

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 1087/2020

Date of Institution ... 20.02.2020

Date of Decision ... 31.01.2022

Sohrab Shah, Ex-Sepoy/Constable No. 5179, Malakand Levies
Malakand. R/O Village Piran, Tehsil Batkhela District Malakand.

... (Appellant)

VERSUS

DC/Commandant, Malakand Levies Malakand and two others.

... (Respondents)

MR. MUHAMMAD ANWAR
Advocate

--- For appellant.

MR. NOOR ZAMAN KHATTAK,
District Attorney

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precisely stated the facts giving rise to filing of the instant service appeal are that the appellant, who was serving as Sepoy in Malakand Levy was proceeded against on the allegations that he, while on duty had made firing on a Car on 26.07.2016 between 9:30 and 10:00 PM; that in the past, he had criminally intimidated Gul Roz Khan, Subedar Major Malakand Levies and F.I.R No. 36 dated 23.09.2014 under sections 186/153/506 PPC read with section 13.AO was registered against the appellant. On conclusion of the inquiry, the appellant was terminated from service vide order dated 22.08.2016 passed by the competent Authority. The



departmental appeal of the appellant was also rejected, therefore, he filed service appeal before Federal Service Tribunal, however in the meanwhile, Levy Force was Provincialized in consequence of 25th Constitutional Amendment, therefore, the appeal was returned to the appellant for its representation before the proper forum. The appellant thus made recourse to this Tribunal for redressal of his grievance.

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 contended that no regular inquiry was conducted in the matter and the appellant was awarded major penalty on the basis of fact finding inquiry; that the appellant was not provided opportunity of cross-examination of the witnesses produced during the inquiry, therefore, the statements of the witnesses could not be taken into consideration against the appellant; that no complaint was filed by anyone against the appellant regarding the alleged incident of firing and the inquiry was initiated against him due to ulterior motive; that the alleged incident of causing threats to Subedar Major took place in the year 2014 and the appellant has already been acquitted in the said case, therefore, no disciplinary action can be taken against the appellant on the ground of the said alleged incident; that the penalty of termination from service is nowhere provided in the relevant rules, which fact by itself is sufficient for setting-aside of the impugned orders. In the last he requested that the impugned orders being bereft of any legal sanctity may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned District Attorney for the respondents has contended that the appellant had made firing on a Car, resulting in causing of damage to the Car, however the passengers luckily escaped unhurt; that the appellant was having rash temperament and had also extended life threats to

Subedar Major Gul Roz, who then lodged an FIR against the appellant; that the appellant was found guilty in the inquiry conducted against him, therefore, he has rightly been awarded major penalty.

5. We have heard the arguments and have perused the record.

6. A perusal of the record would show that disciplinary action was taken against the appellant on the ground that he, while on duty at *Tarai* Check Post, had made firing on a Car on 26.07.2016 between 9:30 and 10:00 PM; that in the past, he had criminally intimidated Gul Roz Khan, Subedar Major Malakand Levies and F.I.R No. 36 dated 23.09.2014 under sections 186/153/506 PPC read with section 13.AO was registered against the appellant. The inquiry officer recorded statements of the appellant and Hawaldar Bacha Rehman as well as statements of Ishtiaq Ahmed, Khalid Rehman and Gohar Ali, who were travelling in the Motorcar, which was being fired upon by the appellant. A perusal of the statements so recorded during the inquiry, it is an admitted fact that Hawaldar Bacha Rehman Regiment No. 4372 was also on duty at the concerned check post, however he has stated in his statement that he had gone towards the river side for easing himself. The aforementioned Bacha Rehman has not supported the allegations of firing being made by the appellant upon a car carrying passengers, rather he has stated that one of the passenger namely Khalid, who was serving in Police, had informed him through cell phone that as they were at fault, therefore, the matter may be kept secret. The aforementioned Hawaldar Bacha Rehman was not cross examined, therefore, his statement shall be deemed to have been admitted as correct. Furthermore, none amongst the passengers had lodged any complaint against the appellant. It is also not understandable that when the Deputy Commissioner alongwith Additional Deputy Commissioner as well as Assistant Commissioner had rushed to the spot on receiving the information of the alleged incident, why immediate action was not taken in the matter through photography of the damaged



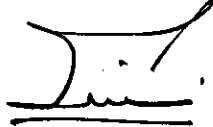
motorcar. The allegations of making firing on the motorcar and causing it damaged have not been proved through any cogent material.

7. The next allegation against the appellant is that he had criminally intimidated Subedar Major Gul Roz and an FIR in this respect was also registered. The aforementioned incident allegedly took place in the year 2014 and the appellant has been admittedly acquitted in the said case. Furthermore, on receipt of the inquiry report, the competent Authority issued show-cause notice to the appellant and terminated him from service vide impugned order dated 22.08.2016. No charge sheet or statement of allegations was issued to the appellant and it is thus crystal clear that no regular inquiry was conducted in the matter. Moreover, the penalty of termination from service is nowhere provided in concerned rules.

8. In view of the above discussion, the appeal in hand is allowed 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
31.01.2022


(ROZINA REHMAN)
MEMBER (JUDICIAL)

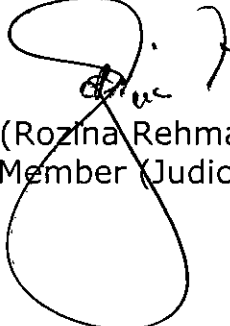

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
31.01.2022

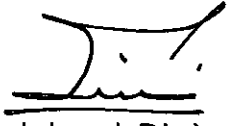
Learned counsel for the appellant present. Mr. Hakeem Zada, Superintendent alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed 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
31.01.2022



(Rozina Rehman)
Member (Judicial)

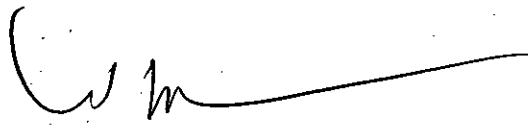


(Salah-ud-Din)
Member (Judicial)

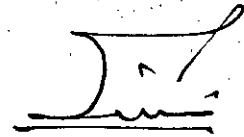
10.11.2021

Appellant alongwith his counsel Mr. Muhammad Anwar, Advocate present. Mr. Muhammad Ibrahim Finance Officer alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned Deputy District Attorney requested for adjournment on the ground that as the brief of the instant appeal has been provided to him very late, therefore, he has not made preparation for arguments. Adjourned. To come up for arguments before the D.B on 31.01.2022.



(ATIQ UR REHMAN WAZIR)
MEMBER (E)

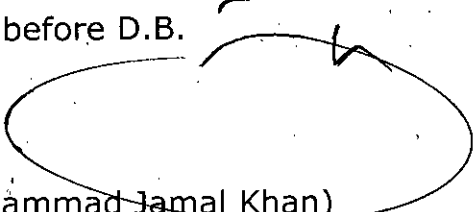


(SALAH-UD-DIN)
MEMBER (J)

25.02.2021

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.


Written reply on behalf of respondents No. 1 & 3 has already been submitted. None present on behalf of respondent No. 4 nor written reply on his behalf is submitted so far, therefore, he is proceeded against ex-parte. File to come up for rejoinder and arguments on 01.06.2021 before D.B.


(Muhammad Jamal Khan)
Member

01.06.2021

Learned counsel for the appellant present. Mr. Hakeem Zada, Superintendent alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Due to paucity of court time arguments could not be heard. Adjourned. To come up for arguments before the D.B on 16.08.2021.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

16.08.2021

Since 16.08.2021 has been declared as Public holiday on account of Moharram, therefore, case is adjourned to 10.11.2021 for the same as before.


Reader

18.11.2020

Appellant in person present. Mr. Kabirullah Khattak learned Addl; AG alongwith Muhammad Ibrahim, Finance Officer for respondents present.

Written reply/comments on behalf respondent No. 1 to 3 has been already submitted. Notice be issued to respondent No.4, the cost of which shall be borne by the appellant. To come up for written reply/comments on behalf of respondent No. 4 on 07.01.2021 before S.B.

Appellant Deposited
Process Fee

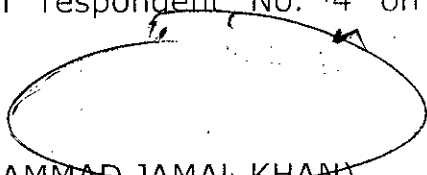
for Res#4


Chairman

07.01.2021

Junior to the senior counsel is present for appellant. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Muhammad Ibrahim, Finance Officer, on behalf of respondents No. 1 to 3, are also present.

Written reply on behalf of respondents No. 1 to 3 has already been submitted. Neither written reply on behalf of respondent No. 4 is submitted nor any representative on his behalf is present, therefore, learned Additional Advocate General is directed to contact respondent No. 4 for submission of written reply/comments by way of last chance. File to come up for written reply/comments on behalf of respondent No. 4 on 25.02.2021 before S.B.

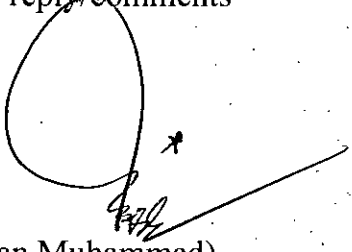

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

25.09.2020

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Muhammad Ibrahim, Finance Officer for respondents present.

Written reply on behalf of respondents No.1 to 3 submitted which is placed on file. Learned Additional Advocate General sought time to contact the respondent No.4 for submission of written reply/comments.

Adjourned to 18.11.2020 for written reply/comments of respondent No.4 before S.B.


(Mian Muhammad)
Member (E)

21.07.2020

Mr. Muhammad Anwar, Advocate for appellant and appellant himself are present. Learned counsel for the appellant contends that the appellant served in Malakand Levy, his services were terminated vide impugned order dated 22.08.2016. His departmental appeal resulted in rejection necessitating recourse to FST. However, the FST returned the appeal due to the 25th Constitutional Amendments wherein the Levy Force has been Provincialized ousting its jurisdiction accordingly, the instant appeal in this Tribunal. Learned counsel contends that allegations of firing on the part of the appellant has no where been proved against him but even then he was awarded major penalty. Besides he submits that a facts finding inquiry was conducted without holding of regular inquiry.

The points raised by the learned counsel need consideration. The appeal is admitted for regular hearing. Appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 25.09.2020 before S.B.

Appellant Deposited
Security & Process Fee

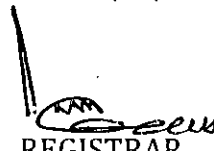


(MUHAMMAD JAMAL KHAN)
MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1087 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/02/2020	<p>The appeal of Mr. Sohrab Shah presented today by Mr. Muhammad Anwar Khan Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p>decrease</p> <p> REGISTRAR 20/02/2020</p>
2-	06-03-020	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21-04-020</u>.</p> <p> MEMBER</p>
7	21.04.2020	<p>Due to COVID19, the case is adjourned to 21.07.2020 for the same as before.</p> <p> Reader</p>