

ORDER
13.09.2022

Mr. Fazal Shah Mohmand, Advocate, for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present and stated at the bar that he is having no objection on acceptance of the application submitted by the petitioner for correction in judgment dated 22.06.2022 passed in Service Appeal bearing No. 6873/2020 titled "Mukhtaj Khan Versus Regional Police Officer Mardan Region Mardan and two others".

2. Learned counsel for the petitioner stated that the penalty of reduction in rank from the post of Officiating Sub-Inspector to the post of Assistant Sub-Inspector was awarded to the appellant/petitioner by the competent Authority, however the departmental appeal of the appellant was partially allowed and the penalty so awarded to the appellant was modified by awarding him punishment of reduction in pay by two stages. The appellant then preferred Service Appeal bearing No.6873/2020 titled "Mukhtaj Khan Versus Regional Police Officer Mardan Region Mardan and two others", before this Tribunal, challenging the penalty of reduction in pay by two stages, which was allowed vide judgment dated 22.06.2022, however in concluding para of the judgment, it has been inadvertently mentioned "*that the appellant is reinstated in service with all back benefits*", which needs correction.

3. This Tribunal within the meaning of sub-section-2 of Section-7 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 is deemed as Civil Court under the Code of Civil Procedure, 1908. In view of Section-152 of the Code of Civil Procedure 1908, this Tribunal is legally vested with the powers to correct any mistake in judgments/orders arising therein due to any accidental slip or omission.

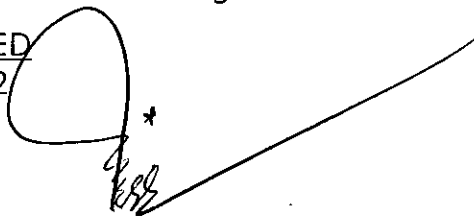
4. In view of the above, the request of the petitioner is allowed and para-7 of the judgment dated 22.06.2022 passed by this Tribunal in Service Appeal bearing No. 6873/2020 titled "Mukhtaj Khan Versus Regional Police Officer Mardan Region Mardan and two others" shall be read as below:-

"In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned penalty of reduction in pay by two stages. The pay received by the appellant prior to the

imposition of the impugned penalty stands restored with all back benefits. Parties are left to bear their own costs. File be consigned to the record room."

5. Copy of this order be placed on file of Service Appeal bearing No. 6873/2020 titled "Mukhtaj Khan Versus Regional Police Officer Mardan Region Mardan and two others", and the same shall be read as part and parcel of the judgment dated 22.06.2022 passed in the aforementioned service appeal. Copy of this order be sent to the respondents for information and compliance. File be consigned to the record room.

ANNOUNCED
13.09.2022



(Mian Muhammad)
Member (Executive)

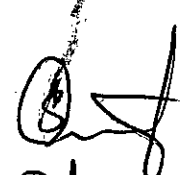
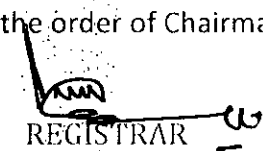
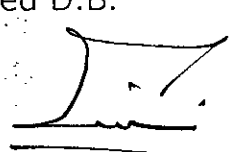


(Salah-ud-Din)
Member (Judicial)

FORM OF ORDERSHEET

Court of _____

Misc. application No. 475/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22/08/2022	<p>The Misc. application for correction in judgment dated 22.06.2022 passed in appeal no. 6873/2020 submitted by Mr. Fazal Shah Mohmand Advocate. It is fixed for hearing before D.B at Peshawar on <u>30-08-2022</u>. Original file be requisitioned. Notices be issued to applicant and his counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman</p> <div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">  25/08/22 </div> <div style="text-align: center;">  REGISTRAR </div> </div>
30.08.2022		<p>Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.</p> <p>The Learned Member (Judicial) Ms. Rozina Rehman is on leave, therefore, to come up ^{for} reply and arguments on the application on 13.09.2022 before the concerned D.B.</p> <div style="text-align: right;">  (Salah-Ud-Din) Member (Judicial) </div>

Before the Khyber Pakhtunkhwa Service Tribunal Peshawar
MISC. application NO. 475/2022
SA service Appeal No 6873/2020



Mukhtaj Khan vs RPO & others

Put up to the court with relevant appeal.

Application for correction in judgement dated 22/6/22
is rendered in the titled Appeal
29/7/22

Reader

- Respectfully submitted.

1. That the applicant has filed the titled service Appeal for his restoration to the rank of Sub Inspector with all back benefits which was accepted vide judgement dated 22/6/22.

- That inadvertently, in the last Para of judgement, the applicant has been ordered to be reinstated, while his prayer was for restoration to the rank of Sub Inspector.

- That correction in the impugned judgement is in the interest of justice which maybe a typographical mistake.

It is therefore Prayed, that on acceptance of this application, correction may kindly be made in the judgement dated 22/6/22 to the extent of restoration of the applicant to the rank of Sub Inspector with all back benefits.

Dated 29-7-2022

Applicant's
Through
Fazal Shah Mohamad
Advocate Peshawar

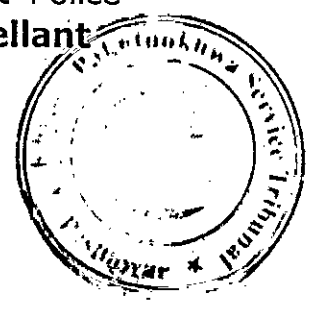
BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Diary No. 5906
Dated 01-7-2020

Service Appeal No 6872/2020

Mukhtaj Khan, Assistant Sub Inspector No 427/MR, District Police Swabi.....**Appellant**

V E R S U S



- 1. Regional Police Officer Mardan Region Mardan.
- 2. District Police Officer, Swabi.
- 3. Provincial Police Officer KPK Peshawar

.....**Respondents**

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 03-06-2020 PASSED BY RESPONDENT NO 1 WHERE BY THE MAJOR PENALTY OF REDUCTION IN RANK FROM OFFICIATING SUB INSPECTOR TO THE RANK OF ASI AWARDED BY RESPONDENT NO 2 HAS BEEN MODIFIED TO THE MAJOR PENALTY OF REDUCTION IN PAY BY TWO STAGES.

PRAYER:-

On acceptance of this appeal the impugned Order dated 03-06-2020 of respondent No 1 may kindly be set aside and the appellant may kindly be ordered to be restored as Sub Inspector with all back benefits.

Respectfully Submitted:-

- 1. That the appellant joined the respondent Department as Constable on 01-07-1991, remained posted to various Police Stations, was promoted as Head Constable, then as ASI and was lastly promoted as Officiating Sub Inspector on 27-11-2016 and since then he performed his duties with honesty and full devotion.
- 2. That on 08-01-2019 the appellant was issued Charge Sheet on the allegations of illegal gratification and facilitation of accused namely Yousaf Aamir alias Aamir, the appellant replied the same refuting the allegations. **(Copy of charge sheet and reply with annexures are enclosed as Annexure A & B).**
- 3. That thereafter an illegal inquiry was conducted wherein the appellant was not provided opportunity of proper defense. **(Copy of Inquiry Report is enclosed as Annexure C).**

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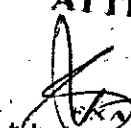
Khyber Pakhtunkhwa Service Tribunal Peshawar

Handwritten notes and signatures on the left margin, including a date '01/07/2020' and other illegible scribbles.

4. That there after Show Cause Notice was issued to the appellant which was also replied by the appellant refuting the allegations. **(Copy of Show Cause Notice and reply is enclosed as Annexure D & E).**
5. That the appellant was awarded the major penalty of reduction in rank from Sub Inspector to the rank of ASI by respondent No 2 vide Order dated 10-03-2020. **(Copy of the Order dated 10-03-2020 is enclosed as Annexure F).**
6. That the impugned order dated 03-06-2020 of respondent No 1 is against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND S:-

- A. That the impugned order is illegal and void abinitio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules and the appellant did nothing that amounts to misconduct.
- C. That the impugned order is based on malafide as the appellant did nothing that would amount to misconduct.
- D. That no proper inquiry was conducted no one was examined in presence of the appellant nor the appellant was ever provided opportunity of cross examination.
- E. That the impugned order is without jurisdiction and lawful authority being passed without jurisdiction as the appellant authority cannot impose penalty rather has to act as appellate authority.
- F. That the impugned order is in violation of Fundamental Rule 29 and as such too is liable to be stuck down.
- G. That the charges were never established nor was any material collected during the so called inquiry.
- H. That the appellant duly performed his duties and took legal action against the said accused, the appellant never took any illegal gratification, nor ever facilitated the said accused.
- I. That the appellant complied with legal requirements as per law, as the said accused was habitual one, further association of private witness mandatory and more particularly who is ready to become witness in peculiar circumstances.

ATTESTED

Officer
Service Tribunal
Peshawar

- J. That the appellant has about 29 years of service with unblemished service record.
- K. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:-29-06-2020

Through



Appellant
(Muhtaj Khan)



Fazal Shah Mohmand
Advocate Supreme Court

Certified to be true copy
JINER
Khyber Pachtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 6873/2020

Date of Institution ... 01.07.2020

Date of Decision ... 22.06.2022



Mukhtaj Khan, Assistant Sub-Inspector No. 427/MR, District Police Swabi.

... (Appellant)

VERSUS

Regional Police Officer Mardan Region Mardan and two others.

... (Respondents)

MR. FAZAL SHAH MOHMAND,
Advocate

For appellant.

MR. NOOR ZAMAN KHATTAK,
District Attorney

For respondents.

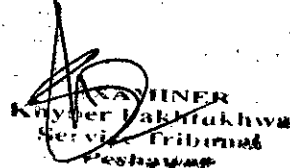
MR. SALAH-UD-DIN
MR. MIAN MUHAMMAD

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Shortly stated the facts forming the background of the instant service appeal are that the appellant while posted as OII Police Station Kaloo Khan, was proceeded against departmentally on the allegations that he had received illegal gratification and had facilitated notorious proclaimed offender namely Yousaf Amir alias Amir son of Said Ghafoor, who was involved in so many criminal cases. On conclusion of the inquiry, the inquiry officer submitted report to the District Police Officer Swabi, who issued final show-cause notice to the appellant and ultimately awarded him major punishment of reduction in rank, vide order dated 09.03.2020. The same was challenged by the appellant through filing of departmental appeal, which was disposed of by Regional Police

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ATTESTING OFFICER
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

Officer Mardan vide order dated 03.06.2020, whereby the penalty awarded to the appellant was converted into major punishment of reduction in pay by two stages. The appellant then filed the instant service appeal for redressal of his grievance.

2. Respondents have contested the appeal by way of submitting written reply, wherein they have controverted the stance taken by the appellant in his appeal.

3. Learned counsel for the appellant has contended that disciplinary action was taken against the appellant due to mala-fide intention, which is evident from the fact that the inquiry officer could not collect any sort of evidence in support of the allegations against the appellant; that the inquiry officer had not recorded statement of a single witness, who could support the allegations leveled against the appellant; that no CDR of cell phone of the appellant as well as cell phone of the concerned accused was procured during the inquiry, which could show that the appellant was having links with the concerned accused; that the appellant has performed his duty with honesty and devotion but his service career was stigmatized through bald and false allegations.

4. On the other hand, learned District Attorney for the respondents has contended that the appellant was OII during the relevant days, who was having links with notorious proclaimed offender namely Yousaf Amir alias Amir and had facilitated him after receiving illegal gratification; that proper departmental inquiry was conducted during which the appellant was found guilty of misconduct; that the appellant, being member of a disciplined force, had brought bad name to the same, therefore, he has rightly been awarded major punishment of reduction in pay by two stages.

5. Arguments heard and record perused.

6. The appellant was proceeded against departmentally on the allegations that he had received illegal gratification and had facilitated accused Yousaf Amir alias Amir, who was involved in so many criminal cases. While going through the inquiry report, we

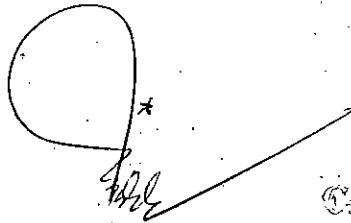
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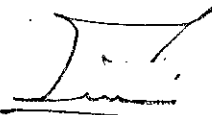
have observed that the inquiry officer did not bother to record statement of even a single witness, who could depose that the appellant had received illegal gratification from the concerned accused. The allegations of receiving illegal gratification were factual in nature, which could have been proved only through collecting of any cogent evidence during the inquiry but the same has not been done by the inquiry officer. Similarly, no cogent and material evidence has been collected during the inquiry, regarding the allegations of facilitating the concerned accused. Allegations of the nature leveled against the appellant required recording of evidence for its proof, however while going through the inquiry report, we have observed that the findings of inquiry officer regarding guilt of the appellant are based merely on presumptions. We are of the view that the allegations leveled against the appellant were not proved during the inquiry; therefore, the penalty awarded to him is not sustainable in the eye of law and is liable to be set-aside.

7. In view of the above discussion, the appeal in hand is accepted by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
22.06.2022

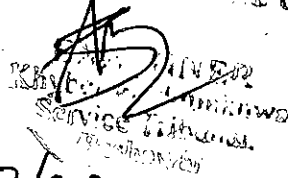


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

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