

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

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

Service Appeal No.377/2023

Date of presentation of Appeal.....01.03.2023
Date of Hearing.....30.10.2024
Date of Decision.....30.10.2024

Muhammad Ilyas son of Said Ahmed resident of Hadobandi, tehsil and District Mansehra.....(*Appellant*)

Versus

1. **Member Board of Revenue**, Khyber Pakhtunkhwa, Peshawar.
2. **Commissioner Hazara Division**, Abbottabad.
3. **Deputy Commissioner**, Mansehra.
4. **Additional Deputy Commissioner (General)** Mansehra.
5. **Settlement Officer**, Mansehra.....(*Respondents*)

Present:

Mr. Muhammad Awais Ajiz, Advocate.....For the appellant
Mr. Umair Azam, Additional Advocate General.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 02.02.2023, PASSED BY RESPONDENT NO.2 WHEREBY MAJOR PENALTY OF COMPULSORY RETIREMENT UNDER THE GROUND OF ALLEGED MISCONDUCT IMPOSED UPON APPELLANT.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averments of the appeal, are that appellant was serving as Patwari; that while serving, respondent No.5, i.e. Settlement Officer Mansehra filed complaint against him vide letter dated 20.06.2022 to

the Deputy Commissioner Mansehra; that the appellant was issued charge sheet and inquiry was initiated against him; that the Inquiry Officer sought reply from the appellant of the charge sheet dated 23.08.2022 which was given; that the Inquiry Officer submitted his findings report and vide impugned order dated 22.09.2022, major penalty of compulsory retirement from service was imposed upon the appellant; that feeling aggrieved, he filed departmental appeal on 01.10.2022 but the same was rejected on 02.02.2023, 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 Additional Advocate General 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 Additional Advocate General controverted the same by supporting the impugned order(s).

5. The appellant, who was serving as a Patwari Mouza Mandiar. During this period, the Settlement Officer, complained against him vide letter dated 20.06.2022. In response to the said letter, the Deputy Commissioner suspended the appellant and ordered for inquiry into the matter. Appellant was charge sheeted which was replied by him



and a fact-finding inquiry was conducted. The findings of the Inquiry Officer were that the appellant had not handed over the record required by the Settlement Officer and had not attended the call of the said officer. Resultantly, vide impugned order dated 22.09.2022 he was compulsorily retired from service. The said order was assailed by the appellant before the Commissioner Hazara Division, Abbottabad, through departmental appeal dated 01.10.2022 but the same was regretted vide appellate order dated 02.02.2023. Therefore, having no other remedy, the appellant filed the instant service appeal.

6. The impugned order 22.09.2022 was passed on the basis of complaint/letter dated 20.06.2022 of the Settlement Officer, to Deputy Commissioner, Mansehra. The Deputy Commissioner, Mansehra suspended the appellant and ordered for inquiry. But the appellant was proceeded against on the complaint of not handing over the record and not attending the call of the Settlement Officer. Claim of the respondents is that they have proceeded against the appellant under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, however, there is nothing on record in shape of final show cause notice, personal hearing or anything in accordance with law which could show that appellant had given chance of defense and on the basis of a fact-finding inquiry, he was awarded major penalty of compulsory retirement. He had not been provided opportunity of cross-examination and was treated harshly, without considering the stance of the appellant.



7. In view of the above, the impugned order dated 22.09.2022 stands set aside and the appellant is reinstated into service with all back benefits. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 30th day of October, 2024.*


KALIM ARSHAD KHAN
Chairman




RASHIDA BANO
Member (Judicial)

Muazem Shah

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.377 of 2023

Muhammad Ilyas versus Government of Khyber Pakhtunkhwa

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
<u>Order-10</u> 30 th October, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Muhammad Awais Ajiz, Advocate, on behalf of appellant.2. Mr. Umair Azam, Additional Advocate General on behalf of respondents. <p><u>Kalim Arshad Khan, Chairman:</u> Vide our detailed judgment of today, placed on file, the impugned order dated 22.09.2022 stands set aside and the appellant is reinstated into service with all back benefits. Costs shall follow the event. Consign.</p> <p>2. <i>Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 30th day of October, 2024</i></p> <p style="text-align: center;"> (Rashida Bano) Member (J)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p><small>*Mutazem Shah*</small></p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.377/2023

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Muhammad Ilyas, son of Said Ahmed, resident of District Mansehra
.....*Appellant*

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1. Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. Commissioner Hazara Division, Abbottabad.

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


PRESENT

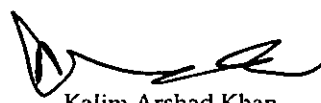
1. Mr. Muhammad Awais Ajiz, Advocate, for the Appellant
2. Mr. Umair Azam, Additional Advocate General, for respondents

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 30th day of October 2024.


Rashida Bano
Member (Judicial)


Kalim Arshad Khan
Chairman