

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**  
**AT CAMP COURT SWAT.**

Service Appeal No. 7647/2021

Date of Institution ... 07.10.2021

Date of Decision ... 10.11.2022

Irshad Khan S/O Sher Muhammad (Ex-Constable belt No. 2862). R/O  
Dushkhel Talash Timergara Dir Lower.

... (Appellant)

**VERSUS**

Inspector General of Police, Khyber Pakhtunkhwa and 02 others.

... (Respondents)

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MR. RIZWANULLAH,  
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,  
Assistant Advocate General

--- For respondents.

MR. KALIM ARSHAD KHAN  
MR. SALAH-UD-DIN

--- CHAIRMAN  
--- MEMBER (JUDICIAL)

**JUDGMENT:**

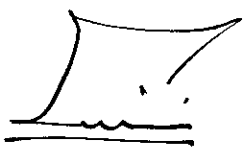
SALAH-UD-DIN, MEMBER:- Brief facts giving rise to filing  
of the instant appeal are that disciplinary action was taken against the  
appellant on the allegations that he alongwith three unknown persons  
had entered the house of complainant Mst. Amina Bibi widow of  
Bakht Zaman at night time and had taken away an amount of  
Rs. 110000/- on gun point, regarding which case FIR No. 75 dated  
14.08.2020 under sections 382/457/34 PPC was registered at Police  
Station Talash. On conclusion of the inquiry, appellant was awarded

major penalty of dismissal from service vide order bearing OB No. 13/EB dated 04.01.2021. The appellant challenged the order of his dismissal by way of filing departmental appeal, however the same was also declined vide order dated 22.02.2021. The appellant then filed revision petition before Inspector General of Police Khyber Pakhtunkhwa, Peshawar, which too was rejected vide order dated 06.08.2021, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has argued that the inquiry proceedings were not conducted in accordance with relevant rules and no final show-cause notice alongwith copy of inquiry report was issued to the appellant; that complainant's brother namely Wakeel Zada was a material witness but the inquiry officer did not record his statement for reasons best known to him; that the complainant had charged the appellant as well as three unknown persons in the FIR, however while recording her statement under section 164 Cr.PC, she has changed her version and has stated that only the appellant had entered her house, which clearly shows mala-fide on part of the complainant; that the appellant was falsely implicated in the concerned criminal case, which fact has been affirmed by acquittal of the appellant; that departmental action was taken against the appellant on the allegations of his involvement in criminal case, however he has already been acquitted by competent

court of law; that as the appellant has been acquitted in the concerned criminal case, therefore, the impugned penalty is not sustainable in the eye of law and is liable to be set-aside. Reliance was placed on PLD 2003 Supreme Court 187, 2001 SCMR 269, 2004 SCMR 641, 2017 PLC (C.S) 180, 2019 SCMR 640, 2015 PLC 259, 2010 SCMR 1554, 2008 SCMR 1406, 1997 SCMR 1073, 2012 SCMR 165, PLD 1982 Peshawar 165, judgment dated 06.12.2021 passed by this Tribunal in Service Appeal No. 11140/2020, Judgment dated 16.06.2022 passed by this Tribunal in Service Appeal No. 3442/2021, PLD 2002 Supreme Court 46, PLD 1959 Supreme Court (Pak.) 9 and 1997 SCMR 1368.



4. On the other hand, learned Assistant Advocate General for the respondents has argued that the appellant was a member of police force and was supposed to protect rights of the citizens, however he forcibly entered the house of complainant and took away an amount of Rs. 110000/-; that the complainant Mst. Amina Bibi is a poor widow and she was having no ill-will with the appellant, which could prompt her to falsely involve the appellant in the criminal case; that the inquiry proceedings were conducted in accordance with Khyber Pakhtunkhwa Police Rules, 1975 and the appellant was provided ample opportunity of self defense as well as personal hearing; that statement of the appellant was recorded during the inquiry proceedings, wherein he has categorically admitted that compromise was effected with the complainant on payment of an amount of Rs. 110000/-; that statements of the complainant as well

as other witnesses were recorded during the inquiry and the appellant was provided opportunity of cross examination but he did not opt to cross examine the complainant as well as the witnesses examined in the inquiry; that in view of statements of the complainant as well as other witnesses, recorded during the inquiry, the allegations against the appellant stood proved; that as the allegations against the appellant were proved during a proper inquiry, therefore, mere acquittal of the appellant is of no avail to him in the departmental proceedings; that the appellant was acquitted on the basis of compromise after payment of an amount of Rs. 110000/- to the complainant, therefore, the appellant could not escape departmental proceedings or consequences thereof on the basis of such acquittal; that the appellant was a member of a disciplined force and his involvement in the concerned criminal case has brought bad name to the police department.

5. Arguments have already been heard and record perused.
6. A perusal of the record would show that one Mst. Amina Bibi widow of Bakht Zaman had lodged report in Police Station Talash District Dir Lower, alleging therein that the appellant alongwith three unknown persons had entered her house at night time and had taken away an amount of Rs. 110000/- on gun point. Case FIR No. 75 dated 14.08.2020 under sections 382/457/34 PPC was registered regarding the occurrence at Police Station Talash in which the appellant was directly charged. The appellant was thus suspended and disciplinary action was initiated against him by issuing him

charge sheet as well as statement of allegations. Mr. Muhammad Zaman DSP Headquarter Dir Lower was appointed as inquiry officer in the matter, who recorded statements of complainant as well as other witnesses. In her statement before the inquiry officer, complainant Mst. Amina Bibi narrated the whole episode of the occurrence and had also alleged that as the elders of appellant had returned an amount of Rs. 110000/- to the complainant, therefore, she affected compromise with the appellant. The appellant was provided opportunity of cross-examination on the complainant, however he did not opt to cross-examine her. The statement of the complainant shall thus be deemed to have been admitted as correct by the appellant. Similarly, the complainant has not cross-examined the other witnesses, whose statements were recorded during the inquiry. On conclusion of the inquiry, the inquiry officer submitted his report to the competent Authority, who issued final show-cause notice to the appellant and after affording him an opportunity of personal hearing, the appellant was dismissed from service. We are having no hesitation to hold that the inquiry proceedings have been conducted in accordance with relevant rules and the allegations against the appellant stood proved in the departmental proceedings.

7. Admittedly, the appellant has been acquitted in the criminal proceedings and now the moot question for determination before us is that as to whether the penalty awarded to the appellant in the departmental proceedings could sustain despite acquittal of the

appellant in the criminal proceedings. In order to appreciate the issue in a proper way, Rule-16:3 of the Khyber Pakhtunkhwa Police Rules, 1934 is reproduced as below:-

**16:3. Action following on a judicial acquittal. -**

(1) *When a Police Officer has been tried and acquitted by a criminal court he shall not be punished departmentally on the same charge or on a different charge based upon the evidence cited in the criminal case, whether actually led or not, unless –*

(a) *the criminal charge has failed on technical grounds; or*

(b) *in the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over; or*

(c) *the Court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or*

(d) *the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or*

(e) *additional evidence admissible under rule 16.25(1) in departmental proceedings is available.*

(2) *..... ”*

8. While going through the *ibid* Sub Rule (1) of Rule-16:3 of the Khyber Pakhtunkhwa Police Rules, 1934, we are of the view that mere acquittal of an accused employee would not absolve him from taking of departmental action by departmental Authority. August Supreme Court of Pakistan in its judgment reported as 2022 SCMR 1796 has graciously held as below:-

*“12. The learned counsel for the respondent argued that the respondent was booked in the NAB reference as well, but he was acquitted by the Accountability Court. In response, the learned DAG argued that an acquittal appeal is pending in the Sindh High Court. The underlying principle of initiating*

disciplinary proceedings, is to ascertain whether the charges of misconduct against the delinquent are proved or not, whereas prosecution under the penal statutes is altogether different where the prosecution has to prove the guilt of accused beyond any reasonable doubt. The common sense or realism of criminal trial is to mete out punishment of the offences committed by the accused while departmental inquiry is started off for making inquiry into the allegations of misconduct in order to maintain and uphold discipline and decorum in the institution and efficiency of the department to strengthen and preserve public confidence.

13. A civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge. While facing expulsive proceedings on departmental side on account of his indictment on criminal charge, he may not save his job in the event of acquittal as the department may still have reasons to conscientiously consider his stay in the service as inexpedient. The department can assess the suitability of a civil servant, confronted with a charge through a fact finding method, which somewhat inquisitorial in nature, but without the heavier procedural riders otherwise required in criminal jurisdiction to eliminate any potential risk of error. Ref: Dr. Sohail Hassan and others v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708) and District Police Officer, Mianwali and 2 others v. Amir Abdul Majid (2021SCMR 420).”



9. Similarly, august Supreme Court of Pakistan in its judgment reported as 2022 SCMR 1770 has graciously held as below:-

“10. It is lucidly straightened out from the record that, after proper inquiry, the petitioner was found guilty in a heinous crime and he was rightly dismissed from service. If the acquittal is found as a result of extending benefit of doubt or some other technical reasons, there is no bar for initiation of departmental enquiry and it is the prerogative rather an onerous responsibility of the employer to consider nature of offence for an appropriate action interdepartmentally. According to Rule 16:3 of the Police Rules, 1934, it is unambiguously provided that when a Police Officer has been tried and acquitted by a criminal Court he shall not be punished departmentally on the same

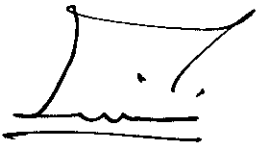
charge or on a different charge based upon the evidence cited in the criminal case, whether actually led or not, unless; a) the criminal charge has failed on technical grounds; b) in the opinion of the Court or of the Superintendent of Police the prosecution witnesses have been won over; c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the Police officer concerned; d) the evidence cited in the criminal case discloses facts unconnected with the charge before the Court which justify departmental proceedings on a different charge; and e) additional evidence admissible under Rule 16:25 (1) in departmental proceedings is available. Whereas in Sub-Rule 2, it is further explicated that "Departmental proceedings admissible under Sub-Rule (1) may be instituted against lower subordinates by the order of the Superintendent of Police but may be taken against upper subordinates only with the sanction of the Deputy Inspector General of Police; and a police officer against whom such action is admissible shall not be deemed to have been honorably acquitted for the purpose of Rule 7.3 of the Civil Services Rules (Punjab), Volume I- Part 1". However in this case, the proceedings against the petitioner were initiated under Rule 6 of the Punjab Police (Efficiency & Discipline) Rules, 1975 in which no bar is encapsulated or put in a nutshell that criminal trial or the disciplinary proceedings on account of misconduct cannot be continued in parallel or simultaneously or, in case of acquittal, the wrongdoer cannot be tried departmentally on the same charges.



11. The rationale and astuteness of initiating disciplinary proceedings by the employer is to unmask whether the charges of misconduct leveled against the delinquent are proved or not and in case his guilt is proved, what action should be triggered against him under the applicable Service Laws, Rules and Regulations, which may include the imposition of minor or major penalties in accordance with the fine sense of judgment of the competent Authority. Quite the reverse, the acuteness and *raison d'être* to set into motion the criminal prosecution is altogether different where the prosecution has to prove the guilt of accused beyond any reasonable doubt. Both have distinctive characteristics and attributes with regard to the standard of proof. It is well settled exposition of law that the prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently at both venues



without having any overriding or overlapping effect. The object of criminal trial is to mete out punishment of the offences committed by the accused while departmental inquiry is inaugurated to enquire into the allegations of misconduct in order to keep up and maintain the discipline and decorum in the institution and efficiency of department to strengthen and preserve public confidence. In the departmental inquiry, the standard of proof is that of "balance of probabilities or preponderance of evidence" but not "proof beyond reasonable doubt", which strict proof is required in criminal trial because the potential penalties are severe. In the case of Dr. Sohail Hassan Khan and others vs. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), this Court held that a civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge arising out of the same impugned transaction; these two are entirely different jurisdictions with different standards of proof as well as procedures; criminal prosecution requires strict proof through a narrowly jacketed procedure and, thus, State's failure on criminal plane does not provide shield of double jeopardy to a delinquent officer. Whereas in the case of District Police Officer, Mianwali and 2 others vs. Amir Abdul Majid (2021 SCMR 420), this Court again held that a civil servant facing expulsive proceedings on departmental side on account of his indictment on criminal charge may not save his job in the event of acquittal as the department still may have reasons/material, to conscionably consider his stay in the service as inexpedient; there are additional reasons to disregard his acquittal inasmuch as criminal dispensation of justice involving corporeal consequences, comparatively, requires a higher standard of proof so as to drive home the charge beyond doubt, an exercise to be routed through a procedure stringently adversarial, therefore, factuality of the charge notwithstanding, procedural loopholes or absence of evidence, sufficient enough to sustain the charge, at times occasion in failures essentially to maintain safe administration of criminal justice out of abundant caution. Departmental jurisdiction, on the other hand, can assess the suitability of a civil servant, confronted with a charge through a fact finding method, somewhat inquisitorial in nature without heavier procedural riders, otherwise required in criminal jurisdiction to eliminate any potential risk of



error, therefore, the Tribunal has undoubtedly misdirected itself in reinstating the respondent, considering his acquittal as the sole criterion in isolation to the totality of circumstances where under he had succeeded to vindicate his position. Reference may be made to the cases of *Dr. Sohail Hassan Khan and others v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others* (2020 SCMR 1708), *Liaqat Ali v. Government of N.W.F.P. through Secretary Health, Peshawar and others* (2011 PLC (C.S) 990), *Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan* (PLD 2010 SC 695), *Government of Pakistan through Secretary Ministry of Finance and others v. Asif Ali and others* (2007 PLC (C.S.) 271, *Superintendent of Police, D.I.Khan and others v. Ihsanullah* (2007 SCMR 562), *Sami Ullah v. Inspector-General of Police and others* (2006 SCMR 554), *Ractor Comsats v. Ghulam Umar Kazi* (2006 SCMR 1894), *Executive Engineer and others v. Zahid Sharif* (2005 SCMR 824), *Khaliq Dad v. Inspector-General of Police and 2 others* (2004 SCMR 192), *Arif Ghafoor v. Managing Director, H.M.C, Texila and others* (PLD 2002 SC 13), *Mir Nawaz Khan v. Federal Government through Secretary, Ministry of Finance, Islamabad and 2 others* (1996 SCMR 315), *Talib Hussain v. Anar Gul Khan and 4 others* (1993 SCMR 2177), *Mud Izharul Ahsan Qureshi v. Messrs P.I.A.C.* (1994 SCMR 1608), *Muhammad Nazir v. The Superintendent of Police, Toba Tek Singh and others* (1990 SCMR 1556) *Muhammad Tufail v. Assistant Commissioner/Collector* (1989 SCMR 316), *Muhammad Saleem v. Superintendent of Police, Sialkot and another* (PLD 1992 SC 369), *Muhammad Ayub v. The Chairman, Electricity Board, WAPDA, Peshawar and another* (PLD 1987 SC 195), *The Deputy Inspector-General of Police, Lahore and others v. Anis-ur-Rehman Khan* (PLD 1985 SC 134) and *Begum Shams-un-Nisa v. Said Akbar Abbasi and another* (PLD 1982 SC 413).

10. We have gone through case law relied upon by learned counsel for the appellant but the same is distinguishable and is not attracted to the facts of the case in hand. As aforesaid, we are thus of considered view that mere acquittal in a criminal case by itself could not entitle an accused to his exoneration in the departmental

proceedings. It is a well settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge, provided his misconduct is proved in departmental proceedings.

11. In view of the above discussion, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

10.11.2022



(KALIM ARSHAD KHAN)  
CHAIRMAN  
CAMP COURT SWAT



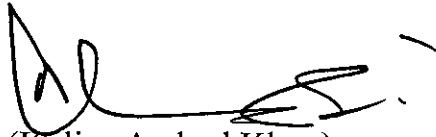
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)  
CAMP COURT SWAT

ORDER  
10.11.2022

Appellant in person present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr. Zahir Shah, ASI for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
10.11.2022



(Kalim Arshad Khan)  
Chairman  
Camp Court Swat



(Salah-Ud-Din)  
Member (Judicial)  
Camp Court Swat

08<sup>th</sup> Nov, 2022

Appellant alongwith his counsel present. Mr. Muhammad Qiaz

Khan Paindakhel, Assistant Advocate General alongwith Mr. Zahir

Shah, ASI for the respondents present and produced documents

*consisting of about seven sheets.*

Arguments heard. To come up for order on 10.11.2022 before the

D.B at Camp Court Swat.



(Salah Ud Din)  
Member (Judicial)  
Camp Court Swat



(Kalim Arshad Khan)  
Chairman  
Camp Court Swat




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06.07.2022

Appellant present in person. Mr. Noor Zaman, District Attorney alongwith Mr. Muqadar Khan, Inspector Legal for respondents present.

Written reply/comments not submitted. Representative of the respondent department requested for time to file written reply/comments. Request accepted by way of last chance. To come up for written reply/comments on 04.08.2022 before S.B at Camp Court, Swat.

  
(Fareeha Paul)  
Member (E)  
Camp Court, Swat

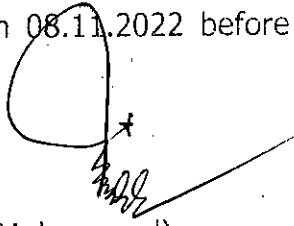
*17.8.22 due to summer vacation the case is adjourned to 8.9.22 for the same.*

08.09.2022

Appellant in person present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Zahir Shah, S.I (Legal) for the respondents present.

Reply/comments on behalf of respondents submitted which are placed on file. Copy of the same handed over to the appellant. Adjourned. To come up for rejoinder, if any, and arguments on 08.11.2022 before D.B at Camp Court, Swat.

**SCANNED**  
**KPST**  
**Peshawar**

  
(Mian Muhammad)  
Member (E)  
Camp Court Swat