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**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

**Service Appeal No. 889/2020**

BEFORE:           **MR. KALIM ARSHAD KHAN,**           ...   **CHAIRMAN**  
                          **MISS. FAREEHA PAUL,**           ...   **MEMBER(E)**

**Nusrat Ullah Khan S/O Dilawar Khan, R/O Shaho Khel, Hangu, Ex-Constable No.4356, Police Line, Peshawar.**

**....(Appellant)**

Versus

1. **Superintendent of Police, Hqr; Peshawar.**
2. **Capital City Police Officer, Peshawar.**
3. **Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.**

**....(Respondents)**

Mr. Arbab Saiful Kamal,  
Advocate

...

For appellant.

Mr. Kabirullah Khattak,  
Addl. Advocate General

...

For respondents.

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Date of Institution.....03.01.2020  
Date of Hearing.....25.04.2022  
Date of Decision.....11.05.2022

**JUDGEMENT**

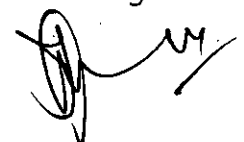
**FAREEHA PAUL MEMBER (E).** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned orders dated 21.04.2012 whereby the appellant was dismissed from service and his period of absence was treated as leave without pay and the appellate order dated 19.12.2019 whereby his departmental appeal for reinstatement was rejected on the grounds that it was badly barred by time by 07 years and 07 months. Both orders have been impugned and are under scrutiny for adjudication before us.



2. Brief facts, as per memorandum of appeal, are that the appellant was enlisted as constable in the year 1994, in the respondent department. He was nominated in FIR No. 10 dated 10.02.2011 for possessing/transporting opium under section 9(C) CNSA by Anti Narcotics Force (ANF) Lahore, and was remanded to judicial lockup at Lahore. The appellant was convicted by the special Court CNS, Lahore vide judgement dated 21.05.2014 and sentenced to death with fine of Rupees One Million or in default thereof to undergo 03 Years SI. The appellant filed an appeal in the Lahore High Court on 24.05.2014 against the aforesaid judgement which came up for hearing on 12.09.2019 wherein his conviction and sentence was set aside and he was acquitted of the charges levelled against him. During the time he remained absent from duty, he was issued charge sheet and statement of allegations on 04.04.2011 and resultantly he was dismissed from service. His departmental appeal dated 21.11.2019 was rejected on the ground that it was badly time barred. The appellant approached the Service Tribunal on 02.01.2020 for redressal of his grievance.

3. Respondents were put on notice who submitted their written replies/comments on contents of the appeal.

4. We have heard learned counsel for the appellant as well as the Addl. Advocate General and perused the case file alongwith connected documents thoroughly. Learned counsel for the appellant argued that the appellant was behind the bar serving his sentence at Lahore and that the charge sheet and statement of allegations did not reach him nor was he given an opportunity of personal hearing



by the Inquiry Officer and was punished with major penalty of dismissal from service on his back. By the time he was acquitted as a result of setting aside his conviction and sentence by the Lahore High Court, he appealed the competent authority for setting aside the penalty but it was rejected and the penalty was upheld on the ground that it was badly time barred by 7 years and 7 months.

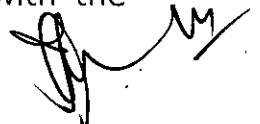
5. Learned Addl. Advocate General contended that the appellant was issued charge sheet and statement of allegations and was called time and again by the Inquiry Officer but he failed to turn up. The inquiry was finalized and report thereof submitted to the authority. A final show cause notice was also issued to him at his home address, after which he was awarded major penalty of dismissal from service. The appellant appealed at belated stage on 21.11.2019 which was rejected being badly time barred under the Limitation Act, 1908.

6. Khyber Pakhtunkhwa Police Rules 1975 clearly provide the procedure of Departmental Inquiry. Rule 6 (i) (a) provides that the authority shall frame a charge and communicate it to the accused together with statement of allegations explaining the charge and of any other relevant circumstances which are proposed to be taken into consideration. The same rules further provides in its part (b) that the accused is given 7 days from the day the charge has been communicated to him and required to put in a written defense and to state at the same time whether he desires to be heard in person. Record reveals that the departmental proceedings were conducted against the appellant in absentia without having him associated with the proceedings which is a glaring violation of Rule 6 of the Police



Rules 1975 which provides that the charge sheet and statement of allegations is to be communicated to the accused. Record further reveals that the charge sheet and statement of allegations was issued to the appellant without taking into consideration whether he received it or not? This deprived the appellant of the right to fair trial and it is also a violation of Article 4 of the Constitution of Islamic Republic of Pakistan which provides that every individual has the right to be dealt with in accordance with law, etc. Before awarding major penalty the Inquiry Officer must have ensured whether the charge sheet was received by the appellant. Even when the final show cause notice was served at his home address, the respondent department might have ascertained the whereabouts of the appellant that he was behind the bar and would have made arrangements for his personal hearing even within jail premises. The appellant upon his acquittal on 12.09.2019 submitted his departmental appeal on 21.11.2019 against the impugned order dated 21.04.2012 which was no doubt time barred. But it is also a fact that he was serving his sentence in Lahore and not in a position to present himself before Inquiry Officer at Peshawar.

7. As a sequel to the preceding paras, we have arrived at the conclusion that the appellant was not given fair chance to present his case before the Inquiry Officer. Before awarding major penalty of dismissal from service, the competent authority should have ensured that relevant clauses of laws/rules had been fully adhered to and the Inquiry Officer had given an opportunity of personal hearing to the appellant. The appeal in hand is therefore allowed by setting aside the impugned order. The appellant is reinstated in service with the



directions to the respondents to conduct de-novo inquiry strictly in accordance with the Law & Rules within 60 days of the receipt of copy of this judgement failing which the appellant shall be considered to have been reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11<sup>th</sup> day of May, 2022. -*



**(KALIM ARSHAD KHAN)**  
Chairman

**(FAREEHA PAUL)**  
Member (E)