(1)

BEFORE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Majid Ali S/O Muhammad Anwar Constable No. 351 (District Police Haripur) presently posted in District Abbottabad.

(Appellant)

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Abbottabad.

(Respondents)

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT-1974.

PETITION FOR RE-OPENING OF TITLED APPEAL NO. 4809/21 WHICH WAS SINE DIE ADJOURNED ON 13-06-2022 WHILE UNDER ADJUDICATION BEFORE THIS HONOURABLE SERVICE TRIBUNAL DUE TO DISMISSAL OF APPELLANT IN ANOTHER CASE AS THE APPELLANT HAS BEEN REINSTATED IN SERVICE VIDE THIS TRIBUNAL DECISION DATED 20-09-2022 IN SERVICE APPEAL NO. 7392/2021.

Respectfully sheweth:-

1. That while appellant's titled service appeal was under adjudication before this honorable Service Tribunal, the was dismissed from service in another case on 10-06-2021 by DPO Abbottabad and his departmental appeal was also rejected by RPO Abbottabad.

2. That due to appellant dismissal from service the titled service appeal was sine die adjourned by this honorable Tribunal on 13-06-2022.

3. That appellant against his dismissal from service filed a service appeal No. 7392/2021 dated 10-09-2021 before this honorable Tribunal which was accepted on 22-09-2022 and he was re-instated in service. **(Copy of order dated 22-09-2022 is attached as Annexure-"A").**

4. That as the appellant has now been reinstated in service, for the sake of justice titled appeal needs to be re-opened and the decided.

PRAYER:

It is, therefore, humble prayed that titled service appeal No. 4809/2021 may graciously be allowed to be re-opened and decided for the sake of justice.

Majid

Petitioner/Appellant

Through

(Muhammad Aslam Tanoli)
Advocate High Court
At Abbottabad

Dated: 6 -02-2023

VERIFICATION

It is verified that contents of instant service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Majid

Dated: 6 -02-2023

Petitioner/Appellant

(A)

Service Appeal No.7392/2021 titled "Majid Ali-vs-Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others", service appeal No. 7393/2021 titled "Faisal Ali Shah-vs- Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others" and service appeal No. 7394/2021 titled "Shahzad Shah-vs- Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others" decided on 22.09.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Fareeha Paul, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR CAMP COURT ABBOTTABAD.

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No.7392/2021

Majid Ali (Ex-Constable No. 351 Police Abbottabad) R/O Sector No.2 Khalabat Township, (KTS) Tehsil & District Haripur.
.....(*Appellant*)

Versus

1. **Provincial Police Officer,** Khyber Pakhtunkhwa, Peshawar.
2. **Regional Police Officer,** Hazara Region, Abbottabad.
3. **District Police Officer,** Abbottabad.
.....(*Respondents*)

Present:

Mr. Muhammad Aslam Tanoli,
Advocate.....For appellant.

Kabirullah Khattak,
Additional Advocate General.....For respondents.

Date of Institution.....10.09.2021
Dates of Hearing.....22.09.2022
Date of Decision.....22.09.2022

.....

Service Appeal No.7393/2021

Faisal Ali Shah, (Ex-Sub, Inspector Police Abbottabad) R/O Village Changi Bandi, Tehsil & District Haripur.
.....(*Appellant*)

Versus

4. **Provincial Police Officer,** Khyber Pakhtunkhwa, Peshawar.
5. **Regional Police Officer,** Hazara Region, Abbottabad.
6. **District Police Officer,** Abbottabad.
.....(*Respondents*)

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST ORDER DATED 10.06.2021 OF THE DISTRICT POLICE OFFICER ABBOTTABAD WHEREBY THE APPELLANT HAS BEEN "DISMISSED FROM SERVICE" AND ORDER DATED 12.08.2021 OF THE REGIONAL POLICE OFFICER HAZARA REGION ABBOTTABAD WHEREBY APPELLANT'S DEPARTMENTAL APPEAL HAS BEEN FILED.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment this appeal and connected Appeal No. 7393/2021 titled "Faisal Ali Shah-vs-Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others" and service appeal No. 7394/2021 titled "Shahzad Shah-vs- Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others" are decided as all the three are against the dismissal of the appellants and the same allegations.

2. According to the facts gathered from the record, disciplinary action was started against all the appellants on the allegations that in a preliminary enquiry, conducted by the Addl: Superintendant of Police Abbottabad, vide his office memo No. 1317/PA dated 01.04.2021, a fake and bogus FIR, No. 139 dated 07.03.2021, under Section 15-AA, was registered at Police Station Nawansher, wherein the time of the occurrence was shown as 1935 hrs while on the same date at 1715/hrs the same accused named Hazrat Gul S/O Bahadar Gul resident of Kotka Sokari, Bannu was charged in a murder case registered vide FIR No. 178 dated 07.03.2021 under Section 302/324/34 PPC Police Station, Bannu Cannt, how was it possible that the accused was charged in 2 FIRs at the same time and date in two very faraway districts.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

After conducting the preliminary enquiry, a departmental enquiry was conducted. It was also alleged in the statement of allegations that the appellant reached Khokhar Maira Interchange to receive the accused in protocol under the direction of SHO while the interchange was out of the jurisdiction of Police Station Nawansher. It was also alleged that preplanning and registering bogus case and obtaining illegal gratification/bribe had been proved against the appellant which shows there malafide intention, severe violation, a serious professional dishonesty and gross misconduct in terms of police E&D Rules 1975. The appellants submitted their reply to the charge sheet whereafter final show cause notice was issued to them, which were also responded. The District Police Officer, Abbottabad relied on the departmental inquiry and after hearing the appellants, awarded them major punishment of dismissal from service on 10.06.2021. The appellants filed departmental appeals which were regretted/filed by the Regional Police Officer, Hazara Region, Abbottabad vide order dated 12.08.2021 and the appellants then filed these appeals.

3. On receipt of the appeals and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeals by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellants.

4. We have heard learned counsel for the appellants and learned Additional Advocate General for the respondents.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Additional Advocate General controverted the same by supporting the impugned order.

6. The entire episode of these appeals can be summarized in the manner and that the appellants managed registration of a fake case vide FIR No. 139 dated 07.03.2021 under Section-15-AA of Police Station Nawansher, Abbottabad in order to show presence of the accused Hazrat Gul son of Bahadur Gul resident of Kotkah Sokari, Bannu, at Abbottabad who was charged in a murder case registered, on the same day, at Police Station Cantonment Bannu under Sections 302/324/34 PPC just two hours and few minutes prior to the time of occurrence shown in FIR No. 139 registered at Police Station Nawansher, Abbottabad. A preliminary inquiry was conducted by the Additional Superintendent of Police, Abbottabad and then departmental inquiry was conducted by the SP investigation Abbottabad. According to the observations in the inquiry everything was allegedly inquired and tried to be thrashed out except to ascertain the fact whether the accused Hazrat Gul son of Bahadur Gul, involved in the two FIRs, registered on the same date, at two different districts, falling far-away from each other, was actually the same person and present and arrested by the appellants in FIR No. 139 or he was not actually the same person and was present at Bannu. The observation No. 3 of the inquiry report, referred to a CDR of all relevant persons, collected in the previous preliminary inquiry, which revealed that the appellants reached Khokhar Maira interchange clearly indicates that they received the accused (Hazrat Gul) in protocol under the direction of the SHO at Khokhar Maira

ATTESTED

EXAMINER

interchange. The enquiry report said that this prima facie shows that the accused Hazrat Gul was actually in Abbottabad but prima facie observation would not be sufficient to hold that he was actually Hazrat Gul and not a fake person planted to benefit Hazrat Gul in a murder case registered at district Bannu. The preliminary as well as the departmental inquiry both are silent to show and prove the fact whether Hazrat Gul was actually in Abbottabad at the relevant point of time, when FIR was registered at Abbottabad or a fake person was arranged and shown as Hazrat Gul. In case it is established that the accused Hazrat Gul was a fake person, arranged by the appellants at Abbottabad, to establish his alibi, in order to exonerate him from the murder charge at Bannu, then of course the act of the appellants would be a gross misconduct and in case, which, of course, could be easily verified from the finger prints of the person arrested in FIR No. 139 at Abbottabad and his finger prints from the jail record and compared with the record of the NADRA, it is established that accused Hazrat Gul was actually at Abbottabad and was arrested by the appellants in case FIR No. 139 dated 07.03.2021, then the situation could be quite different as such a situation would not prove at least, the allegation that the case was registered by the appellants to extend benefit to the accused Hazrat Gul to establish his alibi so that he could be exonerated from the murder charge at Bannu. During the course of arguments, the learned counsel for the appellant produced certified copy of order dated 24.02.2022 passed by learned Judicial Magistrate-I Abbottabad whereby the FIR registered at Abbottabad was cancelled. The learned Magistrate held in the order that the officials of the concerned Police Station, in their statements

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

before inquiry officer admitted that the FIR was registered at about 04:30 AM or 05:00 AM in the morning time on 08.03.2021 and in this respect one day prior i.e. on 07.03.2021, the SHO called the muharrir to keep pending the Roznamcha of 07.03.2021 as he had to register an FIR and on the order of SHO the Muharrir kept the Roznamcha of 07.03.2021 pending till 08.03.2021 (morning) while in the FIR the time of lodging the FIR was mentioned as 2040 hours (08:40 PM). Meaning thereby the FIR was registered in back date. Similarly, one constable Sheraz No. 1132 also admitted before the inquiry that his name was included in the Fard as witness, but neither he was present on the spot nor he has signed on the Fard. Since, in the departmental inquiry it is proved that the FIR was fake, bogus and preplanned, therefore, the cancellation report was filed. The inquiry officer has, though, brought this fact in his observations that the FIR was registered on 08.03.2021 around 4/5 AM but there is no clarification whether only the FIR was registered late or Marasala for lodging the FIR was also drafted late i.e. on 08.03.2021 at 4/5 AM and not on the date and time mentioned in the FIR itself, the copy of which is found placed on file and the same negates the above fact. We find copies of the daily diary No. 33, 38, 39 & 47. According to daily diary No. 33 dated 07.03.2021 the appellants had left the Police Station at 1855 hrs for gasht. Daily diary No. 38 shows that the marasala was drafted by the SHO Faisal Ali Shah and sent through Majid Ali No. 351 (both are the appellants before us) for registration of FIR No. 139 under Section 15AA. Similarly daily diary No. 39 shows that the ASI concerned had completed the FIR around 2050 hrs. These daily diaries also negate the fact stated in the inquiry

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

report. Therefore, we find that the above points have not been either enquired, clarified, answered or established during the inquiry. In the absence of inquiry with respect to the above detailed points/facts the punishment awarded to the appellants would not be appropriate.

7. Therefore on allowing these appeals, we set aside the impugned orders of dismissal of all the three appellants from service as well as the appellate order filing their departmental representations and direct that a detailed de-novo inquiry be conducted, covering the above facts/observations/points made by us and then proceed in accordance with the result/outcome. The appellants are reinstated for the purpose of the above enquiry. The back benefits shall be subject to the outcome of the de-novo enquiry. The enquiry shall be completed within a period of sixty days from the date of receipt of this judgment and the compliance report be submitted to the Registrar of this Tribunal. Date of receipt of this judgment be also acknowledged to the Registrar of this Tribunal. Costs shall follow the event. Consign.

8. ***Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 22nd day of September, 2022.***

Khyber Pakhtunkhwa Service Tribunal Peshawar

SD/- 22/09/22

KALIM ARSHAD KHAN
Chairman
Camp court Abbottabad

Date of Presentation of Application 04-10-22
Number of Words 3200
Copying Fee 34/-
Urgent 34/-
Total 38/-
Name of Copyist —
Date of Completion of Copy 04-10-22
Date of Delivery of Copy 04-10-22

SD/-

FAREEHA PAUL
Member (Executive)
Camp court Abbottabad

Certified to be ture copy

Khyber Pakhtunkhwa Service Tribunal, Peshawar