the Government Servants (Efficiency & Discipline) Rules, 2011, resulting in a flawed process that deprived the appellant of his right to a fair hearing and defense. The inquiry was procedurally deficient due to the absence of a formal charge sheet/statement of allegations, show-cause notice and the lack of opportunity for cross-examination of witnesses. In light of these findings, we conclude that the inquiry is invalid and lacks the requisite legal foundation.

*05/11/2024*

7. Consequently, the matter is remitted back to the respondents with the direction to conduct proper inquiry strictly in compliance with the Government Servants (Efficiency & Discipline) Rules, 2011, ensuring that all procedural safeguards are upheld to provide a fair and just assessment of the allegations against the appellant. Needless to mention that the appellant shall be fully associated with the inquiry proceedings by providing him fair opportunity of defending himself. This inquiry must be completed within a 90-days timeframe from the date of receipt of copy of this judgment. 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.

8. *Pronounced in open Court at Camp Court, Swat and given under our hands and the seal of the Tribunal on this 05<sup>th</sup> day of November, 2024.*

  
**AURANGZEB KHATTAK** 05/11/2024.  
Member (Judicial)  
Camp Court, Swat



  
**FAREEHA PAUL**  
Member (Executive)  
Camp Court, Swat



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No. 1304/2023

Abdul Salam versus Government of Khyber Pakhtunkhwa through Secretary Element & Secondary Education KP Peshawar and others.


S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
<p><u>Order-12</u> 05<sup>th</sup> November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none"><li>1. Appellant alongwith Mr. Umar Khitab, Advocate.</li><li>2. Mr. Muhammad Jan, District Attorney assisted by Mr. Hussain Ali, Assistant District Education officer with authority letter on behalf of respondents.</li></ol> <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, the matter is remitted back to the respondents with the direction to conduct proper inquiry strictly in compliance with the Government Servants (Efficiency &amp; Discipline) Rules, 2011, ensuring that all procedural safeguards are upheld to provide a fair and just assessment of the allegations against the appellant. Needless to mention that the appellant shall be fully associated with the inquiry proceedings by providing him fair opportunity of defending himself. This inquiry must be completed within a 90-days timeframe from the date of receipt of copy of this judgment. 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 05<sup>th</sup> day of November, 2024.</i></p> <div style="display: flex; justify-content: space-around;"><div data-bbox="574 2140 941 2369"><p>(Fareeha Paul) Member (Executive) Camp Court, Swat</p></div><div data-bbox="1117 2140 1532 2369"><p>(Aurangzeb Khattak) Member (Judicial) Camp Court, Swat</p></div></div> <p><i>05/11/2024</i></p>


02<sup>nd</sup> July, 2024

Appellant alongwith his counsel present. Mr. Umair Azam,  
Additional Advocate General for the respondents present.

Learned counsel for the appellant seeks further time for  
preparation of brief. Granted. To come up for arguments on  
08.10.2024 before the D.B at Camp Court, Swat. Parcha Peshi given  
to the parties.

SCANNED  
KPST  
Peshawar


  
(Muhammad Akbar Khan)  
Member (Executive)  
Camp Court, Swat

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

\*Naeem Amin\*

- 08.10.2024
1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present.
  2. Bench is incomplete, therefore, case is adjourned. To come up for arguments on 05.11.2024 before D.B at camp court Swat. P.P given to the parties.

SCANNED  
KPST  
Peshawar

  
(Muhammad Akbar Khan)  
Member (E)  
Camp Court Swat

\*Kamranullah\*

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

**Service Appeal No. 1304/2023**

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5. Muhammad Javid Principal Government High School Ghailagai (Barikot) Swat. (Member Enquiry Committee).

.....**(Respondents)**

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.


**PRESENT**


1. Mr. Umar Khitab, Advocate.....For appellant.
2. Mr. Muhammad Jan, District Attorney.....For official respondents.

<b>Appellants</b>	<b>Amount</b>	<b>Respondent</b>	<b>Amount</b>
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
<b>Total</b>	<b>Rs. 100/-</b>	<b>Total</b>	<b>Rs. Nil</b>

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 05<sup>th</sup> day of November 2024.

  
**Farzeha Paul**  
**Member (Executive)**  
**Camp Court, Swat**

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