

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Muhammad Ali Mazhar
Justice Musarrat Hilali

CPLA No.706/2021

[Against the judgment/order dated
09.12.2020 passed by the Khyber
Pakhtunkhwa Service Tribunal,
Peshawar in Appeal No.367/2019]

Muhammad Abid

...Petitioner(s)

Versus

Government of Khyber Pakhtunkhwa thr.
Secretary Excise, Taxation & Narcotics Control
Department, Peshawar & others

...Respondent(s)

For the Petitioner : Mr. Ahmad Ali, ASC
For the Respondent(s) : Mr. Zahid Yousaf, AOR
Along with Mr. Muhammad
Shoaib, Superintendent

Date of Hearing : 01.07.2025

Judgment

Muhammad Ali Mazhar, J.- This Civil Petition for leave to appeal is directed against the judgment dated 09.12.2020, passed by the learned Khyber Pakhtunkhwa Service Tribunal, Peshawar, in service appeal No.367/2019.

2. According to the facts narrated by the petitioner, he was appointed as Naib Qasid in the Excise & Taxation Department, D.I.Khan in the year 2011. An anonymous complaint was received against him to the respondent No.2 wherein some allegations were levelled against him, therefore, the Inquiry Officer was directed to conduct an inquiry and submit a report within three days. However, the inquiry was completed after five months. Ultimately, the petitioner was exonerated from the allegations of the anonymous complaint, but his salary was stopped, therefore, he

filed a writ petition in the Peshawar High Court and *vide* Order dated 28.11.2017, directions were issued to the department to release the salaries of the petitioner. Out of vengeance, the Excise & Taxation Officer seized the attendance register and stopped the petitioner from marking his attendance so as to create a false case of absence. Consequently, the respondent No.3, *vide* letter No.629/DD dated 10.10.2017, called for an explanation from the petitioner on the accusation of absence from duty since 03.10.2017, despite the fact that the petitioner was performing his official duties. Once again, an Inquiry Officer was called upon to conduct an inquiry against the petitioner and a report was submitted, and *vide* order dated 08.11.2018, the petitioner was removed from service based on a biased inquiry. A Departmental Appeal was preferred, and after the lapse of the stipulated time, the petitioner filed an appeal before the Khyber Pakhtunkhwa Service Tribunal which was dismissed *vide* impugned judgment dated 09.12.2020.

3. The learned counsel for the petitioner argued that the petitioner was removed from service under the provisions of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, but the inquiry and other departmental proceedings were not conducted under the aforesaid Rules. He further argued that neither any statement of witness was recorded in the presence of the petitioner, nor any opportunity of cross-examining was afforded to him, however, the learned Tribunal failed to comprehend this pivotal aspect of the case which resulted in a grave miscarriage of justice. It was further averred that the absence of the petitioner ensued because he was not allowed to mark his attendance by the Excise & Taxation Officer.

4. The learned AOR of the respondents argued that an anonymous complaint was received against the petitioner, therefore, an inquiry was conducted against him, but he was exonerated from the charges and no punishment was awarded to him. Subsequently, the petitioner was wilfully absent from his official duty. Therefore, on the charges of wilful absence, an inquiry was again conducted and he was removed from service after due compliance of all requisite legal formalities.

5. Heard the arguments. What is reflected from the record is that the petitioner was issued a show cause notice on the alleged wilful absence from duty w.e.f. 30.10.2017 to 24.10.2018. Though an inquiry was conducted into the allegations of misconduct and at least three witnesses, i.e., Ashiq Hussain (Naib Qasid), Khan Afzal (Driver), and Abdul Hameed (ASI, Excise and Taxation Office), were examined, but it is not reflected from the minutiae of the inquiry report whether any opportunity was afforded to the petitioner for cross-examining such witnesses during the inquiry proceedings, to defend the charges or to prove his innocence. When we confronted this aspect to learned counsel for the respondents who was assisted by Mr. Shoaib Muhammad, Superintendent, he fairly conceded that no such opportunity was provided to the petitioner during the course of the departmental inquiry.

6. The main purpose of issuing a show cause notice to any delinquent is to provide him a fair and reasonable opportunity to offer an explanation against the charges of misconduct reported or noted against him. Obviously, if the reply to the show cause notice is not found satisfactory, the employer/management/competent authority may decide to hold an inquiry into the allegations and may also appoint an inquiry officer or constitute an inquiry committee to conduct an inquiry against the wrongdoer, and after completion of the inquiry proceedings, submit a report to the competent authority for necessary action in accordance with law. We are mindful that under all Civil Servants (Efficiency & Discipline) Rules, either federal or provincial, an infallible and watertight procedure is already provided for conducting departmental inquiries, and sanguine to the philosophy/principle of natural justice and due process of law, a right of cross-examination is recognized as an inalienable and undeniable right. Furthermore, if this valuable right is repudiated, it will amount the strangulation and deprivation of the well-entrenched right of defense, despite this right being provided for in all Civil Servants (Efficiency & Discipline) Rules unequivocally and distinctly. *Au fait*, prior to appointing an inquiry officer, the competent authority should have ensured, with due diligence, that the person so appointed is familiar with and sentient to the rudimentary rules of

inquiry. Sometimes, it seems to us beyond any shadow of doubt that lapses or glitches are committed deliberately in departmental inquiries to provide an edge or periphery to the accused so that if the inquiry is turned down on technical defects, the beneficiary will be no other than the person accused of such lapses or legal flaws in inquiry proceedings. An inquiry on charges of misconduct is a serious matter; the whole career or livelihood of an employee/civil servant is put on peril. Therefore, the departmental inquiry should have been conducted with proper application of mind and due process and not in haste or in a slipshod manner or with the sole aim of victimizing the accused of misconduct, even if the allegations are unproved. All judicial, quasi-judicial, and administrative authorities should carry out their powers with a judicious and even-handed approach to ensure that justice is done according to the tenor of law and without any violation of the principle of natural justice. It is the prime duty of the inquiry officer to provide an opportunity to the accused person for defending himself against the charges and when any witness is produced against the accused, he should be given an opportunity to cross examine such witness in his defence. This is unfortunately lacking in this case.

7. In the case of Federation of Pakistan through Chairman Federal Board of Revenue FBR House, Islamabad and others Vs. Zahid Malik (2023 SCMR 603), one of us, speaking for the bench, held that the primary objective of conducting departmental inquiry is to grasp whether a clear-cut case of misconduct is made out against the accused or not. The guilt or innocence is founded on the end result of the inquiry. The learned Service Tribunal may observe whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. In a regular inquiry, it is a precondition that an even-handed and fair opportunity should be provided to the accused and if any witness is examined against him then a fair opportunity should also be afforded to cross-examine the witnesses. In a departmental inquiry on the charges of misconduct, the standard of proof is that of balance of probabilities or preponderance of evidence. Where

any authority regulates and performs its affairs under a statute which requires the compliance of the principles of natural justice then it should have been adhered to inflexibly. Yet again, in the case of Ghulam Murtaza Sheikh and another Vs The Chief Minister, Sindh and others (**2024 SCMR 1757**), it was held by one of us that a fair opportunity of cross-examination metes out the opposing party a leeway and possibility to accentuate the weaknesses or flaws in a testimony which is a most effective tool to shatter the testimony of witnesses to disprove the charge or allegations both in civil and criminal matters including in domestic/departmental inquiries conducted under labour laws or civil servant laws. The purpose of conducting inquiries, on one hand, is to fix the responsibility of the delinquent vis-à-vis the charges levelled against him in the show cause notice or statement of allegations, but in unison, it also aids and facilitates the catching and exposing of the actual culprit or delinquent. No evidence which is accusatorial to the opposite party would be admissible unless such party is afforded an evenhanded opportunity of assessing its exactitudes by cross-examination, which is a most essential device to unearth the truth. If the elementary principle of law is not contented, then obviously, the whole edifice of unwarranted proceedings will fall apart. Whether the evidence is trustworthy or inspires confidence could only be determined with the tool and measure of cross-examination. The possibility cannot be ruled out in the inquiry that a witness may raise untrue and dishonest allegations due to some animosity against the accused which cannot be accepted unless he undergoes the test of cross-examination which indeed helps to expose the truth and veracity of allegations. It is the legal duty of the Service Tribunal to vet the whole inquiry report for the purposes of fact-finding, including, the effect of non-affording the right to cross-examine, which is necessary to decide the appeals on merits.

8. As a result of the above discussion, this civil petition is converted into an appeal and is allowed. As a consequence, thereof, the removal from service order of the petitioner dated 08.11.2018 is set aside and the matter is remanded to the

competent authority to conduct a *de novo* inquiry into the allegations of misconduct after providing ample opportunity of defence to the petitioner. The payment of back benefits will be subject to the outcome of the *de novo* inquiry. The inquiry shall be conducted and completed within a period of three months and the petitioner is also directed to participate in the inquiry. If there is any change in address of the petitioner, he will provide his new address to the competent authority so that a notice of inquiry may be dispatched to him at his current abode, or he can receive the notice from the office to ensure his appearance and participation before the inquiry officer.

Judge

Judge

Islamabad, the
01.07.2025
Syed Farhan Ali
Approved for reporting