

PUNJAB SERVICE TRIBUNAL, LAHORE

ORDER SHEET

APPELLANT/
PETITIONER

5150/2022

APPEAL NO. _____ 200

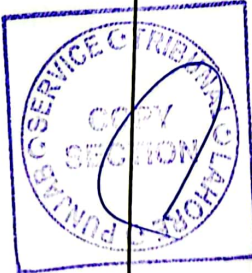
Dr. Muhammad Nouman Ahmed Shah

Versus

The Hon'ble Chief Minister of Punjab etc.

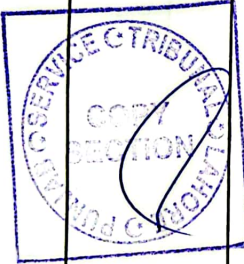
RESPONDENT

Date of order of proceeding	Order with signature of Chairman, Members and that of parties or counsel, where necessary.
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03.04.2024	<p><u>PRESENT</u></p> <ol style="list-style-type: none">1. Mr. Allah Nawaz Khosa, Advocate Counsel for the appellant.2. Mr. Masood Karim, D.A.3. Mr. Tariq Mahmood, Research Officer, DR. <p>Brief facts of the case are that the appellant was posted as Veterinary Officer (Dairy), LES, Bhunikey, Pattoki, when disciplinary proceedings were initiated against him alongwith three others under the PEEDA Act, 2006 through order of inquiry dated 2.10.2020, whereby Dr. Mansoor Ahmad (BS-20), Director General (Ext.), L&DD, Punjab, Lahore was appointed as inquiry officer to conduct regular inquiry against the appellant and others on the following allegations:-</p> <p><i>"i. There is tampering/forgery in individual milk production record of newly purchased buffaloes by using ink-remover in the Milk record Register of LES, Bhunikey particularly at page No.45, 53, 65, 77, 89, 97 and 107 for the buffaloes tag No.NP-91, NP-92, NP-93, NP-95, NP-96, NP-97, NP-98, NP-99 and NP-100.</i></p> <p><i>ii. The overall totals of daily milk production as well as monthly milk production of individual buffaloes are incorrect, which has definitely affected the lactation yield of the buffalo herd which not only lead to financial discrepancies but also ranking of animals for their future progeny against the mandate of the institute and affect het national interest. There is difference in daily</i></p>



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		<p><i>milk production record in the Milk Record Register as well as in the Milk Production Disposal Register.</i></p> <p><i>iii. There is difference in daily milk production record in the Milk Record Register as well as in the Milk Production Disposal Register”.</i></p> <p>The inquiry officer after holding inquiry submitted his report, held appellant guilty of the charges and recommended for imposition of major penalty of forfeiture of past three years service.</p> <p>The competent authority after affording opportunity of hearing by way of appointing Dr. Ayesha Saeed (PAS/BS-20) DG Libraries, Punjab as hearing officer vide order dated 7.8.2021, while agreeing with the findings/recommendations of the inquiry officer, awarded major penalty of forfeiture of past three years service vide impugned order dated 21.3.2022. Aggrieved of the order, appellant preferred departmental appeal before the Chief Secretary, Punjab which was not decided within the statutory period and service appeal was filed before this Tribunal on 18.7.2022.</p> <p>2. However, after filing this appeal and issuance of notices to the respondents, the Chief Minister, Punjab rejected the review appeal of the appellant on 20.12.2022. In view of Section 19(3) of the PEEDA Act, 2006, the review petition was nowhere in the field and was abated by operation of law, hence the order dated 20.12.2022 is without lawful authority and jurisdiction as it could not be passed. The relevant law reads as under:-</p> <p><i>“On the exercise of the option in terms of sub-section (2), the appeal or, as the case may be, the review pending before the Appellate Authority or the Chief Minister shall abate to the extent of such employee”.</i></p> <p>3. Arguments heard. Record perused.</p> <p>4. The main stance of the learned Counsel for the appellant is that inquiry was not conducted in proper manner nor there is any evidence in order to establish the charges against the appellant.</p>



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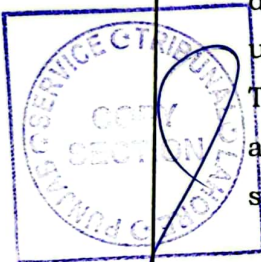
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5. When confronted with, the learned District Attorney could not deny, by perusal of the inquiry report, that no evidence was recorded in order to establish the charges against the appellant.

6. Undeniably, there is only statement of the accused official, on record, which is in "question-answer form" and in that statement the appellant has specifically denied the charges, therefore the opinion of the inquiry officer is not supported by any independent evidence. Without recording any evidence, the findings of the inquiry officer are based upon presumptions. A civil servant cannot be punished on the basis of presumptions or the wishes of the inquiry officer or the competent authority. The department is bound to prove the allegations by production of unimpeachable evidence which is absolutely missing in this case. The impugned orders of the competent as well as appellate authority have been passed in mechanical manner and not sustainable in the eye of law.



Even otherwise, the basic question to be dealt by this Tribunal is whether without framing the charges upon the appellant and three others, disciplinary proceedings could be initiated and punishment could be imposed notwithstanding the provisions of Section 9(1)(b) of the PEEDA Act, 2006, the same is reproduced as under:-

"9. Procedure to be followed by the competent authority whereas inquiry is necessary. (1) If the competent authority decides that it is necessary to hold an inquiry against the accused under Section 5, it shall pass an order of inquiry in writing, which shall include--

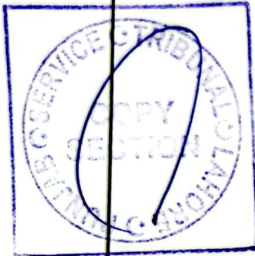
b) The grounds for proceeding, clearly specifying the charges alongwith apportionment of responsibility;"

(emphasis provided)

7. The bare reading of the Section hereinabove clearly reflects that it is mandatory to serve statement of allegations/grounds of proceedings, clearly specifying the charges alongwith apportionment of responsibility but the

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		<p>competent authority while passing the order of inquiry dated 2.10.2020 did not frame separate charges against the appellant and others, hence the superstructure if any built thereon is not sustainable in law.</p> <p>Even otherwise, the hearing officer or the competent authority did not apply its judicious mind and merely relied upon and reproduced the facts and findings of the inquiry committee, which itself is an illegality.</p> <p>It has been settled by the Hon'ble Supreme Court of Pakistan in various judgments passed by the apex court that competent authority as well as appellate authority while passing the order of punishment or appellate order are bound to scrutinize the evidence on record and order is to be passed referring any incriminating evidence against the accused but in this case no evidence, whatsoever, is available which could be referred by the competent authority. In this regard reliance is placed upon "Chief Secretary, Government of the Punjab versus Muhammad Ali Saqib (2020 SCMR 1245)". The relevant paragraph is reproduced as under:-</p> <p><i>"The orders of the competent authority as well as departmental appeal are on the basis that they agreed with the recommendation of the inquiry officer. <u>They have not scrutinized the evidence available on the file themselves, but relying upon the recommendation of the inquiry officer and ignoring that no specific allegation through evidence was proved against the respondent, despite that major penalty of dismissal from service was awarded.</u>"</i></p> <p style="text-align: right;">(emphasis provided)</p> <p>Though the inquiry was conducted and finding has already been given by the inquiry officer but the competent authority as well as the appellate authority has failed to dilate upon any such evidence which could be used against the appellant. Hence the impugned orders are in violation of the law</p> <p style="text-align: right;">/s/</p>



PUNJAB SERVICE TRIBUNAL, LAHORE

ORDER NO.

PUNJAB SERVICE TRIBUNAL

Contd. Page No. _____

Appeal No. 5150/2022

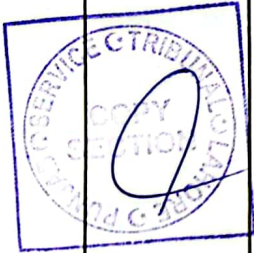
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laid down by the Hon'ble Supreme Court of Pakistan, referred hereinabove.

8. For what has been discussed above, this appeal is **allowed**, impugned orders dated 21.3.2022 & 20.12.2022 are set aside.



[Signature]
Justice (R) Atir Mahmood
CHAIRMAN

[Signature]
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Punjab Service Tribunal
Lahore

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Punjab Service Tribunal (Lhr. Bench) *2061-24*

Date of Submission of application for certified copy.....	<i>13-5-24</i>
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Shahzad

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BEFORE THE PUNJAB SERVICE TRIBUNAL, LAHORE

Amended Service Appeal No. _____/2023

Dr. Muhammad Nouman Ahmed Shah, Livestock Production Officer, BRI
Pattoki District Pakpattan

...APPELLANT

VERSUS

1. The Honorable Chief Minister of Punjab.
2. The Secretary Livestock, Government of the Punjab, Livestock & Dairy Development Department, Punjab, Lahore.

...RESPONDENTS

APPEAL U/S 4 OF THE PUNJAB SERVICE TRIBUNAL ACT 1974,
AGAINST THE ORDER DATED 21-03-2022 AND ORDER DATED
20/12/2022 WHEREBY THE APPELLANT WAS AWARDED MAJOR
PENALTY OF FORFEITURE OF PAST THREE YEARS' SERVICE .

CLAIM IN APPEAL

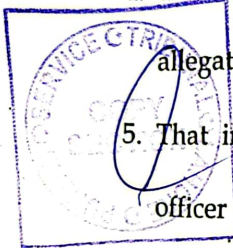
Very Kindly Set-Aside The Impugned Order Dated 21-03-2022 &
20/12/2022 Whereby The Appellant Was Awarded Major Penalty
Of Forfeiture Of Past Three Years' Service After Declaring The
Same To Be Illegal, Without Jurisdiction, Arbitrary, Malafide,
Against Law And Facts And As Such Appeal Of The Appellant May
Very Kindly Be Accepted .

Respectfully Sheweth:-

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That the addresses of the parties have rightly been incorporated in the title / instant appeal for effective service of summons and notices upon the parties.

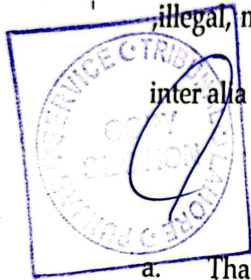
2. That briefly stated the facts of the case are that the appellant is working as Manager LES, Bhunkey, Pattoki, District Kasur and performing his duty efficiently, diligently and with honesty.
3. That the appellant while posted as Manager LES Bhunkey charged with the so called allegations of involved in forgery/ tempering of milk production record and milk record and also concealed the facts.
4. That the appellant replied to the allegations and denied all the allegations. Copy of reply is hereby enclosed as Annexure-A
5. That inquiry was conducted in an arbitrary manner and inquiry officer recommended major punishment of forfeiture of past three years service and immediate shifting from the post of Farm Manager. Copy of inquiry report is hereby enclosed as Annexure-B
6. That personal hearing was conducted by the Dr. Ayesha Saeed (PAS) Director General Public Libraries, Punjab wherein it was stated in personal hearing report that no financial discrepancy / embezzlement has been found. Copy of personal hearing is hereby enclosed as Annexure-C
7. That respondent No.01/worthy C.M without any legal justification awarded Major Punishment of Forfeiture of past three years' service without any legal justification. Copy of order dated 21.03.2022 is hereby enclosed as Annexure-D



8. That the appellant filed review petition against the impugned order dated 21.03.2022 within time which was pending hence the appellant filed service appeal before this Honorable Tribunal after elapsed on 90 days.

9. That service appeal of the appellant was admitted by this Honorable Court and respondents submitted their reply before this Honorable Court, after pursuing the reply the appellant came to know that review filed by the appellant is rejected by the Chief Minister

10. That the impugned order dated 21.03.2022 & 20/12/2022 is void, illegal, malafide, against the law and facts and liable to be set aside inter alia on the following amongst others: -



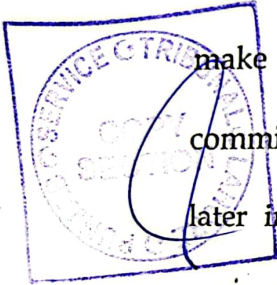
GROUNDS

- a. That the respondents while deciding the case of the appellant did not apply their mind to the facts of the case and law applicable thereto and decided the same in an arbitrary manner..
- b. That It is submitted that I joined LES, Bhunikey on 01-04-2019 vide Chief Research Officer (CRO), Buffalo Research Institute (BRI) order no.1531-35 dated 30-03-2019 and worked over there till 26-08-2019
- c. That Allegation regarding purchase of substandard animals "it's worth mentioning to clarify that appellant was not member of any procurement/selection committee which comprised of five members including convener (Ex CRO BRI Pattoki) (Annexure 2) and also not a part of any technical inspection committee (Annexure-3) to which appellant has no concern. As the appellant

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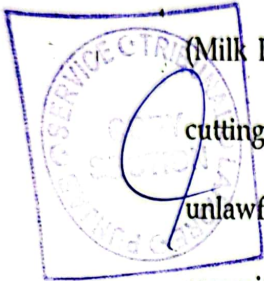
was not part of any committee so that I have no concern in tempering of records. As reported by probe committee headed by Mr. Asif Yaseen Incharge, LES Chak Katora in its report dated 29.08.2019(Annexure-4) that Buffaloes which were purchased were of low production potential and to hide the low production tempering were made as Convener of Probe committee Mr. Asif Yaseen was himself part of Buffalo selection/purchase committee, It means Mr. Asif Yaseen himself involved in purchase of sub-standard animals. This allegation is refuted and required to make same allegation against Mr. Asif Yaseen (convener Probe committee) who was first acting as member purchase committee, later investigated as convener in probe committee against the same allegation. CRO, BRI, Pattoki also processed the clearance the bill of post against purchase of these animals by assuming in dreams to protect the rest of purchase committee members by fixing the responsibility on shoulder of appellant.

d. That Neither the convener of probe committee Mr. Asif Yaseen was waxed about these baseless allegation leveled against appellant in which he was performed as Senior Officer but the justice could not be fulfilled and all the rest of the members of the said committee were intentionally over looked and protected because of the administration of EX CRO BRI from head to tail were preceded and having personal vendetta biases against appellant.



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e. That The appellant proceeded by probe officer against the charge of record tempering In the continuation of these formations were engaged to conduct this proceeding in which all the ex officio recorded their version about tempering to which audio recording is available which can be reproduced when required, in which the convener of the probe committee Mr. Asif Yaseen confessed during telephonic conversation that Azeem Ullah (Milk Recorder) proceeded in same allegation got fetch this paper from proceedings and replaced on the facts relying by Azeem Ullah (Milk Recorder) accused that copy is not readable as number of cutting been marked over paper which he was replaced. This unlawful and unjustified assistance given by convener probe committee Mr. Asif Yaseen to accused for framing the baseless charges against appellant also sufficient to quash this proceeding at once.



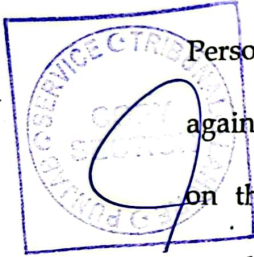
f. That Before initiating the proceeding the appellant requested to Departmental representative for the provision of relevant record (Annexure 6) to contest and agitated this proceeding for rebutting the charges leveled against the appellant with documentary evidences but as the head to tail due to influence of EX CRO BRI who was acted as convener of procurement committee in which appellant was being proceeded intentionally twisted and reluctant to provide relevant record, reason thereby the appellant unable to present the record which I requested and same was done on the instruction of EX CRO BRI. The departmental representative

himself rebutted this allegation while recording his statements during proceedings that relevant record kept by EX CRO BRL, So, I couldn't provide..

g. That In the view of ongoing facts the accused MR. Azeem Ullah (milk recorder) committed as expressed about replacement of statement which can be testified through audio forensic contained deliberation of Mr. Asif Yaseen about this unauthorized act also admitted by the convener probe committee that audio confession of the unlawful replacement of statement of Mr. Azeem Ullah (Milk Recorder) has also been presented as evidence before the

Personal hearing officer but the same was over sighted which is against the ethics of justice. In this context one sided proceeding on the personal vendetta/biasedness being conducted against appellant and at the level of personal hearing officer appointed by your kind Honorable good self also admitted that appellant did not involve in any type of financial embezzlement (Annexure 7). That also proved and established pertaining to the weakened/distorted facts but converting into so-called allegations leveled against me.

h. That the appellant informed Dr. Mansoor Ahmed the then inquiry officer in written form that the departmental representative did not provide the relevant complete record on my written request (Annexure-8) which I also mentioned at the time of inquiry, but the inquiry officer did not bother about the matter. Being a junior officer, I performed my zeal to maintain animals in all aspects



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related to their production performance. In the view of hard struggle the appellant was also awarded financial honorarium in the chair (Annexure 9). Suffice that whole action /proceeding on baseless allegations required to be struck down on this rebuttal.

i. That the honorable Supreme Court in various judgments held that major penalty could not be awarded by adopting summary procedure. Reliance is placed on 2003 SCMR 681, 2004 SCMR 316, 2008 SCMR 1369, 2007 PLC (CS) 215, 2010 PLC (C.S) 1143.

j. That the Apex Supreme Court of Pakistan in various citations declared that before awarding major punishment regular enquiry is mandatory. The punishment awarded without regular enquiry is not only in violation of directions of Supreme Court of Pakistan but against the natural justice. Following citations of Apex court of Supreme Court are relied upon:-

1. 1986 PLC 639
2. 2000 PLC (CS) 270
3. 2000 PLC (CS) 1196
4. 1984 PLC 639
5. 2004 PLC (CS) 1293

The Supreme Court of Pakistan has given guide lines how to conduct regular enquiry. In this regard, decision of Apex court published in 2004 PLC (CS) 1306 is as below:-

Nature and conduct of Departmental Enquiry was not a confidential matter, but record must show involvement/ association of accused civil servant with commissioned misdeeds. Enquiry proceedings

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were of judicial nature in which participation of accused civil servant was necessary condition and "SINE QUA NON" for the reasons that departmental enquiry was first stage of judicial proceeding which must be conducted strictly in accordance with requirement of law and not whimsically. Examination of witness must be in the presence of accused civil servant during enquiry proceeding.

k. That the appellant has left with no other efficacious and alternate remedy to get redressed the grievance, except filing of this service appeal before this Honorable Tribunal.

PRAYER: -

In the light of above submissions, it is therefore, most respectfully prayed that impugned order dated 21.03.2022 communicated to the appellant on 25.03.2022 passed by respondent No.1 and appellate review order dated 20/12/2022 may very kindly be set aside by declaring as illegal, unlawful, void ab initio, malafide, having no value in the eyes of law, and as such the service appeal of the appellant may very kindly be accepted in the best interest of justice, equity and fair play.

Any other relief, which this Honorable Court deems fit and proper, may also be awarded.

N. NAWAZ KHOSA
...APPELLANT

Through

CERTIFIED TRUE COPY
Punjab Service Tribunal

ALLAH NAWAZ KHOSA
Advocate High Court,
33/A QUEENS ROAD, LAHORE

CERTIFICATE:

As per instructions, this, is the first appeal in this Hon'ble Punjab Service Tribunal, Lahore.