BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR AT CAMP COURT SWAT

Service Appeal No. 1204/2019

Date of Institution ... 30.09.2019

Date of Decision ... 08.02.2023

Fakhr Alam Shah S/O Nisar Bacha (Ex-Constable No. 247 Buner Police) Resident of Village Gadar, Mardan.

... (Appellant)

VERSUS

The District Police Officer, Buner and 01 another.

... (Respondents)

MS. UZMA SYED,
Advocate --- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General --- For respondents.

MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)
MR. MUHAMMAD AKBAR KHAN --- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts surrounding the instant service appeal are that the appellant was appointed as Constable in Police Department vide order dated 09.03.2009. The appellant was dismissed from service by the District Police Officer on 11.08.2014 on the basis of a complaint filed by one Sher Zamin alleging therein that the appellant had attempted to commit sodomy upon his nephew namely Bilal Khan. The appellant challenged his penalty through filing of Service Appeal bearing No. 241/2015 before this Tribunal, which was allowed vide judgment dated

06.11.2017 with the directions to the respondent to hold de-novo inquiry within a period of four months, failing which the appellant shall be deemed to have been reinstated in service. De-novo inquiry was thus conducted in the matter and the appellant was again dismissed from service vide order dated 12.02.2018. The appellant after availing departmental remedy, has now approached this Tribunal through filing of instant service appeal for redressal of his grievance.

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

3. Learned counsel for the appellant has addressed her arguments supporting the grounds raised by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. Arguments have already been heard and record perused.

5. A perusal of the record would show that during the de-novo inquiry, Mr. Darvesh Khan Head of Investigation Buner issued show-cause notice to the appellant on 10.01.2018, wherein it is mentioned that he being competent Authority had decided to proceed against the appellant in general Police proceedings without aid of inquiry officer. Similarly, grounds of action were also conveyed to the appellant, however later on statement of allegations and charge sheet were issued to the appellant on 15.01.2018, by the same Darvesh Khan

Head of the Investigation Buner. While going through the contents of statement of allegations, we have observed that on one hand, Mr. Darvesh Khan Head of Investigation issuing the same as competent Authority but on the other hand he is also an inquiry officer in the matter. If Mr. Darvesh Khan was an inquiry officer in the matter, then he was legally not competent to issue statement of allegations and charge sheet to the appellant as it was the job of the competent Authority and not the inquiry officer. It is also interesting to note that the inquiry officer has issued final show-cause notice to the appellant on 16.01.2018, which was the job of the competent Authority. Furthermore, charge sheet as well as statement of allegations were issued to the appellant on 15.01.2018 and whole exercise of de-novo inquiry was completed by submitting inquiry report to the District Police Officer Buner on 19.01.2018. While going through the available record, we have observed that inquiry proceedings were conducted in a hasty and slipshod manner without complying the mandatory provisions of Police Rules, 1975 rendering the impugned order of dismissal of the appellant as void ab-initio. One of the main dent in the previous inquiry proceedings as pointed out in the judgment rendered in previous service appeal of the appellant was non-provision of an opportunity to the appellant for cross-examination of the witnesses examined during the inquiry. It is, however astonishing that as per the available record, the appellant was again not provided any opportunity of cross-examination of complainant namely Sher Zamin. Although, the complainant Sher Zamin has been cross-examined, however it

appears that cross-examination has been conducted by the inquiry officer and not the complainant. As far as the question of limitation is concerned, the same would not be attracted in the instant case for the reason that the impugned order dated 12.02.2018 is void ab-initio and no limitation runs against a void order.

6. According to the charge sheet as well as statement of allegations, complainant's nephew namely Bilal was taken by the appellant to a field for sodomy, however in his statement recorded during the inquiry, complainant namely Sher Zamin has not at all mentioned that his nephew was taken by the appellant to a field for commission of sodomy. Moreover, in case any attempt was made by the appellant for commission of sodomy upon Bilal, it is not understandable that why any FIR was not registered against the appellant.

7. In view of the above discussion, orders dated 12.02.2018, 14.06.2018 and 04.12.2018 are set-aside and the appellant stands reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
08.02.2023

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

(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)
CAMP COURT SWAT

ORDER
08.02.2023

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

Vide our detailed judgment of today, separately placed on file, orders dated 12.02.2018, 14.06.2018 and 04.12.2018 are set-aside and the appellant stands reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
08.02.2023

(Muhammad Akbar Khan)
Member (Executive)
Camp Court Swat

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

S.A No. 1204/2019

07.02.2023 Appellant alongwith Miss. Uzma Syed, Advocate present, who submitted fresh Wakalatnama. Mr. Inam-ul-Haq, S.I (Legal) alongwith Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Arguments heard. To come up for order on 08.02.2023 before the D.B at Camp Court Swat.

(Muhammad Akbar Khan)
Member (E)
Camp Court Swat

(Salah-ud-Din)
Member (J)
Camp Court Swat