

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No.632/2020

Date of presentation of appeal15.01.2020
Date of Hearing.....13.02.2023
Date of Decision.....01.03.2023

Waris Khan S/O Raees Khan, Caste Kundi R/O Village Amakhel,
District Tank. Presently serving as Driver/Constable in Police
Department Tank.

.....(*Appellant*)

Versus

1. **Provincial Police Officer, (IGP), Khyber Pakhtunkhwa Central Police Office Peshawar.**
2. **Regional Police Officer/Deputy Inspector General of Police, Dera Ismail Khan Region (Tank).**
3. **District Police Officer Tank.**

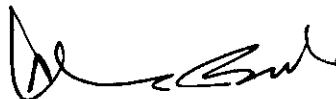
.....(*Respondents*)

Present:

Sheikh Iftikhar-Ul-Haq,
Advocate.....For appellant.

Asif Masood Ali Shah,
Deputy District AttorneyFor respondents.

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SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED OFFICE ORDER OB-199 DATED 19.03.2019 ISSUED BY THE RESPONDENT NO. 3 VIDE WHICH THE RESPONDENT NO.3 AWARDED PUNISHMENT OF ONE YEAR SERVICE IS FORFEITED AND IS WARNED TO REMAIN CAREFUL IN AND AVOID RELATION WITH ANTI-STATE ELEMENTS RESPECTIVELY THROUGH ABOVE ORDER. SIMILARLY THE IMPUGNED APPELLANT ORDER NO.2963/ES DATED 13.06.2019 QUA THE DEPARTMENTAL APPEAL/REPRESENTATION AS WELL AS REVISION ORDER NO. 4048 DATED 12.12.2019 RECEIVED ON 30.12.2019 OF THE



RESPONDENTS MAY GRACIOUSLY BE SET ASIDE AND THE APPELLANT BE DISCHARGED FROM THE CHARGES LEVEL AGAINST THE APPELLANT.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the facts gathered from the record, the appellant was appointed as Driver/Constable in the Police Department. During service, a complaint was filed by one Rehmatullah, wherein, it was stated that the appellant was reluctant in returning of loan of Rs. 50,000/- to the complainant. In response to that complaint, the respondent No.3 issued the impugned order dated 19.03.2019 by imposing the minor punishment of forfeiting one year service alongwith warning to be careful in future upon the appellant. Feeling aggrieved, the appellant filed departmental appeal which was rejected on 13.06.2019, hence, the instant service appeal.

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

3. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Deputy District Attorney controverted the same by supporting the impugned order.

5. It is the case of the appellant that respondent department had initiated inquiry against the appellant on the allegation that one Rehmat Ullah son of



Mati Ullah had lodged a complaint for non return of debt/loan amounting to Rs. 50,000/- and on the basis of the said complaint the appellant was awarded minor punishment of forfeiting one year service alongwith warning to be careful in future. This Tribunal had already decided almost similar issue in service appeal No. 948/2018 titled "Mst. Rubina Zahid-vs- District & Sessions judge, Abbottabad and one other", operative part of the same is reproduced below:

"7. The outstanding amount of groceries has been considered by the departmental authority as an act of the appellant amounting to misconduct. We have gone through the definition of misconduct as enunciated in Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011. As the act of the appellant could not be considered as connected to her official business but was a private transaction with the shopkeeper in a routine way, therefore the same could not be considered to be covered by the definition of misconduct. Moreover, it is a common practice that the low paid category of people usually resort to the practice of purchasing of groceries on credit and making its payment after they have money in their hand. Nothing is available on the record, which could show that the non-payment of the amount was deliberate; rather it appears that the poor financial condition of the appellant was the main reason for non-payment of the amount. We are of the considered opinion that the appellant was wrongly proceeded against for an act, which prima facie, was not amounting to misconduct, therefore the impugned penalty awarded to the appellant is liable to be set aside.

08. In view of the foregoing discussion, the instant appeal is accepted and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room."

6. Facts in these appeals are not different than the appeal earlier decided by this Tribunal. In this case the private debts were considered to be mis-



conduct on the part of the appellant, which in no way can be so considered nor is there any provision in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 to proceed against the civil servant on such a charge, therefore, this appeal is allowed and impugned orders are set aside. Costs shall follow the event. Consign.

7. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 1st day of March, 2023.*



KALIM ARSHAD KHAN
Chairman




MUHAMMAD AKBAR KHAN
Member (Executive)

ORDER

1st Mar, 2023

1. Appellant in person present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, this appeal is allowed and impugned orders are set aside. Cost shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 1st day of March, 2023.*



(Kalim Arshad Khan)
Chairman



(Muhammad Akbar Khan)
Member(Executive)