

Service Appeal No.15180/2020 titled "Muhammad Tariq Bhatti-vs-Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others", service appeal No. 14546/2020 titled "Muhammad Usman-vs- Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" and service appeal No. 14547/2020 titled "Gul Nawaz-vs- Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 06.10.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

SCANNED
KPST
Peshawar

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MIAN MUHAMMAD ... MEMBER (Executive)

Service Appeal No.15180/2020

Muhammad Tariq Bhatti, Son of Muhammad Yousaf Bhatti caste Bhatti resident of Dabba Tabakhi D.I.Khan serving as Principal BS-19 Govt: Higher Secondary School Mandhra Kalan, D.I.Khan.

.....(*Appellant*)

Versus

1. **The Government of Khyber through Chief Secretary**, Khyber Pakhtunkhwa, Peshawar.
2. **Secretary** to the Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
3. **Secretary Establishment** Government of Khyber Pakhtunkhwa Peshawar.
4. **Director** Khyber Pakhtunkhwa Elementary and Secondary Education Department, Khyber Pakhtunkhwa Peshawar.

.....(*Respondents*)

Present:

Mr. Pir Ghulam Khan Marwat,
Advocate.....For appellant.

Syed Naseer Ud Din Shah,
Assistant Advocate General.....For respondents.

Date of Institution.....19.11.2020

Dates of Hearing.....06.10.2022

Date of Decision.....06.10.2022

Service Appeal No.14546/2020

Muhammad Usman son of Ghulam Sadeeq caste Awan resident of Faqeer Abad D.I.Khan serving as SIPE BS-18 Govt: Higher Secondary School No. 2 D.I.Khan.

.....(*Appellant*)

Service Appeal No.15180/2020 titled "Muhammad Tariq Bhatti-vs-Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others", service appeal No. 14546/2020 titled "Muhammad Usman-vs- Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" and service appeal No. 14547/2020 titled "Gul Nawaz-vs- Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 06.10.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Versus

1. **The Government of Khyber through Chief Secretary**, Khyber Pakhtunkhwa, Peshawar.
2. **Secretary** to the Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
3. **Secretary Establishment** Government of Khyber Pakhtunkhwa Peshawar.
4. **Director** Khyber Pakhtunkhwa Elementary and Secondary Education Department, Khyber Pakhtunkhwa Peshawar.

.....(*Respondents*)

Present:

Mr. Pir Ghulam Khan Marwat,
Advocate.....For appellant.

Syed Naseer Ud Din Shah,
Assistant Advocate General.....For respondents.

Date of Institution.....19.11.2020
Dates of Hearing.....06.10.2022
Date of Decision.....06.10.2022

Service Appeal No.14547/2020

Gul Nawaz son of Malik Nadir caste Awan resident of Najaf Colony Thoya Fazil Road Dera Ismail Khan presently serving as Subject Specialist BS-18 Govt: Higher Secondary School No. 2 D.I.Khan.

.....(*Appellant*)

Versus

Mr. Pir Ghulam Khan Marwat,
Advocate.....For appellant.

Syed Naseer Ud Din Shah,
Assistant Advocate General.....For respondents.

Date of Institution.....19.11.2020
Dates of Hearing.....06.10.2022
Date of Decision.....06.10.2022



.....
.....

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST PUNISHMENT IMPOSED UPON THE APPELLANT OF THE KIND "WITHHOLDING OF 03 ANNUAL INCREMENTS FOR THREE YEARS" VIDE IMPUGNED NOTIFICATION NO. SO(B/T)E&SED/9-2/2019/HSSC BISE D.I.KHAN/MUHAMMAD TARIQ BHATTI DATED 06.07.2020.

CONSOLIDATED JUDGMENT

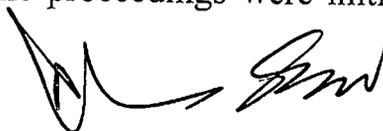
KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment the instant appeal and connected Appeal No. 1546/2020 titled "Muhammad Usman-vs- The Government of Khyber through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others" and service appeal No. 14547/2020 titled "Gul Nawaz-vs- The Government of Khyber through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others" are decided as all the three are against the same departmental proceedings.

2. According to the facts gathered from the record, the appellant is serving as Principal at GHSS Mandra Kalan, D.I.Khan; that in 2019 Higher Secondary School (Annual) Examination was started in the month of April; that the appellant alongwith other colleagues (appellants in the instant case) was deputed on the examination duty; that on 26.04.2019, an unpleasant occurrence took place in the examination Hall; that fact finding inquiry was conducted by Abdul Basit, Additional Secretary (Dev) E&SE Department Khyber Pakhtunkhwa vide office order dated 20.05.2019; that on 30.10.2019 an enquiry committee was constituted against the appellants and the enquiry



committee submitted report on 28.12.2019 recommending minor punishment of forfeiture of three annual increments upon the appellants of this appeal while in appeal No. 14546 titled "Muhammad Usman" was awarded punishment of "withholding of two annual increments for two years" and in appeal No. 14547 titled "Gul Nawaz" was awarded penalty of "reduction to a lower post for two years"; that the competent authority issued show cause notice on 25.02.2020 which was replied by the appellants; that the appellants were awarded penalty of "withholding of three annual increments for three years" vide impugned notification dated 06.07.2020 against which the appellants filed departmental appeal which was not responded within the stipulated statutory period, hence, the instant service appeal.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeals by filing written replies raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellants.
4. We have heard learned counsel for the appellants and learned Assistant Advocate General for the respondents.
5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Assistant Advocate General controverted the same by supporting the impugned order.
6. It appears that the respondents had penalized all the three appellants in consequence of the recommendations of the enquiry report of the enquiry committee. The proceedings were initiated against the appellants by issuing



Service Appeal No.15180/2020 titled "Muhammad Tariq Bhatti-vs-Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others", service appeal No. 14546/2020 titled "Muhammad Usman-vs- Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" and service appeal No. 14547/2020 titled "Gul Nawaz-vs- Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 06.10.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

charge sheet, statement of allegations and appointment of enquiry committee comprising of Adil Siddique, Commissioner Bannu and Attiq-Ur-Rehman, Principal GHSS No. 1, Peshawar Cantonment but the Chief Secretary showing himself to be authority, while initiating the proceedings and the appointing the enquiry committee, in disregard to the provisions of Rule-10 sub-rule-1 clause-C of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, did not appoint departmental representative by designation. Similarly, the enquiry report is totally silent to state the name and designation of the departmental representative. The enquiry report reflects that only the statements of the accused officials including the appellants were shown to have been recorded but those are not annexed with the reply of the department. The enquiry report is found placed on file which has been perused. The recommendations in the enquiry report had not only found the appellants guilty but also proposed punishment which act was outside the domain of the enquiry committee as it could only suggest nature of penalty i.e. either major or minor etc while the quantum of the penalty was not the job of the enquiry committee which it did in this case. Rule-12 sub-rule-1 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has vested the enquiry committee with the powers of a civil court trying a suit under the Code of Civil Procedure in 1908, in respect of the following matters namely:

- a) summoning and enforcing the attendance of any person and examining him on oath;
- b) requiring the discovery and production of documents, and receiving evidence on affidavits; and



Service Appeal No.15180/2020 titled "Muhammad Tariq Bhatti-vs-Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others", service appeal No. 14546/2020 titled "Muhammad Usman-vs- Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" and service appeal No. 14547/2020 titled "Gul Nawaz-vs- Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 06.10.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

c) issuing commissions for the examination of witnesses or documents.

7. There is nothing found in the report of the enquiry committee as to how many witnesses were examined from either side so much so name of any witness was also not mentioned in the enquiry report what to talk about their examination or cross examination as required by the rules *ibid*. The report is silent regarding any question put by the enquiry committee to the accused officials or any witnesses, which was necessary because in the departmental enquiry the accused officials were not provided the facility to engage a lawyer to join the proceedings to defend them and thus the process is inquisitorial and the committee has only to find that the charge was proved or not proved by pointing towards the major or minor penalty without suggesting the punishment or at least the quantum of punishment. After conclusion of the enquiry under Rules-11 and 12 of the said rules, it is sent to the competent authority who has to examine the report and the relevant material and determine whether the enquiry had been conducted in accordance with rules but there is nothing in the impugned order to show that the authority had found that enquiry had been conducted in accordance with the provisions of the rules as required by rule-1 of Rule-14 of the rules *ibid*. Similarly, under Sub-rule-2 of Rule-14 of the Rules, the competent authority had to observe that it was satisfied that the enquiry had been conducted in accordance with the provisions of the Rules and that it had to further determine whether the charge or charges had been proved against the accused or not. Following further process was to be adopted by the competent authority under Rule-14 of



the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline)

Rules 2011:-

(4) Where the charge or charges have been proved against the accused, the competent authority shall issue a show cause notice to the accused by which it shall-

(a) Inform him of the charges proved against him and the penalty or penalties proposed to be imposed upon him;

(b) give him reasonable opportunity of showing cause against the penalty or penalties proposed to be imposed on him and to submit as to why one or more of the penalties as provided in rule-4 may not be imposed upon him and to submit additional defense in writing, if any, within a period which shall not be less than seven days and more than fifteen days from the day the charge or charges have been communicated to him: provided that the accused shall, in his reply to show cause notice, indicate as to whether he wants to be heard in person or not;

(c) Provide a cop of the inquiry report to the accused; and

(d) direct the departmental representative to appear, with all the relevant record, on the date of hearing.

(5) After affording personal hearing to the accused the competent authority shall, keeping in view the findings and recommendations of the inquiry officer or inquiry committee, as the case may be, facts of the case and defense offered by the accused during personal hearing, by an order in writing-

(i) Exonerate the accused if charges had not been proved; or

(ii) Imposed any one or more of the penalties specified in rule 4 if charges have been proved.

(6) Where the competent authority is satisfied that the inquiry proceedings have not been conducted in accordance with the provisions of these rules or the facts and merits of the case have been ignored or there are other sufficient grounds, it may, after recording reasons in writing, either remand the

Service Appeal No.15180/2020 titled "Muhammad Tariq Bhatti-vs-Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others", service appeal No. 14546/2020 titled "Muhammad Usman-vs- Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" and service appeal No. 14547/2020 titled "Gul Nawaz-vs- Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 06.10.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

inquiry to the inquiry officer or the inquiry committee, as the case may be with such directions as the competent authority may like to give, or may order a de-novo inquiry through different inquiry officer or inquiry committee 1[subject to sub-rule(7) of rule 11].

(7) After receipt of reply to the show cause notice and affording opportunity of personal hearing the competent authority shall decide the case within a period of fifteen days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons.

(8) If the case is not decided by the competent authority within the prescribed period of fifteen days, the accused may submit an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period.



8. Under Sub-rule-7 the competent authority had to decide the case within a period of fifteen days after receipt of reply to the show cause notice and affording the opportunity of personal hearing. The impugned order shows that the personal hearing of Muhammad Tariq Bhatti was alleged to have been conducted on 08.04.2020 whereas the authority had to decide within fifteen days after 08.04.2020 but the impugned notification is of 06.07.2020 that is after more than fifteen days of personal hearing which is violation of sub-rule-7 of Rule-4 of the above rules. Last but not the least it is nowhere evident from the enquiry report that either the Addl: Deputy Commissioner, D.I.Khan as alleged in the statement of allegations to have witnessed the episode as well as the complainant that is Chairman of the BISE, D.I.Khan was neither mentioned as witness nor there is anything to show that they were examined and/or cross examined during the enquiry. The record also shows that the first charge sheet, statement of allegations, initiation of enquiry etc all were done by the Chief Secretary showing himself to be the Competent Authority

Service Appeal No.15180/2020 titled "Muhammad Tariq Bhatti-vs-Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others", service appeal No. 14546/2020 titled "Muhammad Usman-vs- Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" and service appeal No. 14547/2020 titled "Gul Nawaz-vs- Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 06.10.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

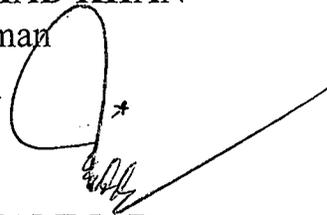
whereas the final show cause notice was signed by the Chief Minister showing himself to be the Competent Authority and similarly the impugned notification also shows that the punishment was awarded by the Chief Minister. But the personal hearing was not given by the Chief Minister himself, who claimed to be the Competent Authority rather, as the record shows the personal hearing was given by the Secretary to Government of Khyber Pakhtunkhwa Administration Department, who is not the Authority of the appellants. So it is not clear as to whether Chief Secretary was also Competent Authority because he initiated the disciplinary action and if he was not then the entire proceedings can safely be termed to be nullity in the eyes of law. In the circumstances, the punishments awarded to the appellants cannot sustain.

9. For what has been discussed above, we allow appeals and as a resultant consequence set aside the impugned orders leaving the department at liberty either to conduct enquiry afresh in accordance with law and rules or not. Costs shall follow the event. Consign.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 6th day of October, 2022.*



KALIM ARSHAD KHAN
Chairman



MIAN MUHAMMAD
Member (Executive)