

09.01.2023

Counsel for the appellant present. Mr. Asif Masood Ali Shah,
Deputy District Attorney for the respondents present.

Learned Member Executive (Miss Fareeha Paul) left the
court at 12.00 Noon in order to attend a meeting in the Law
Department, Government of Khyber Pakhtunkhwa, therefore, this
case is adjourned to 04.04.2023 for arguments before the D.B.




(ROZINA REHMAN)
Member (J)

SCANNED
KPST
Peshawar

11th Oct., 2022

Counsel for the appellant present. M. Muhammad Adeel Butt,
Addl. A.G. alongwith Hazrat Bilal, HC for the respondents
present.

Learned counsel for the appellant requests for adjournment..
Adjourned. To come up for arguments on 10.11.2022 before the
D.B.


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman


10.11.2022


Counsel for the appellant present.

Naseer Ud Din Shah learned Assistant Advocate General
for the respondents present.

Former requested for adjournment on the ground that he
has not prepared the brief. Adjourned. To come up for arguments
on 09.01.2023 before D.B.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

24.08.2022

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Partial arguments heard. To come up for remaining arguments on 30.08.2022 before the D.B.

(Rozina Rehman)
Member(J)



(Salah-Ud-Din)
Member(J)

30.08.2022

Learned counsel for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for the respondents present.

Learned Member (Judicial) Mrs. Rozina Rehman is on leave, therefore, arguments could not be heard. Adjourned. To come up for remaining arguments on 12.09.2022 before the D.B.



(Salah-Ud-Din)
Member(J)

12.09.2022

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Mr. Mian Muhammad, learned Member (Executive) is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments before the D.B on 11.10.2022.



(Salah-Ud-Din)
Member (J)

16.12.21

DB is on Tour case to come up
For the same on Dated. 1-4-22

Reader

01.04.2022

Junior of learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Federal Service Tribunal. Adjourned. To come up for arguments before the D.B on 06.06.2022.



(Rozina Rehman)
Member (J)



(Salah-Ud-Din)
Member (J)

6th June, 2022

Proper D.B is not available. Therefore, case is adjourned to 24.08.2022 for the same as before.



Reader

09.08.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Former made a request for adjournment 20.10.2021 before D.B.



(Rozina Rehman)
Member (J)

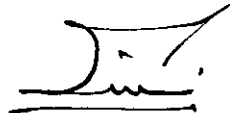


Chairman

20.10.2021

Appellant in person present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Appellant sought adjournment; granted. Case to come up for arguments on 10.11.2021 before D.B.



(Salah-Ud-Din)
Member (Judicial)

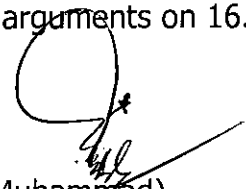


Chairman

10.11.2021

Appellant in person present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG alongwith Mr. Aziz Shah, Reader for respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 16.12.2021 before D.B.



(Mian Muhammad)
Member(E)



(Rozina Rehman)
Member(J)

12.12.2020

Due to pandemic of Covid-19, the case is adjourned to 22.02.2021 for the same as before.

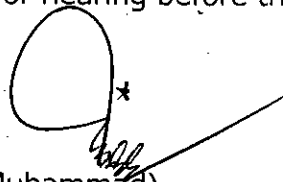


Reader

22.02.2021

Appellant in person and Addl. AG alongwith Muhammad Raziq, H.C for the respondents present.

Former requests for adjournment as his learned counsel had left the Tribunal premises due to illness. Adjourned to 01.06.2021 for hearing before the D.B.



(Mian Muhammad)
Member(E)



Chairman

01.06.2021

Appellant in person present.

Javid Ullah learned Assistant Advocate General for respondents present.

^{is} Bench incomplete as learned Member Executive (Mian Muhammad) is on leave, therefore, case is adjourned to 09.08.2021 for hearing before D.B.



(Rozina Rehman)
Member(J)

10.06.2020

Bench is incomplete as one learned Member (J) is on leave. Therefore, the case is adjourned. To come up for the same on 27.07.2020 before D.B.



Reader

27.07.2020

Due to COVID19, the case is adjourned to 11.09.2020 for the same as before.

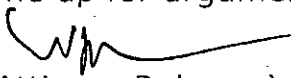


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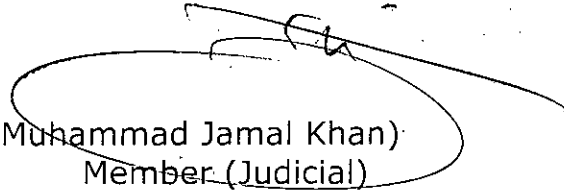
11.09.2020

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

Appellant states that his counsel is not available today. Requested for adjournment. Adjourned to 14.10.2020 on which to come up for arguments before D.B.



(Attiq-ur-Rehman)
Member (Executive)



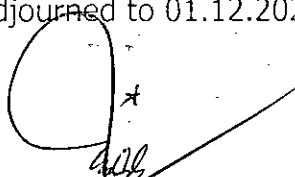
(Muhammad Jamal Khan)
Member (Judicial)

14.10.2020

Junior counsel present on behalf of appellant.

Mr. Kabir Ullah Khattak learned Additional Advocate General for respondents present.

A request was made for adjournment as senior counsel is not available. Application for adjournment is placed on file and case is adjourned to 01.12.2020 for arguments, before D.B.



(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member (J)

13.11.2019

Appellant in person and Addl. AG Muhammad Raziq, H.C for the respondents present.

Reply on behalf of respondents No. 1 & 2 submitted by the said representative, which is placed on record. The appeal is assigned to D.B for arguments on 15.01.2020. The appellant may submit rejoinder, within a fortnight, if so advised.



Chairman

15.01.2020

Appellant absent. Learned counsel for the appellant absent. Muhammad Raziq H.C representative of the respondents present. Due to general strike of the Bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 24.03.2020 before D.B. Appellant be put to notice for the date fixed.



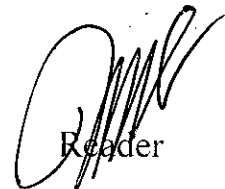
Member



Member

24.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 10.06.2020 before D.B.



Reader

19.08.2019

Counsel for the appellant and Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG for the respondents present.

Learned AAG is required to contact the respondents and submit written reply/comments on the next date positively. Adjourned to 17.09.2019 before S.B.


Chairman

17.09.2019

Nemo for appellant. Addl. AG alongwith Muhammad Raziq, Reader for the respondents present.

Representative of the respondents seeks time. To come up for requisite reply/comments on 09.10.2019 before S.B.

Chairman 

09.10.2019

Counsel for the appellant and Addl. AG alongwith Muhammad Raziq, Reader for the respondents present.

Representative of the respondents seek further time. Last opportunity is granted to the respondents for submission of requisite reply/comments on 13.11.2019 before S.B.


Chairman

21.06.2019

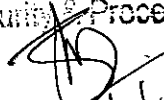
Counsel for the appellant Abid Hussain present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department as Constable. He was imposed major penalty of dismissal from service vide order dated 23.12.2015 on the allegation of his involvement in criminal case vide FIR No. 607 dated 24.08.2015 under sections 365A, 155C, 347, 147, 149 PPC PS Khazana. It was further contended that the appellant was honorable discharged/acquitted vide order dated 27.07.2018 by the competent court therefore, the appellant filed departmental appeal on 06.08.2018 hence, the present service appeal on 19.04.2019. It was further contended that departmental proceeding was initiated against the appellant as well as one other Farman Ali. It was further contended that the said Farman Ali has already been reinstated in service on the basis of judgment of this Tribunal. It was further contended that the impugned order dated 23.12.2015 was not communicated to the appellant but when the appellant was discharged/acquitted by the competent court vide order dated 27.07.2018 then he immediately filed departmental appeal. It was further contended that neither proper inquiry was conducted nor the appellant was provided opportunity of persona hearing and defence therefore, the impugned order is illegal and liable to be set-aside.

The contentions raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 19.08.2019 before S.B.


(Muhammad Amin Khan Kundi)
Member

SCANNED
KPST
Peshawar



Appellant Deposited
Security & Process Fee


21/6/19

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 607/2019


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/05/2019	<p>The appeal of Mr. Abid Hussain resubmitted today by Syed Noman Ali Bukhari Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	10/05/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21/06/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Abid Hussain Ex-Constable No. 34 Capital City Police Peshawar received today i.e. on 19.04.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of Impugned orders dated 28.2.2014 and 17.7.2018 mentioned in para-A of the grounds of appeal are not attached with the appeal which may be placed on it.
- 2- Copies of FIRs mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 3- Copies of bail and acquittal orders mentioned in para-4 of the memo of appeal (Annexures-C&D) are not attached with the appeal which may be placed on it.
- 4- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 5- Annexures of the appeal may be attested.
- 6- Annexures of the appeal may be flagged.
- 7- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 785 /S.T,

Dt. 22-4- /2019.


REGISTRAR -
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Noman Ali Bokhari Adv.

objection removed & file re-submitted.



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 607 /2019

Abid Hussain

V/S

Police Department.

INDEX

S.NO.	Documents	Annexure	Page No.
1.	Memo of appeal	-----	01-04
2.	Copy of FIR	---A---	05-06
3.	Copy of show cause notice	---B---	07-09
4.	Copy of dismissal order	---C---	10
5.	Copy of Acquittal order	----D----	11
6.	Copy of departmental appeal	---E---	12
7.	Copy of rejection order	---F---	13
*	Vakalat Nama	-----	14


APPELLANT
Abid Husain

THROUGH:


SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT


(UZMA SYED)
ADVOCATE HIGH COURT

(1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 607 /2019

Mr. Abid Hussain, Ex-Constable/No.34
Capital City Police, Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 638

Dated 19-4-2019

(Appellant)

VERSUS

1. The Senior Superintendent of Police (operation), KPK, Peshawar.
2. The Capital City Police Officer, KPK, Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 23.12.2015 WHEREIN THE APPELLANT WAS AWARDED MAJOR PENALTY OF DISMISSAL FROM SERVICE AND AGAINST THE ORDER DATED 22.03.2019 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

Filed to-day

Registrar

19/4/19

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 23.12.2015 AND 22.03.2019 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Re-submitted to -day
and filed.

Registrar

9/5/19

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was appointed as Constable in Police Department and work with entire satisfaction of his superior.
2. That during the fulfillment of obligation, FIR NO 607 dated 24/08/2015 U/S 365A, 155C, 347 ,147, 149 PPC were registered against the appellant . **Copy of FIRs are attached as Annexure-A.**
3. That on the basis of said FIRs the appellant was issued show cause notice and directly dismissed from service on 23-12-2015 received on 06-08-2018 without waiting for the finalization of the criminal case. **Copy of show cause and dismissal order is attached as Annexure-B & C.**
4. That the appellant was release/acquitted from the charges, which is leveled against the appellant vide order dated 27.07.2018. **Copy of acquittal order is attached as Annexure- D.**
5. That thereafter, the appellant filed departmental appeal on 06.08.2018 for reinstatement in service which was rejected vide order dated 22.03.2019. Hence present appeal on the following grounds. **Copy of departmental appeal is attached as Annexure-E & F.**

GROUND:

- A) That the impugned order dated 23.12.2015 & 22.03.2019 are against the law, facts, norms of justice and material on record and principle of fair play.
- B) That the appellant was acquitted from the charge due to which appellant was dismissed from the service and there is no more

ground remained to punished the appellant, hence the appellant is eligible for the reinstatement.



- C) That all the actions taken against the appellant is before the finalization of the criminal case which is also the violation of CSR 194. The department is duty bound to kept departmental proceeding pending till the finalization of case.
- D) That the impugned order and attitude of respondent department is in sheer violation of Article 4, 25 and 38 of the constitution.
- E) That due to impugned order and Harsh View of the respondents department, the appellant and his family has suffered a lot.
- F) That no chance of personal hearing was provided to the appellant at the time of passing impugned order, which against the law and rules.
- G) That before passing impugned order no codal formalities was fulfilled and no proper procedure was adopted which is the violation of the law and rules hence the impugned order is not sustainable, liable to be set aside.
- H) That no proper procedure has been followed before passing the impugned order and even, there is no show cause notice and statement of allegation was served upon the appellant, thus the proceedings so conducted are defective in the eye of law.
- I) That the appellant was condemned unheard and has not been treated according to law and rules.
- J) That the appellant has not been treated accordance with law, fair played justice, despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- K) That the similar nature appeal is already accepted by this Hon'able Tribunal tilted Farman Ali vs Police Department, so according to superior court judgment no limitation run in the cases where same relief was already granted.
- L) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

(4)

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.


APPELLANT
Abid Husain

THROUGH:


SYED NÓMAN ALI BUKHARI
ADVOCATE HIGH COURT
& 
(UZMA SYED)
ADVOCATE HIGH COURT



OFFICE OF THE
SENIOR SUPERINTENDENT OF POLICE
(OPERATIONS)
PESHAWAR



No. 1525 /PA, DATED 19/11/2015

Superintendent of Police,
Rural Peshawar.

Subject: SHOW CAUSE NOTICE
Memo: -

Enclosed please find herewith a copy of Show Cause Notice in duplicate in respect of Abid Khan No. 34 r/o Village Kochan Gulbela District Peshawar for service upon him. The duplicate copy of Show Cause Notice may please be served upon him and a copy thereof sent to this office as a token of receipt at the earliest for further necessary action.

for
SENIOR SUPERINTENDENT OF POLICE
(OPERATIONS)
PESHAWAR

OFFICE OF THE SENIOR SUPERINTENDENT OF P
PESHAWAR

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ATIONS.

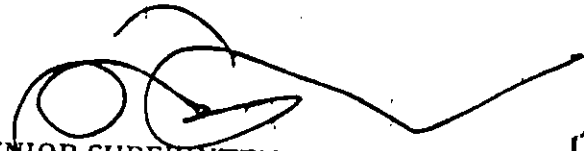
SHOW CAUSE NOTICE
(UNDER RULES 5 (3) KPK POLICE RUL

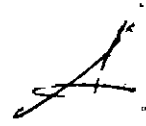
1. That you FC Abid Hassan No. 34 while posted at Police Lines Peshawar has rendered yourself liable to be proceeded under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct:
 - i. That on 23.07.2015, you along with SI Farman Khan of PS Khazana intercepted one Muhammad Iqbal s/o Ghulam Muhammad aged 42/43 r/o Mardan along with his friend namely Maqbool r/o Mardan boarded in vehicle Honda Civic bearing No. ICT-QY-888 coming from Mardan to Peshawar.
 - ii. You along with SI Farman Ali kept them in illegal confinement, threatened them for dire consequences and demanded a huge amount of Rs. 1000000 (ten lacs) as illegal gratification for their release.
 - iii. That you also deprived them from Lap Top, Perfume, Medical Kit First Aid & USB.
 - iv. That after receiving a huge amount of Rs. 1000000 (ten lacs) from Muhammad Iqbal s/o Ghulam Muhammad you released them from captivity. As such a criminal case vide FIR No. 607 dated 24.08.2015, u/s 365A/155C/347/147/149 PPC PS Khazana has been registered against you.
 - v. Being a member of disciplinary force you deviated yourself from your lawful duties as well as misused your official authority which is a gross misconduct on your part and render you liable for punishment under Police Rules, 1975.
2. That by reason of above, as sufficient material is placed before the undersigned; therefore it is decided to proceed against you in general police proceeding without aid of enquiry officer.
3. That the misconduct on your part is prejudicial to good order of discipline in the police force.
4. That your retention in the police force will amount to encourage in efficient and unbecoming of good police officer.
5. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rule.

J

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6. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.
7. You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex-parte shall be taken against you.
8. You are further directed to inform the undersigned that you wish to be heard in person or not.
9. Grounds of action are also enclosed with this notice.


SENIOR SUPERINTENDENT OF POLICE,
OPERATIONS, PESHAWAR
15-9-07





**OFFICE OF THE
SENIOR SUPERINTENDENT OF POLICE
(OPERATIONS)
PESHAWAR**



No. 1732-40 /PA, DATED 23/12 /2015

ORDER

No 34

Constable Abid Hassan of CCP Peshawar was issued Show Cause Notice u/s 5(3) of the Khyber Pakhtunkhwa Police Rules, 1975 on the basis of following allegations;

- i. That on 23.07.2015, he along with SI Farman of PS Khazana intercepted one Muhammad Iqbal s/o Ghulam Muhammad aged 42/43 r/o Mardan along with his friend namely Maqbool r/o Mardan boarded in vehicle Honda Civic bearing No. ICT-QY-888 coming from Mardan to Peshawar.
- ii. That they kept them in illegal confinement, threatened for dire consequences and demanded a huge amount of Rs. 1000000 (ten lacs, as illegal gratification for their release.
- iii. That they also deprived them from Lap Top, Perfume, Medical Kit First Aid & USB.
- iv. That after receiving a huge amount of Rs. 1000000 (ten lacs) from Muhammad Iqbal s/o Ghulam Muhammad you released them from captivity. As such a criminal case vide FIR No. 607 dated 24.08.2015 u/s 365A/155C/347/147/149 PPC PS Khazana has been registered against him along with SI Farman.
- v. Being a member of disciplinary force he deviated himself from his lawful duty as well as misused his official authority which is a gross misconduct on his part.

Show Cause Notice was issued to the delinquent police official but he failed to submit reply within stipulated period of time. SCN was then sent to SP Rural for service upon delinquent police official and return the copy of receipt to this office. However, SP Rural reported that the above mentioned FIR has been registered against him and he is absconder. The applicant namely Muhammad Iqbal s/o Ghulam Muhammad r/o Mardan submitted a written statement duly attested by him before the undersigned and held responsible FC Abid Hassan and his own friend namely Maqbool r/o Mardan for what happened with him on the day of occurrence. Perusal of the case file also revealed that the above accused official is guilty of the misconduct.

The duty of Police Officer is to protect life, property and liberty of citizens, preserve and promote public peace but he being a member of discipline force deviated himself from his official/lawful duties and indulge himself in anti-state affairs, thus, tarnished the image of Police in the eyes of general public which ultimately bring bad name to police force.

Thus by keeping in view the above facts and circumstances, the undersigned being competent authority under Police Rules, 1975 award him the **Major Punishment of Dismissal from Service** with immediate effect.

**DR: (MIAN SAEED AHMAD) PSP
SENIOR SUPERINTENDENT OF POLICE
(OPERATIONS)
PESHAWAR**

O.B.NO. 4610 / dated 23/12 /2015.

No. 1732-40 /PA, dated Peshawar, the 23/12 /2015.

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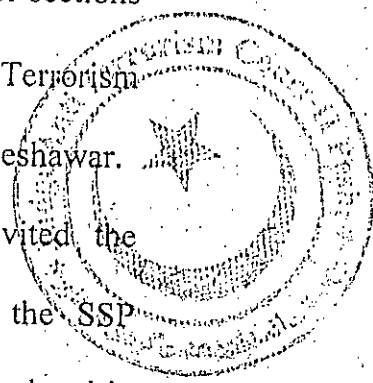
1. The Deputy Inspector General of Police, Enquiry & Inspection, KPK for favour of information, please.
2. The Capital City Police Officer, Peshawar w/r to his office Dy. No. 13559/OS dated 01.09.2015 and Endst: No. 9753-54/SRC dated 02.09.2015.
3. The AIG Establishment, KPK w/r to his office memo No. 751-53/PA dated 01.09.2015.
4. The SP Rural, Peshawar w/r to his office memo No. 1229/R dated 25.08.2015.
5. The SP HQrs, CCP, Peshawar.
6. The SDPO Rural, Peshawar
7. OAS, PO, AS, CC, I/C Computer Cell.
8. FMC with enquiry file.

تفہیم کے لئے (16) ممبرانہ

Accused Maqbool and Abid Jan on bail present.

Learned APP on behalf of the State present.

Accused named above have been sent up to this court for facing trial in case FIR No.607 Dated 24.08.2015, under sections 365-A-347-155C-147-149 read with section 7 of the Anti-Terrorism Act, 1997 registered at Police Station Khazana of District Peshawar.



Today, the learned APP for the State invited the attention of this court towards the joint findings of the SSP (Investigation), DPP Peshawar and Public Prosecutor as tendered in the Proforma "B" of the Prosecution annexed with the file according to which, the instant case has been recommended for Discharge. In view of the above findings, the learned APP of this court requested for discharge of the accused named above U/S 4C(2) of the Prosecution Act 2005 in the instant case.

In view of the above situation, by finding myself in agreement with the request of the learned APP, accused Maqbool and Abid Jan are discharged in the present case. Accused are on bail, their bail bond stands cancelled and the sureties are absolved from the liabilities of bail bonds. File be consigned to record room after its completion and compilation.

Announced:-
27.07.2018.

RECEIVED

[Signature]
ANTI-TERRORISM COURT
Peshawar Division Peshawar
06/8/2018

[Signature]
(TARIQ YOUSAF ZAI)
Anti-Terrorism Court-II
Judge, ATC-II, Peshawar.
27/7/18

06/08/90

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OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

Phone No. 091-9210989
Fax No. 091-9212597

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ORDER

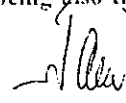
This order will dispose of departmental appeal preferred by ex-constable Abid Hussain No. 34 who was awarded the major punishment of "dismissal from service" under P.R 1975 vide OB No. 4610 dated 23.12.2015 by SSP-Operations, Peshawar.

2. The allegations leveled against him were that he while posted at PS Khazana was issued SCN on the following allegations:-

- i. That on 23.7.2015, he along with SI Farman intercepted one Muhammad Iqbal s/o Ghulam Muhammad aged 42/43 years, r/o Mardan along with his friends namely Maqbool r/o Mardan boarded in vehicle Honda Civic bearing No. ICT-QY-888 coming from Mardan to Peshawar.
- ii. That he kept them in illegal confinement, threatened for dire consequences and demanded a huge amount of Rs. 1000000/- (Ten lacs) as illegal gratification for their release.
- iii. That he also deprived them from Lap Top, Perfume, Medical Kit First Aid & USB.
- iv. That after receiving a huge amount of Rs.1000000/- (Ten lacs) from Muhammad Iqbal s/o Ghulam Muhammad he released them from captivity. As such criminal cases vide FIR No. 607 dated 24.8.2015 u/s /155-C/347/147/149-PPC PS Khazanawas registered against him along with SI Farman.
- v. Being a member of the disciplined force he deviated himself from his lawful duty as well as misused his official authority which is a gross misconduct on his part.

3. He was issued Show Cause Notice by SSP/Operation Peshawar, but he failed to submit his reply within the stipulated period. The SSP-Ops: Peshawar in his order mentioned that the accused constable Adid Hussain No.34 was charged in case FIR No. 607 dated 24.8.2015 u/s 365-A /155-C/347/147/149-PPC PS Khazana and he is absconder. His act brought a bad name for the entire force, hence awarded him the major punishment of dismissal from service.

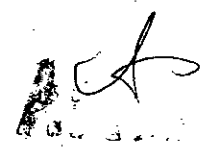
4. He was heard in person in O.R. The relevant record perused along with his explanation. He was provided ample opportunity to defend himself but he failed to produce any plausible explanation in his defence. The duty of Police officer is to protect the life, property and liberty of citizens, preserve and promote public peace but he being a member of discipling force deviate himself from his official/lawful duties and indulged himself in anti-state affairs, thus, tarnished the image of force in the eyes of general public which ultimately bring bad name to Police force. Therefore, his appeal to set aside the punishment order awarded by SSP/Ops: Peshawar vide OB No.4610 dated 23-12-2015 is hereby rejected /dismissed being also time bared for 03 year and 02 months.


(QAZI JAMIL UR REHMAN)PSP
CAPITAL CITY POLICE OFFICER
PESHAWAR

No. 508-13 /PA dated Peshawar the 22-03-2019

Copies for information and n/a to the:-

1. SSP-Ops: Peshawar.
2. PO/CRC/OASI/FMC along with FMC
3. Official concerned.



Dismissal order.

- 1) Charge sheet & statement of allegations & Reply.
- 2) Show cause notice & Reply.
- 3) inquiry Report.
- 4) Department appeal.
- 5) ATC Judgment.

VAKALAT NAMA

NO. _____/20

IN THE COURT OF K.P Service Tribunal, Peshawar

Abid Hussain (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt (Respondent)
(Defendant)

I/We, Abid Hussain

Do hereby appoint and constitute **SYED NOMAN ALI BUKHARI, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

Abid Hussain
(CLIENT)

ACCEPTED

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 607/2019.

Ex-Constable Abid Hussain No. 34 of CCP, Peshawar.....Appellant.

VERSUS.

1. Capital City Police Officer, Peshawar.
2. Senior Superintendent of Police Operations, Peshawar.....Respondents.

Reply on behalf of Respondents No. 1, 2

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to this court with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant concealed the material facts from Honorable Tribunal.

FACTS:-

- 1- First part of para No.1 is correct to the extent that the appellant was appointed in the replying department in the year 2002, while rest of para is denied on the ground that the appellant have a blemish service record, he earned in his service 12 Bad entries, 01 Minor punishment & 02 Major punishment in his service record. It is worth mentioning here that his present appeal was badly time barred.(copy of orders are annexure as A.B)
- 2- Para No.2 is incorrect. In fact the appellant while posted at PS Khazana, intercepted an innocent citizen namely Mohammad Iqbal s/o Ghulam Muhammad r/o Mardan boarded in vehicle Honda bearing No. ICT-QY-888 coming from mardan to Peshawar, confined him illegally demanded a huge amount of Rs 10Lacs for his release and threatened him of dire consequence. He also deprived them from Lap Top, perfume medical kit first aid and USB. The competent authority knowing real fact of the episode issued him final show cause notice under section 5(3) of the Rules 1975 and dispense with the enquiry proceedings. As such a criminal case vide FIR No.607 dated 24.08.2015 u/s 365-A/155-C/347/148/149-PPC PS Khazana has been registered against him, wherein he remained absconder.(copy of the show cause notice is annexure as "C")
- 3- Para No. 3 is incorrect. In fact the appellant was issued final show cause notice under section 5 (3) of the Police Rules 1975 and dispense with the enquiry proceedings. The competent authority after examining material on record reached

to an irresistible conclusion, hence he was awarded major punishment of dismissal from service. Moreover, the criminal and departmental proceedings are two different entities which can run side by side. Therefore his departmental proceedings was concluded without waiting of criminal case registered against him.

- 4- Para No.4 is correct to the extent but acquittal in a criminal case would not lead to exoneration of a civil servant in departmental proceedings. His act brought a bad name for the entire force and an innocent citizen was also victimized, hence he was awarded major punishment.
- 5- Para No.5 is correct to the extent that he filed departmental appeal which was thoroughly processed and an ample opportunity of hearing was provided to appellant by appellate authority but appellant failed to defend himself with plausible/justifiable grounds, hence his appeal was rejected/filed, also being time barred for about 03 year and 02 months.

GROUND:-

- A- Incorrect. The punishment orders passed by the competent authority as per law/rules.
- B- Incorrect. Acquittal in a criminal case would not lead to exoneration of a civil servant in departmental proceedings, the appellant was found guilty of misconduct, therefore the appellant is not entitled for re-instatement.
- C- Incorrect. In fact the criminal and departmental proceedings are two different entities and can run side by side. Therefore departmental proceedings was concluded without waiting of criminal case registered against him.
- D- Incorrect. The appellant was treated as per law/rules, and no article of constitution has been violated.
- E- Incorrect. The appellant himself is responsible for the situation by committing gross misconduct.
- F- Incorrect. The appellant was given proper opportunity of personal hearing and defence but he could not prove himself innocent.
- G- Incorrect. The appellant being a member of disciplined force was proceeded departmentally in accordance with law/rules.
- H- Incorrect. The appellant was treated as per law/rules.
- I- Incorrect. He was called and heard in person in Orderly Room. The appellant was provided ample opportunity to defend himself, but he failed to produce any plausible explanation in his defence.

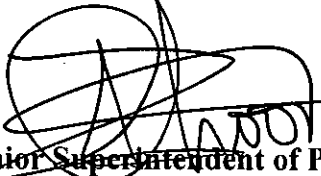
- J- Incorrect. The appellant was treated as per law/rules and the punishment awarded to him is liable to be upheld. The duty of police officer is to protect the life, property and liberty of citizens, preserve and promote public place, but he being a member of disciplined force devoid himself from his official/lawful duties and indulged himself in anti-state affairs, thus tarnished the image of force in the eyes of general public which ultimately brings bad name to police force.
- K- Incorrect. The appellant was found guilty of misconduct. The present service appeal is badly time barred.
- L- That respondent may also be allowed to advance any additional ground at the time of hearing of the appeal.

PRAYER.

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed.



**Capital City Police Officer,
Peshawar.**



**Senior Superintendent of Police,
Operations, Peshawar.**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 607/2019.

Ex-Constable Abid Hussain No. 34 of CCP, Peshawar.....Appellant.

VERSUS.

1. Capital City Police Officer, Peshawar.
2. Senior Superintendent of Police Operations, Peshawar.....Respondents.

AFFIDAVIT

We respondents No. 1, & 2 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.

**Capital City Police Officer,
Peshawar.**

**Senior Superintendent of Police,
Operations, Peshawar.**

ORDER.

This order will dispose off departmental enquiry against the Constable Abiel No. 1891 on the grounds that he while posted at Police Station Sarband, Peshawar absented himself from his duty with effect from 17.8.08 to date without leave & permission by his seniors.

Accordingly, he was issued charge sheet with statement of allegations and SP/HQrs & DSP/Legal were appointed as Enquiry Officers.

Findings of the Enquiry Officers received in which he was found guilty and recommended for major punishment.

He was issued Final Show Cause Notice to fulfill the procedure & legal formalities but he is still at large and there is no possibility of his return back to join his duty back in the near future.

I have gone through the case file and perused the whole record thoroughly, also recommendation for major punishment, which shows that he has tarnished the image of Police Force in the eyes of general public.

Therefore, being found guilty of gross mis-conduct, an exparte action is being taken against him, he is hereby awarded the major punishment of dismissal from services from the date of his absence under the Rules Removal from Service (Special Powers Ordinance) 2000 with immediate effect.


SR: SUPERINTENDENT OF POLICE,
OPERATIONS, PESHAWAR.

O.B.No. 2766

Dated 13-9- /2008.

NO. 936-39 /PA, DT: 15/09 /08.

Copy to for information & n/action to:-

1. The Capital City Police Officer, Peshawar.
2. The SP/HQrs SP/ Canlt DSP/Legal.
3. Pay Officer, CRC, OASI, FMC with enquiry papers. ①
4. I/C Clothing Godown to collect Govt: articles from him.

R

ORDER.

This office order relates to the disposal of formal departmental enquiry against Constable Abid No.1891 of Capital City Police Peshawar on the allegations/charges that he was selected for lower School Course at PTC Hangu, involved in a criminal case vide FIR No.95 dated 01.02.2010 u/s 365/13-AO/7-ATA Police Station Hayatabad.

3

In this regard, he was placed under suspension vide this order No.316-23/PA & OB No.449 dated 10.02.2010. He was also issued charge sheet and summary of allegations vide No.40/E/PA, dated 23.02.2010. DSP Civil Secretariat was appointed as Enquiry Officer. He conducted the enquiry and submitted his findings/report that this violation and without lawful absence from training Centre is indictable. He further recommended major punishment for accused official vide Enquiry Report dated 06.04.2010.

Upon the finding of Enquiry Officer, he was issued final show cause notice vide No.40/E/PA, dated 22.04.2010 to which he received and submitted reply of the said notice. He was also heard in person but his explanation found unsatisfactory.

According to the decision of the court that the request of the learned public prosecutor is accepted and allowed to withdraw from the prosecution with the meaning of section 494 Cr.P.C and the accused are discharged from the charges of abduction for rason with the meaning of 494 (a) Cr.P.C. Moreover, the accused are discharged from the charges under Section 365-A and Section 7-Anti Terrorism Act.

In light of the finding of Enquiry Officer and other material available on record and perusal of his previous service record it has been proved beyond any shadow of doubt that he is guilty of this misconduct.

Therefore, in exercise of the power vested in me under the Removal from Service (Spl: Powers) Ordinance-2000, he is hereby awarded the major punishment of Removal from service with immediate effect.

Arashid
(ABDUR RASHID)
SUPERINTENDENT OF POLICE
HEADQUARTERS PESHAWAR

O.B No. 1877 / Dated 27.5 / 2010

No. 1285-93/PA, dated Peshawar, the 28.5 / 2010.

Copy forwarded for information & n/action to:-

- ✓ The Capital City Police Officer, Peshawar.
- ✓ The SSP/Operation Peshawar.
- ✓ Pay Officer/RI, LO Police Lines Peshawar.
- ✓ OASI, CRC & FMC along-with complete departmental enquiry file.
- ✓ Officials concerned.

OFFICE OF THE SENIOR SUPERINTENDENT OF POLICE, OPERATIONS,

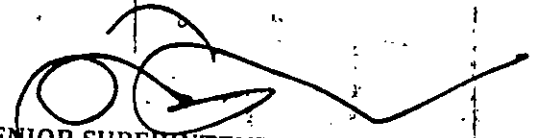
PESHAWAR

SHOW CAUSE NOTICE

(UNDER RULES 5 (3) KPK POLICE RULES, 1975)

1. That you FC Abid Hassan No. 34 while posted at Police Lines Peshawar has rendered yourself liable to be proceeded under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct:
 - i. That on 23.07.2015, you along with SI Farman Khan of PS Khazana intercepted one Muhammad Iqbal s/o Ghulam Muhammad aged 42/43 r/o Mardan along with his friend namely Maqbool r/o Mardan boarded in vehicle Honda Civic bearing No. ICT-QY-888 coming from Mardan to Peshawar.
 - ii. You along with SI Farman Ali kept them in illegal confinement, threatened them for dire consequences and demanded a huge amount of Rs. 1000000 (ten lacs) as illegal gratification for their release.
 - iii. That you also deprived them from Lap Top, Perfume, Medical Kit First Aid & USB.
 - iv. That after receiving a huge amount of Rs. 1000000 (ten lacs) from Muhammad Iqbal s/o Ghulam Muhammad you released them from captivity. As such a criminal case vide FIR No. 607 dated 24.08.2015, u/s 365A/155C/347/147/149 PPC PS Khazana has been registered against you.
 - v. Being a member of disciplinary force you deviated yourself from your lawful duties as well as misused your official authority which is a gross misconduct on your part and render you liable for punishment under Police Rules, 1975.
2. That by reason of above, as sufficient material is placed before the undersigned; therefore it is decided to proceed against you in general police proceeding without aid of enquiry officer.
3. That the misconduct on your part is prejudicial to good order of discipline in the police force.
4. That your retention in the police force will amount to encourage in efficient and unbecoming of good police officer.
5. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rule.

6. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.
7. You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex-parte shall be taken against you.
8. You are further directed to inform the undersigned that you wish to be heard in person or not.
9. Grounds of action are also enclosed with this notice.


SENIOR SUPERINTENDENT OF POLICE,
OPERATIONS, PESHAWAR
15-9-10

**OFFICE OF THE SENIOR SUPERINTENDENT OF POLICE, OPERATIONS,
PESHAWAR
GROUNDS OF ACTION**

That you FC Abid Hassan No. 34 while posted at Police Lines committed the following misconduct:

- i. That on 23.07.2015, you along with SI Farman Ali of PS Khazana intercepted one Muhammad Iqbal s/o Ghulam Muhammad aged 42/43 r/o Mardan along with his friend namely Maqbool r/o Mardan boarded in vehicle Honda Civic bearing No. ICT-QY-888 coming from Mardan to Peshawar.
- ii. You along with SI Farman Ali kept them in illegal confinement, threatened them for dire consequences and demanded a huge amount of Rs. 1000000 (ten lacs) as illegal gratification for their release.
- iii. That you also deprived them from Lap Top, Perfume, Medical Kit First Aid & USB.
- iv. That after receiving a huge amount of Rs. 1000000 (ten lacs) from Muhammad Iqbal s/o Ghulam Muhammad you released them from captivity. As such a criminal case vide FIR No. 607 dated 24.08.2015 u/s 365A/155C/347/147/149 PPC PS Khazana has been registered against you.
- v. Being a member of disciplinary force you deviated yourself from you lawful duties as well as misused your official authority which is a gross misconduct on your part and render you liable for punishment under Police Rules, 1975.

Before reasons of above you have, rendered yourself liable to be proceeded under Khyber Pakthunkhwa Police Rules, 1975, hence these ground of action


SENIOR SUPERINTENDENT OF POLICE,
OPERATIONS, PESHAWAR

15-8-15

**OFFICE OF THE
SENIOR SUPERINTENDENT OF POLICE
(OPERATIONS)
PESHAWAR**

No. 1732-40 /PA, DATED 23/12 /2015

ORDER

No. 34


Constable Abid Hassan of CCP Peshawar was issued Show Cause Notice u/s 5(3) of the Khyber Pakhtunkhwa Police Rules, 1975 on the basis of following allegations;

- i. That on 23.07.2015, he along with SI Farman of PS Khazana intercepted one Muhammad Iqbal s/o Ghulam Muhammad aged 42/43 r/o Mardan along with his friend namely Maqbool r/o Mardan boarded in vehicle Honda Civic bearing No. ICT-QY-888 coming from Mardan to Peshawar.
- ii. That they kept them in illegal confinement, threatened for dire consequences and demanded a huge amount of Rs. 1000000 (ten lacs) as illegal gratification for their release.
- iii. That they also deprived them from Lap Top, Perfume, Medical Kit First Aid & USB.
- iv. That after receiving a huge amount of Rs. 1000000 (ten lacs) from Muhammad Iqbal s/o Ghulam Muhammad you released them from captivity. As such a criminal case vide FIR No. 607 dated 24.08.2015 u/s 365A/155C/347/147/149 PPC PS Khazana has been registered against him along with SI Farman.
- v. Being a member of disciplinary force he deviated himself from his lawful duty as well as misused his official authority which is a gross misconduct on his part.

Show Cause Notice was issued to the delinquent police official but he failed to submit reply within stipulated period of time. SCN was then sent to SP Rural for service upon delinquent police official and return the copy of receipt to this office. However, SP Rural reported that the above mentioned FIR has been registered against him and he is absconder. The applicant namely Muhammad Iqbal s/o Ghulam Muhammad r/o Mardan submitted a written statement duly attested by him before the undersigned and held responsible FC Abid Hassan and his own friend namely Maqbool r/o Mardan for what happened with him on the day of occurrence. Perusal of the case file also revealed that the above accused official is guilty of the misconduct.

The duty of Police Officer is to protect life, property and liberty of citizens, preserve and promote public peace but he being a member of discipline force deviated himself from his official/lawful duties and indulge himself in anti-state affairs, thus, tarnished the image of Police in the eyes of general public which ultimately bring bad name to police force.

Thus by keeping in view the above facts and circumstances, the undersigned being competent authority under Police Rules, 1975 award him the **Major Punishment of Dismissal from Service** with immediate effect.


**DR: (MIAN SAAD AHMAD) PSP
SENIOR SUPERINTENDENT OF POLICE
(OPERATIONS)
PESHAWAR**

O.B.NO. 4610 / dated 23/12 /2015.

No. 1732-40 /PA, dated Peshawar, the 23/12 /2015.

Copy for information to:

1. The Deputy Inspector General of Police, Enquiry & Inspection, KPK for favour of information, please.
2. The Capital City Police Officer, Peshawar w/r to his office Dy. No. 13559/OS dated 01.09.2015 and Endst: No. 9753-54/SRC dated 02.09.2015.
3. The AIG Establishment, KPK w/r to his office memo No. 751-53/PA dated 01.09.2015.
4. The SP Rural, Peshawar w/r to his office memo No. 1229/R dated 25.08.2015.
5. The SP HQrs, CCP, Peshawar.
6. The SDPO Rural, Peshawar
7. OAS, PO, AS, CC, I/C Computer Cell.
8. FMC with enquiry file.

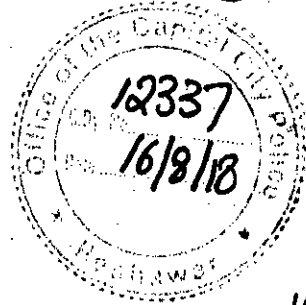
بقایا استواریوں کے لئے فرماں علی

308- LB
2018/2010

جس میں سی بی او کا نام لکھا ہے

①

عنوان: ایل۔ سیدہ مقدمہ عدالت نمبر 248-2010



نمبر 365A
347-133-149-149
(7) قضاوت
ATA

Securo Aballe
1311-13
2018/18

سائل عدالت میں گزارنے

① یہ کہ سائل محکمہ پولیس میں بطور کیس سائل کو بھرتی ہو کر تعلیماتہ پورے کے ساتھ ساتھ حکیمانہ تربیت حاصل کی

9/1 F.M.L
put up yourself

② یہ کہ سائل کا حدف ایکس گروٹ مقدمہ بنا دیا گیا اور اس میں ملوث کرنے کے حدف کاروائی کی کر

Dy. Supt. Police
Legal Cell/Freshwar
2018/18

③ یہ کہ سائل کو پورے مقدمہ عنوان محکمہ سے علیحدہ کر دیا گیا

④ یہ کہ سائل نے مقدمہ کا سامنا کرنے کے عداوت سے فہانت کرانی

- C.C.P.O. Tawaz
- SSP/O _____
- SSP/I _____
- SP/Cantt _____
- SP/City _____
- SP/Rural _____
- SP/Sec _____
- SP/HQ _____
- SP/T.O _____
- SP/T. HQ _____
- DSP/I/OS _____
- P.O./C.C. _____
- TA/EC-II _____
- S./C.Cell _____

17/8/18

⑤ یہ کہ سائل کا حدف کہ قہم کی اصلیت نہ مل سکی اور بے گناہی کی وجہ سے پراسیکیوشن ایکٹ (2) کے تحت عدالت نے سچے بہت کر دیا گیا

⑥ یہ کہ حکم عداوت جس میں کیا جا رہا ہے اس پر غور فرمایا جائے

استدعا ہے کہ میرے روزگار کا۔ اور مالی مشکلات کو دیکھتے ہوئے اس حکم پر غور فرمایا کر محکمہ میں بحال کرنے کا حکم

صارف فرمایا جائے
340
دل عزیزانہ ستم کو ختم کیلئے دعا دادوری
5945253-0300 تلک



OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

Phone No. 091-9210989
Fax No. 091-9212597

ORDER

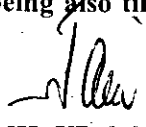
This order will dispose of departmental appeal preferred by ex-constable **Abid Hussain No. 34** who was awarded the major punishment of "**dismissal from service**" under P.R 1975 vide OB No. 4610 dated 23.12.2015 by SSP-Operations, Peshawar.

2. The allegations leveled against him were that he while posted at PS Khazana was issued SCN on the following allegations:-

- i. That on 23.7.2015, he along with SI Farman intercepted one Muhammad Iqbal s/o Ghulam Muhammad aged 42/43 years, r/o Mardan along with his friends namely Maqbool r/o Mardan boarded in vehicle Honda Civic bearing No. ICT-QY-888 coming from Mardan to Peshawar.
- ii. That he kept them in illegal confinement, threatened for dire consequences and demanded a huge amount of Rs. 1000000/- (Ten lacs) as illegal gratification for their release.
- iii. That he also deprived them from Lap Top, Perfume, Medical Kit First Aid & USB.
- iv. That after receiving a huge amount of Rs. 1000000/- (Ten lacs) from Muhammad Iqbal s/o Ghulam Muhammad he released them from captivity. As such criminal cases vide FIR No. 607 dated 24.8.2015 u/s /155-C/347/147/149-PPC PS Khazana was registered against him along with SI Farman.
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3. He was issued Show Cause Notice by SSP/Operation Peshawar, but he failed to submit his reply within the stipulated period. The SSP-Ops: Peshawar in his order mentioned that the accused constable Adid Hussain No.34 was charged in case FIR No. 607 dated 24.8.2015 u/s 365-A /155-C/347/147/149-PPC PS Khazana and he is absconder. His act brought a bad name for the entire force, hence awarded him the major punishment of dismissal from service.

4. He was heard in person in O.R. The relevant record perused along with his explanation. He was provided ample opportunity to defend himself but he failed to produce any plausible explanation in his defence. The duty of Police officer is to protect the life, property and liberty of citizens, preserve and promote public peace but he being a member of discipline force deviate himself from his official/lawful duties and indulged himself in anti-state affairs, thus, tarnished the image of force in the eyes of general public which ultimately bring bad name to Police force. **Therefore, his appeal to set aside the punishment order awarded by SSP/Ops: Peshawar vide OB No.4610 dated 23-12-2015 is hereby rejected /dismissed being also time bared for 03 year and 02 months.**


(QAZI JAMIL UR REHMAN)PSP
CAPITAL CITY POLICE OFFICER
PESHAWAR

No. 508-13 /PA dated Peshawar the 22-03-2019

Copies for information and n/a to the:-

1. SSP-Ops: Peshawar.
2. PO/CRC/OASI/FMC along with FMC
3. Official concerned.

Before the 1st Senior Tribunal, Peshawar

Appeal No: 607/19

Abid Hussain

vs

Police Dept

Subject: Application for adjournment in above mentioned Appeal

Respectfully sheweth

That the above mentioned Appeal is pending before this tribunal & fixed for Arguments today.

That due to some emergency / domestic problem counsel for the appellant ^{previously} ~~was~~ moved to city Mianwali Province Punjab due to mentioned reason the counsel for the appellant is unable to attend the courts.

It is therefore requested on acceptance of this application, the appeal may be adjourned to some other date.

Appellant

through ^{his} ~~the~~ Counsel

Syed Noman Ali Bhatti

Date 14-10-20

For Appellant.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 846 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 743

Dated 21-5-2018

Taj Ali Khan, Ex- Junior Clerk,
DHQ Hospital Lakki Marwat.

(APPELLANT)



VERSUS

1. The Secretary Health KPK, Civil Secretariat, Peshawar.
2. The Director General Health Service KPK, Peshawar.
3. The Executive District Officer, Health Lakki Marwat.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 26.09.2006 WHEREBY THE APPELLANT WAS TERMINATED FROM SERVICE AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 26.09.2006 MAY KINDLY BE SET ASIDE. THE RESPONDENTS MAY PLEASE BE DIRECTED TO REINSTATE THE APPELLANT WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to day
[Signature]
Registrar
21/5/18

Re-submitted to -day
and filed.

[Signature]
Registrar
29/6/18

RESPECTFULLY SHEWETH:
FACTS:

1. That the appellant was working as Junior Clerk in Health department and performed his duty with the entire satisfaction of his superiors and no complaint has been against him.

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 846/2018

Date of Institution ... 21.05.2018

Date of Decision ... 07.01.2022

Taj Ali Khan, Ex-Junior Clerk, DHQ Hospital Lakki Marwat.

... (Appellant)

VERSUS

The Secretary Health Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and two others.

... (Respondents)

Syed Noman Ali Bukhari,
Advocate

... For Appellant

Muhammad Rasheed,
Deputy District Attorney

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

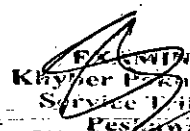
JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant while serving as junior clerk in health department, was proceeded against on the charges of absence, but in the meanwhile, in a reference No 06/2006, the Accountability Court proceeded the appellant on the charges of corruption and was ultimately arrested. The accountability court vide judgment dated 16-09-2011 convicted the appellant, which was challenged by the appellant in Peshawar High Court. Peshawar High Court vide judgment dated 19-12-2017 set aside the sentence of the appellant and the case was remanded to the trial court with direction to frame fresh charge against the appellant and proceed him in accordance with law. After his release, the appellant came to know that he had

ATTESTED

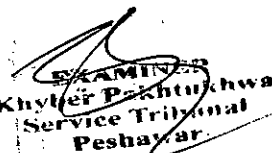

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

been removed from service vide order dated 26-09-2006, against which he filed departmental appeal dated 30-01-2018, which was not responded within statutory period, hence the instant service appeal with prayers that the impugned order dated 26-09-2006 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned order dated 26-09-2006 and not taking action on the departmental appeal of the appellant within the statutory period are against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that the appellant has been condemned and has not been treated in accordance with law; that no regular inquiry was conducted against the appellant and the appellant was terminated from service without conducting regular inquiry; that the appellant was acquitted of the charges, hence the reason upon which the appellant was terminated has vanished, therefore there remains no ground to penalize the appellant on this account; that as per section-194 of the Civil Service Regulations, the respondents were required to suspend the appellant from service till conclusion of the criminal case, but the appellant was hastily proceeded against without observing the codal formalities and was terminated from service; that the appellant was proceeded against under Removal from Service (Special Powers) Ordinance 2000, but in RSO 2000, there is no mention of the penalty of termination, hence the impugned order is void having no legal value in the eye of law; that no charge sheet/statement of allegations was served upon the appellant nor any show cause was served upon the appellant; that absence of the appellant was not willful but was due to compelling reasons, which were beyond control of the appellant.

03. Learned Deputy District Attorney for the respondents has contended that the appellant while serving as Junior Clerk was found involved in corruption, hence a reference No. 06-2006 was made against him and he was tried in accountability court; that the court convicted the appellant U/S 10 of NAO 1999 vide judgment

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
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 Peshawar

dated 16-09-2011 and sentenced for one year R.I and a fine of Rs. 6 million; that such penalty was challenged by the appellant in Peshawar High Court and Peshawar High Court set aside the sentence, but remanded the case to the trial court to frame the charges afresh; that as a result of his arrest by NAB, the appellant absented himself from duty, for which he was proceeded against under Removal from Service (Special Powers) Ordinance, 2000; that absence notices were issued and delivered at his home address but he did not respond; that such notices were published in two leading newspapers, but again he did not turn up; that after no response from the appellant, he was terminated from service vide order dated 26-09-2006.

04. We have heard learned counsel for the parties and have perused the record.

05. The impugned order of termination dated 26-09-2006 would reveal that the appellant was proceeded against under Removal from Service (Special Powers) Ordinance, 2000, but in RSO 2000, there is no provision for willful absence from duty. Section-4 of the ordinance provides that a person against whom action is proposed to be taken under sub-section 1 of section 3 may be placed under suspension with immediate effect, if in the opinion of the competent authority, suspension is necessary or expedient. Section 5 of the ordinance provides for appointment of inquiry officer/ committee by providing the civil servant appropriate opportunity to defend his cause, but no such action was taken, which was required under the law, rather the appellant was proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 1973 by sending notices at his home address and its publication in the newspapers, which however was not warranted and on this score alone, the impugned order is liable to be set aside, as in presence of RSO 2000 having overriding effect, the appellant was wrongly proceeded against under a wrong law, which is illegal and not tenable in the eye of law. Since impugned action was initiated and taken to its logical

ATTESTED

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar


conclusion under a misconception of law and under a wrong law, it has vitiated entire proceedings including final order, which could not be sustained under the law, hence proceedings as well as final order is liable to be set aside. Reliance is placed on 2007 SCMR 229. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of dismissal from service, which however was not done in case of the appellant. The respondents were well aware of the fact that a criminal case was registered against the appellant and he was arrested by NAB, hence it was beyond control of the appellant to attend to his duty. In a situation, the appellant was otherwise required to be kept under suspension until conclusion of the criminal case, as is provided in section 194 of Civil Service Regulations, but the respondents malafiedly proceeded him on the charges of absence from duty in a haphazard manner without adhering to the method prescribed in law. The appellant was confined in jail during the period and his absence was neither deliberate nor willful, circumstances were beyond control of the appellant and non-reply of the notices was not due to his negligent conduct. The principle of natural justice demands that no one should be condemned unheard during departmental proceedings, but the appellant was condemned unheard, hence the impugned order is not sustainable in circumstances. Reliance is placed on 2018 PLC (CS) 67. Dealing with the question of delay in submission of departmental appeal, it is observed that the same is not be extended much weightage. The impugned order provided for penalty to the appellant in terms of termination from service, which as rightly argued by the learned counsel for the appellant is not included in the list of penalties provided in the rules applied on the appellant. The order, therefore, having been passed in blatant disregard of law can only be termed as void and no limitation runs against void order. Reliance is placed on 2019 SCMR 648. Moreover, the Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to

ATTESTED

penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service. Moreover, it is a well settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880. Conviction of the appellant was set aside by Peshawar High Court vide judgment dated 19-12-2017 and the appellant was released from jail. It is also settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152. As is evident from their comments, the respondents were well aware that the appellant was arrested by NAB and that his absence was not willful, the respondents proceeded the appellant in haste and did not afford appropriate opportunity of defense as was required under the provisions of the said ordinance, rather conducted proceedings only to the extent of fulfillment of codal formalities, hence the appellant was condemned unheard. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460.


06. We are of the considered opinion that the appellant has not been treated in accordance with law and he was illegally removed from service without proper application of law. In view of the situation, the instant appeal is accepted. The impugned order dated 26-09-2006 is set aside and the appellant is re-instated in

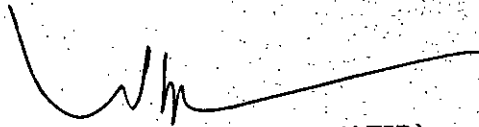
ATTESTED


EX-MINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

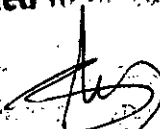
service. The intervening period is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
07.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN)


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

Certified to be true copy


Khy. Service III
Peshawar

of Presentation of Application 27/01/22
Number of 2800
Copying Fee 30/-
Urgent: 4/1
Total 34/1
Name of Copy _____
Date of Completion of Copy 27/01/22
Date of Delivery of Copy 27/01/22

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1084/2020

Date of Institution ... 12.02.2020

Date of Decision ... 13.10.2021



Pir Abdul Khaliq Shah son of Pir dost Muhammad Khan Mali, attached to District Jail, Kohat R/o Village Sumari Payan, Lachi, District Kohat.

... (Appellant)

VERSUS

Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

MR. ADNAN KHATTAK
Advocate

... For Appellant

MR. JAVED ULLAH,
Assistant Advocate General

... For Respondents

ROZINA REHMAN
ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATTESTED ATIQ-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the case are

that the appellant was appointed as Mali on 06-11-2017 in central jail Kohat. During the course of his service, the appellant was charged in FIR U/S 302/324/34 PPC dated 31-08-2018 and was arrested on 02-11-2018. During confinement in the said jail, the appellant was proceeded against and was dismissed from service vide order dated 26-02-2019, but in the meanwhile the appellant was acquitted of the criminal charges vide judgment dated 18-09-2019. Feeling aggrieved, the appellant filed departmental appeal 20-09-2019, which was rejected vide order dated 11-11-2019, hence the instant service appeal instituted on 10-02-2020 with prayers that the


(Signature)
ATIQ-UR-REHMAN WAZIR
Member (Executive)
Khyber Pakhtunkhwa Service Tribunal
Peshawar

impugned order dated 26-02-2019 may be set aside and the appellant may be reinstated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant was under treatment in hospital on 31-08-2018, which is evident from record and the appellant informed the respondents well in time of his illness vide application dated 03-09-2019 alongwith bed rest certificate for two months, but the respondents arbitrarily dismissed the appellant from service without taking into consideration his genuine health issues; that absence of the appellant from duty was not intentional, rather due to compelling reasons of his health issues, due to which he was regularly admitted in hospital and the hospital authorities vide letter dated 23-10-2018 have verified genuineness of such documents; that when the appellant was arrested on 02-11-2018, thereafter, he came to know that an FIR has also been registered against him on the same date, i.e. 31-08-2018; that the appellant was confined in the same jail, but the authorities did not follow the prescribed procedure; that while passing the impugned order of dismissal, no proper procedure was adopted, as no regular inquiry was conducted nor the appellant was afforded any opportunity to defend his cause; that dismissal order of the appellant was not communicated to the appellant despite the fact that the appellant was confined in the same jail and after acquittal, the appellant came to know about his dismissal and the appellant instantly filed departmental appeal, which too was rejected without any consideration; that while imposing major penalty of dismissal from service, the respondents were bound by law to follow the mandatory provisions of law as enshrined in E&D Rules, 2011, which however were ignored and the appellant was dismissed in an arbitrary manner, which is illegal, unlawful and contrary to the norms of natural justice.

03. Learned Assistant Advocate General for the respondents has contended that departmental appeal of the appellant is badly time barred, as the impugned order was issued on 26-02-2019, whereas the appellant filed departmental appeal

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

on 20-09-2019; that it is a well settled legal proposition that when departmental appeal is barred by time, the service appeal before this Tribunal is incompetent; that the appellant absented himself from lawful duty w.e.f 01-09-2018 without permission of competent authority and it was later on confirmed that the appellant was charged in a murder case vide FIR dated 31-08-2018, but the appellant himself did not inform the competent authority about lodging of FIR against him; that the appellant was arrested on 02-11-2018 and was shifted to the same jail, where he had performed duty as Mali; that notices dated 14-09-2018 and 02-10-2018 were issued to the appellant to resume his duty, but he failed to do so; that the appellant later on submitted medical bed rest certificates w.e.f 31-08-2018 to 31-10-2018, which were found bogus; that the appellant was placed under suspension vide order dated 20-11-2018, thereafter proper departmental inquiry was conducted against him and the appellant was afforded every opportunity of defense, but he failed to respond to the notices or to the final show cause notice; that the appellant was treated in accordance with law and rightly penalized for absence as well as for an FIR lodged against him.

04. We have heard learned counsel for the parties and have perused the record.

05. We assume that it might be a coincidence that the appellant was charged in an FIR on 31-08-2018 and on the same day, he was admitted in hospital due to his illness. Record would show that the appellant well in time had submitted an application dated 03-09-2018 alongwith bed rest certificate for two months issued by hospital authorities, which was sent for verification to the concerned hospital and the hospital authorities duly verified such documents as genuine. To this effect, findings of the inquiry report also suggest that medical certificates were sent for verification vide order dated 19-10-2018, which were duly verified by the concerned medical officer vide letter dated 23-10-2018, but astonishingly, the respondents in their comments have decaled such documents fake. Contradictory statements of


ATTESTED

SECRETARY
Service Tribunal

the respondents to this effect would strengthen contention of the appellant that he was actually ill and hospitalized, but the respondents did not consider his ailment, rather declared it fake. Upon arrest of the appellant on 02-11-2018, the respondents came to know that the appellant has been charged in a criminal case as well, thereafter the appellant was placed under suspension vide order dated 20-11-2018, which was a correct course and in a situation, principals of natural justice demands that respondents must have waited for decision of a criminal court, which is also supported by section 194-A of CSR but the respondents initiated disciplinary proceedings against him on the allegation of absence from duty as well as his involvement in a criminal case and dismissed him from service within a shortest possible time, which however was not warranted, as it is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

06. Disciplinary proceedings conducted so far against the appellant are also replete with deficiencies as after his arrest, the appellant and respondents were under one roof, but record does not support stance of the respondents that charge sheet/statement of allegations and show cause notice was actually served upon the appellant, which strengthen contention of the appellant that appellant was not associated with the proceedings. On the question of limitation contention of the appellant hold force, as the appellant filed departmental appeal just after acquittal from criminal charges. In a situation, if a civil servant is dismissed from service because of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (C.S) 1076. The Supreme Court of Pakistan in its judgment

ATTESTED


 JUDICIAL OFFICER
 Service Tribunal
 Islamabad

reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. Moreover, it is a well settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (C.S) 1014 and 1999 SCMR 880. We are of the considered opinion that absence of the appellant was not willful, rather it was due to his illness and his admission in hospital and to this effect, he has already informed the respondents vide letter dated 03-09-2018 and his presence in hospital was already verified by the concerned medical officer. Even otherwise absence on medical grounds without permission of competent authority does not constitute gross misconduct entailing major penalty of dismissal from service. Reliance is placed on 2008 SCMR 214. As far as the second allegation regarding his involvement in criminal case is concerned, In 2012 PLC (C.S) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (C.S) 460.

07. In view of the foregoing discussion, the instant appeal is accepted and the impugned order dated 26-02-2019 is set aside and the appellant is re-instated in service, the intervening period however is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
13.10.2021

(ROZINA REHMAN)
MEMBER (J)

Certified to be true copy
MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

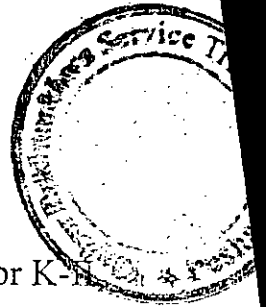
(ATIQ UR REHMAN WAZIR)
MEMBER (E)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 213/2017

Date of institution ... 27.02.2017

Date of Decision ... 06.08.2019



Arif Shah S/O Haji Alaf Shah R/O House No. 99, Street No.4, Sector K-1
Phase-III, Hayat Abad, Peshawar.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary C&W Department,
Peshawar & one other.

... (Respondents)

Mr. Muhammad Ilyas Orakzai
Advocate.

--- For appellant.


Mr. Muhammad Jan
Deputy District Attorney

--- For respondents.

MR. MUHAMMAD HAMID MUGHAL
MR. HAMID FAROOQ DURRANI

--- MEMBER(J)
--- CHAIRMAN

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER:- Learned counsel for the

appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith
Shahroom SDO for the respondents present.

2. Feeling aggrieved against the order dated 18.08.2010 of cancellation of his
appointment order dated 29.07.2010, the appellant approached this Tribunal by filing
the present service appeal for his reinstatement as Lab Attendant with back benefits.

3. Learned counsel for the appellant argued that vide order dated 29.07.2010 of the
Chief Engineer Central Design Office C&W Department Peshawar, the appellant was
appointed as Lab Attendant; that the appointment order of the appellant as well as

8.20

appointment orders of twenty (20) other officials were cancelled vide impugned order dated 18.08.2010 due to non-observance of codal formalities in the appointment process; that several officials mentioned in the impugned order dated 18.08.2010 have already been reinstated by this Tribunal vide common judgment dated 12.06.2012 passed in Service Appeal bearing No.3125/2010 which judgment was upheld by the august Supreme Court of Pakistan vide judgment dated 19.09.2012 in Civil Petitions No.401 to 409-P/2012; that another official namely Adnan Yaqoob named in the impugned order was also reinstated by this Tribunal vide judgment dated 26.01.2018 in Service Appeal bearing No.308/2016. Learned counsel for the appellant stressed that the appellant being a similarly placed person is also entitled to similar relief.

4. As against that learned Deputy District Attorney argued that the matter cancellation of appointment order pertains to the year 2010 while the appellant approached this Tribunal in the year 2017 as such the present service appeal is hopelessly time barred. Further argued that the appellant was appointed without fulfillment of codal formalities thus the appointment of appellant was illegal.

5. Arguments heard. File perused.

6. Vide the impugned order dated 18.08.2010, not only the appointment order dated 29.07.2010 of the appellant was cancelled but twenty (20) other officials also appointed in the month of July, 2010, were also deprived from service. Admittedly several officials mentioned in the impugned order were later on reinstated in service vide common judgment dated 12.06.2012 passed in Service Appeal bearing No.3125/2010 and the august Supreme Court of Pakistan vide its judgment/order dated 19.09.2012 upheld the aforementioned common judgment of this Tribunal. Similarly Service Appeal bearing No.308/2016 of Adnan Yaqoob also mentioned in the impugned order, was also accepted vide judgment dated 26.01.2018.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.

6.8.2019


7. When other officials who earlier challenged the impugned order dated 18.08.2010 through service appeals have been reinstated in service and issue involved in the case of appellant and those other officials is one and the same i.e. appointment without fulfillment of codal formalities, this Tribunal is of the considered opinion that the appellant is also entitled to reinstatement in service. This Tribunal however observes that at a belated stage i.e. in the year 2017, the appellant approached this Tribunal and assailed the order pertaining to the year 2010.

8. As a sequel to above, in the interested of justice and similarity of point involved in the present service appeal and above mentioned service appeals, the delay in filing the present service appeal is condoned while relying upon the judgment of Apex Court reported in 2002 PLC (C.S) 268. The impugned order dated 18.08.2010 in relation to the appellant, is also set aside and the appellant is reinstated in service without back benefits. The present service appeal is accepted in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.


(HAMID FAROOQ DURRANI)
CHAIRMAN


(MUHAMMAD HAMID MUGHAL)
MEMBER

ANNOUNCED
06.08.2019

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Appeal 20-8-19
Number of Words 1600
Copying Fee 20-00
Urgent 4-00
Total 24-00
Name of Applicant [Signature]
Date of Completion of Appeal 20-8-19
Date of Delivery of Copy 20-8-19

Date of Order

proceeding

2

1

Order or other proceedings with signature of Judge or Magistrate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 773/2016

Date of Institution

..... 15.07.2016

Date of Decision

..... 16.10.2018

Arsalan Ix-Constable No.488 son of Abdul Khanan resident of Garhi Alta Khan, Tehsil & District Kohat.

Appellant

- 1. Government of Khyber Pakhtunkhwa through Inspector General of Police, Peshawar.
- 2. Regional Police Officer, Kohat Region.
- 3. District Police Officer, Kohat.
- 4. DSP (Legal) Kohat.

Respondents

Mr. Muhammad Hamid Mughal-----Member (J)
Mr. Hussain Shah-----Member (B)

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - I, learned

counsel for appellant and Mr. Riaz Paindakhel learned Assistant

Advocate General for the respondents present.

2. The appellant has filed the present appeal u/s 4 of the Khyber

Pakhtunkhwa Service Tribunal Act, 1974 against the order dated

13.04.2015 whereby he was awarded major punishment of dismissal

from the service being involved/arrested in case FIR No.713 dated

04.12.2014 u/s 302/34 PPC P.S City District Kohat. The appellant

has also challenged the order dated 15.06.2016 through which his

16.10.2018

departmental appeal was rejected.

3. Learned counsel for the appellant argued that the appellant was arrested in a false case Fir No.413 dated 04.12.2014 u/s 302/34 PPC-15 AA Police Station City Kohat. Further argued that during the pendency of criminal trial when the appellant was in the judicial lock up/Central Jail Kohat, the departmental inquiry was conducted against the appellant due to his involvement in the above mentioned criminal case. Further argued that the appellant was not associated with departmental inquiry nor he was provided the alleged inquiry report and that without affording any opportunity of hearing to the appellant, the respondent No.3 issued the impugned order of his dismissal from service. Further argued that the departmental appeal of the appellant was also rejected in a hasty manner without considering the actual facts and circumstances of the case.

4. As against that learned Assistant Advocate General argued that the appellant was arrested in the murder case and for that reason departmental action was initiated against him and that the punishment was awarded to the appellant after observing all the legal requirements. Further argued that the inquiry officer in his report gave findings against the appellant. Further argued that the inquiry officer also mentioned in his report that the appellant being a member of disciplinary force used to visit the place of "Eunuch/Khawaja-Sera" which is also a moral stigma. Further argued that the appellant also filed departmental appeal/review petition which was rejected by the appellate/review board and in this

respect proper order dated 18.11.2016 was issued.

5. Arguments heard. File perused.

6. There is no dispute that the departmental action was initiated and the inquiry report was prepared when the appellant was confined in judicial lock up. Learned Assistant Advocate General remained unable to demonstrate that the witnesses got recorded their statements before the inquiry officer, in the presence of the appellant. The inquiry officer in his report also mentioned that, as per FIR, the appellant used to visit the place of "Eunuch/Khawaja-Sera" which is moral stigma. However no allegation to that effect has been leveled in the charge sheet/statement of allegation.

7. In view of above, the order dated 15.06.2016 of the appellate authority (respondent No.2) and the order dated 18.11.2016 of appeal/review board are set aside and the competent authority is directed to conduct denovo inquiry against the appellant by providing him proper opportunity of defense under the law/rules. The issue of reinstatement of the appellant shall be subject to the outcome of denovo inquiry. The present appeal is disposed off in the above terms. Parties are left to bear their own costs. File be consigned to the record room.



(Hussain Shah)
Member



(Muhammad Hamid Mughal)
Member

ANNOUNCED

16.10.2018

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT SWAT.**

Service Appeal No. 1213/2019

Date of Institution ... 01.10.2019

Date of Decision ... 05.10.2021



Aziz Ahmad Ex-Constable No. 2658 Swat Police, District Swat.

... (Appellant)

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

MR. IMDAD ULLAH
Advocate

... For Appellant

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

... For Respondents

ROZINA REHMAN
ATIQU-UR-REHMAN WAZIR

... **MEMBER (JUDICIAL)**
... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as constable in police department was dismissed from service on 09-01-2015 on the charges of his involvement in criminal case vide FIR No. 687 dated 10-12-2013. The appellant filed Service Appeal No. 742/2016, which was decided vide judgment dated 06-11-2017 with direction to the respondents to conduct de-novo inquiry. As a result of de-novo inquiry, the appellant was again dismissed from service vide order dated 28-12-2017, against which the appellant filed another Service Appeal No. 415/2018 before this Tribunal, which was decided vide

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

judgment dated 04-04-2019 with direction to the respondents to again conduct de-novo inquiry and as a result of de-novo proceedings, the appellant was again dismissed from service vide order dated 15-07-2019. Feeling aggrieved, the appellant filed departmental appeal dated 22-07-2019, which was partially accepted and major penalty of dismissal from service was converted into major penalty of removal from service vide order dated 24-09-2019, hence the instant service appeal with prayers that the impugned orders may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that it is a well settled legal proposition that before imposition of major penalty of removal from service, regular inquiry is must, which however was not done in case of the appellant, as the appellant was not afforded any opportunity of defense, thus making the whole process nullity in the eye of law; that the appellant has not been treated in accordance with law and have condemned the appellant unheard, as no chance of personal hearing was afforded to him, nor he was given any chance to cross-examine witnesses or rebut the evidences leveled against him; that the respondents have misused their official authority in a very fanciful and arbitrary manner, which the law never approves of; that the appellant was acquitted of the criminal charges by the competent court of law vide judgment dated 03-05-2016 and there remains no reason to penalize the appellant for the charges, which has already been quashed by the competent court of law.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was dismissed from service on the allegations of desecration of Holy Quran, for which he was charged in case FIR No. 687 dated 10-12-2013; that the appellant was acquitted by the court on technical grounds, however in departmental inquiry, the charges were established against him and he was dismissed from service after fulfilling all the formalities; that the de-novo proceedings were conducted as per

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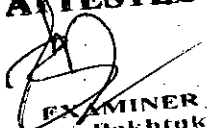

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

law and rule, wherein the allegations leveled against the appellant were proved; that the appellant was treated in accordance with law and was rightly penalized for the crime he committed.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that an FIR was registered against the appellant on the sensitive issue of desecration of Holy Quran allegedly committed by the appellant, who subsequently was arrested and tried in the criminal court. Simultaneously, the appellant was also proceeded against departmentally and was ultimately dismissed from service, against which the appellant filed service appeal and this Tribunal vide judgment dated 06-11-2017 had observed that no proper opportunity of defense was afforded to the appellant, hence the respondents were directed to conduct a de-novo inquiry and as a result of de-novo proceedings, the appellant was again dismissed from service vide order dated 28-12-2017. The appellant again knocked at the door of this Tribunal vide service appeal No. 415/2018 and this Tribunal once again remanded the case to the respondents to conduct inquiry in accordance with law vide judgment dated 04-04-2019 and as a result of de-novo inquiry, the appellant was again dismissed from service vide impugned order dated 15-07-2019, against which the appellant filed departmental appeal, which was accepted to the extent that major penalty of dismissal from service was converted into major penalty of removal from service vide impugned order dated 24-09-2019, hence the appellant filed the instant service appeal.

06. We have noted that the allegations so leveled against the appellant are factual in discourse, which cannot be proved without conducting a regular inquiry by affording proper opportunity of defense to the appellant as well as opportunity to cross-examine witnesses, which however was not done in case of the appellant. The

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 673 /2013.

A. W. J. Peshawar
Laraine Peshawar
573
22/3/13

Rehmat Ali S/O Mohammad Ali
Ex- Constable NO. 181,
R/O- Village Mula Yousaf Bunir.....Appellant.

VERSUS

- 1-The Provincial Police Officer KPK Peshawar.
 - 2- The D.I.G Malakand Region, Swat.
 - 3- The D.P.O Distt:Bunir.
-Respondents.

APPEAL UNDER SECTION - 4 OF THE KPK
SERVICE TRIBUNALS ACT 1974 AGAINST
THE ORDER DATED.30.11.2012
COMMUNICATED TO APPELLANT ON
26.2.2013 WHEREBY THE APPEAL OF THE
APPELLANT FOR REINSTATEMENT WAS
REJECTED FOR NO GOOD GROUNDS.

PRAYER: That on acceptance of this appeal the order dated.30.11.2012 may be set-aside and the appellant may be reinstated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of appellant.

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22/3/13

R.SHEWETH.

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16/4/13

1- That the appellant joined the Police Deptt: as constable in the year 16.2.1996. The appellant has also passed A-1 Course during service and had good record of service throughout. The

Sr. No	Date of order/proceeding	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	06.01.2020	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Service Appeal No. 673/2013</p> <p>Date of Original Institution 22.03.2013 Date of Decision 06.01.2020</p> <p>Rehmat Ali son of Mohammad Ali Ex-Constable No.181 resident of Village Mula Yousaf Bunir. <p align="right">Appellant</p> <p align="center">Versus</p> <ol style="list-style-type: none"> The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar. The D.I.G Malakan Region, Swat. The D.P.O District Buner. <p align="right">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Ahmad Hassan-----Member(E)</p> <p align="center"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney present.</p> <ol style="list-style-type: none"> The appellant has filed the present service appeal against the order dated 30.11.2012 whereby his departmental appeal for his reinstatement in service, was filed/regretted. Learned counsel for the appellant argued that the appellant joined the Police Department in the year 1996; that having been charged in a murder case vide FIR No.220 dated 04.03.2001 P.S </p>

6.1.2020

Daggar District Buner, the appellant was convicted and sentenced to life imprisonment alongwith fine of Rs.50,000/- vide judgment of the Trial Court dated 02.07.2003; that consequent upon court judgment, the appellant was dismissed from service vide order dated 22.07.2003; that against the judgment of learned Trial Court, the appellant filed Criminal Appeal No.386/2003 before the Hon'ble Peshawar High Court Peshawar which Criminal Appeal was rejected to the extent of the appellant and finally the appellant approached august Supreme Court of Pakistan; that compromise arrived at between the parties and application for compounding the offence was accepted by the august Supreme Court of Pakistan hence the Criminal Appeal No.572 of 2006 filed by the appellant before the august Supreme Court of Pakistan was allowed, the impugned judgment was set aside and the appellant was released vide order dated 27.09.2012; that after his release, the appellant approached the respondent department for his reinstatement in service however his departmental appeal was rejected vide impugned order dated 30.11.2012. Learned counsel for the appellant argued that the impugned order is against law and norms of justice; that since the judgment of his conviction and sentence has been set aside, the appellant is therefore entitled to be reinstated in service. In support of his case, learned counsel for the appellant relied upon the judgments of august Supreme Court of Pakistan reported in 1998 SCMR page 1993, PLD 2010 Supreme Court page 695 and the judgment

6.1.2020

dated 20.06.2007 of this Tribunal passed in Service Appeal No.274/2006.

4. As against that learned DDA argued that the appellant was dismissed from service after he was convicted and sentenced to life imprisonment and fine by the learned Sessions Judge Buner; that criminal appeal filed by the appellant was also dismissed by the Hon'ble Peshawar High Court Peshawar and his conviction and sentence was maintained; that departmental inquiry was also conducted against the appellant; that the august Supreme Court of Pakistan accepted the appeal of the appellant on the basis of compromise; that the appellant was not acquitted rather he was released on the basis of compromise.

5. Arguments heard. File perused.

6. The appellant was convicted and sentenced in the murder case as mentioned above which conviction and sentence was also maintained by the Hon'ble Peshawar High Court Peshawar. Owing to the factum of compromise between the parties, the Criminal Appeal No.572 of 2006 filed by the appellant before the august Supreme Court of Pakistan was allowed, the impugned judgment was set aside to his extent and he was released vide order dated 27.09.2012.

7. Perusal of the order dated 22.07.2003 as mentioned above, would show that the appellant was awarded punishment of dismissal from service in view of the court judgment dated 02.07.2003 whereby he was convicted and sentenced, which

6.1.2010

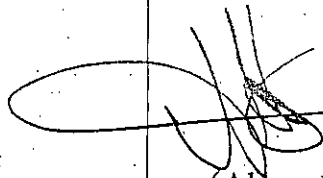
judgment is however no more in field in view of the above mentioned order of the august Supreme Court of Pakistan dated 27.09.2012, passed just because the parties have compromised.

8. The learned DDA has asserted that the departmental inquiry has been conducted against the appellant however he remained unable to produce record of regular inquiry in the shape of charge sheet/statement of allegation, statements of witnesses recorded by the inquiry officer and Show Cause Notice etc.

9. This may also be observed that it was not the stance of the learned counsel for the appellant that the allegations/charge leveled against the appellant is false rather he pressed for the reinstatement of the appellant in service due to his release in the murder case on the basis of compromise.

10. In view of above scenario, the appellant is reinstated in service without back benefits. The out of service period/intervening period shall be treated as leave without pay. The present service appeal is accepted in the above noted terms.

No order as to costs. File be consigned to the record room.



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

ANNOUNCED
06.01.2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 847/2017

Date of Institution ... 09.08.2017

Date of Decision ... 31.12.2018



Jaman Ali Shah son of Khursheed Ali Shah Ex-Constable No. 57, District, Bannu.
... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and two others.
... (Respondents)

Present.

MISS UZMA SYED,
Advocate.

... For appellant

MR. KABIRULLAH KHATTAK,
Addl. Advocate General

... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. HUSSAIN SHAH,

... CHAIRMAN
... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

The facts, as laid by the appellant, are that he was appointed as Constable in the Police Department on 10.09.2012. During his service an FIR No. 216 dated 24.09.2016 was registered against him under Section 504/186-PPC. On the basis of FIR, departmental proceedings were initiated which resulted in removal of appellant from service. The appellant, after exhausting departmental remedy, filed Service Appeal No. 1342/2014 before this Tribunal which was allowed on 10.10.2016 and the impugned order was set aside. The appellant was reinstated with the directions to the respondents to conduct denovo enquiry against him, if

ADMITTED
 KHYBER PAKHTUNKHWA
 SERVICE TRIBUNAL
 PESHAWAR

deemed appropriate. The denovo enquiry was conducted against the appellant by the Superintendent of Police (Investigation) Bannu and the appellant was again dismissed from service. A departmental appeal was preferred on 24.4.2017 against the order of dismissal dated 19.04.2017 which could not find favour and was rejected on 24.07.2017.

2. We have heard learned counsel for the appellant and learned Addl. Advocate General on behalf of the respondents.

It was the contention of learned counsel for the appellant that charge sheet and statement of allegations were not issued to the appellant during second round of proceedings. So much so, that even show cause notice was not served on the appellant before passing of impugned order. That, the recommendations of Superintendent of Police (Investigation) Bannu were ignored and a second enquiry was ordered which was against the judgment of this Tribunal. The appellant stood acquitted from the criminal case and there was no justification with the respondents to have proceeded against the appellant.

On the other hand learned Addl. Advocate General contended that the criminal proceedings, wherein, the appellant was acquitted were not to influence the departmental proceedings which could be taken up independently. Learned AAG provided copy of record pertaining to enquiry conducted against the appellant after judgment by this Tribunal and stated that all the codal formalities were fulfilled by respondents in that regard. The appellant was not only issued statement of allegations and charge sheet but was also duly associated with the proceedings. He was allowed to cross-examine SHO Hussain Khan and was also provided with opportunity to produce evidence in defence.

TESTED

Signature
 Addl. Advocate General
 Service Tribunal
 Faisalabad

3. It shall be useful to reproduce hereunder the concluding part of judgment dated 10.10.2016 passed by this Tribunal in Appeal No. 1342/2014:-

"7. After a thorough perusal of the record and hearing pro & contra arguments this was observed that appellant altercation had taken place between him and SHO, Shahbaz Khan who initiated the matter against the appellant to the competent authority and thus FIR was registered against him. Undeniably, the appellant stands acquitted of the charge by the competent court of jurisdiction vide its order dated 24.04.2014 but prior to conclusion of the criminal trial the appellant was removed from service on 18.07.2014. It is thus evident that the competent authority did not wait for fate of the criminal case decided through a neutral umpire. The enquiry report reveals that the enquiry officer did not record statement of any private witness. The Tribunal is of the considered view that findings of the enquiry officer are not based on a correct factual position and so the penalty awarded to the appellant is also not in accordance with law. Consequently, the Tribunal is constrained to set aside the impugned order and to reinstate the appellant into service. The competent authority if deems proper may initiate fresh enquiry proceedings in which full opportunity of defence and hearing be provided to the appellant including opportunity of cross-examination on the witnesses. The fresh enquiry proceedings if any be concluded within a period of one month positively. The issue of back benefits is subject to the outcome of de-novo enquiry. In case, no denovo enquiry is conducted then the intervening period be treated as his leave of the kind due. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room."

It is evident from the above reproduction that the respondents, at the relevant time, did not wait for the outcome of criminal proceedings against the appellant. It was also noted that the fresh enquiry, if any, was to be concluded within a period of one

ATTESTED


FOR THE
SECRETARY
POSTMASTER

[Signature]

It has been held by the Apex Court in judgment reported as 2002-SCMR-57 that in case where departmental authority dismisses a civil servant from service only on the charge of involvement in a criminal case and where regular enquiry was not conducted by the departmental authority, the petitioner could claim that having been exonerated by the criminal court the departmental authority was not competent to discharge/remove him from service. In another judgment reported as 2001-SCMR-269, it was held that where the criminal charges were not established before a competent court of law and the civil servant was acquitted on those specific charges, the departmental proceedings exactly on the same charges would be solely irrelevant and unjustified.

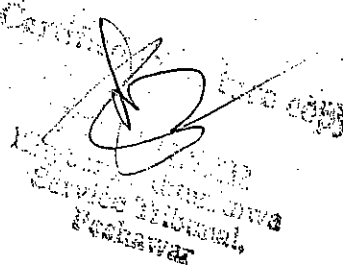
5. As a sequel to the above, we are of the opinion that the departmental proceedings taken against the appellant were not only in disregard of law on the subject but also in contrivance to the judgment of this Tribunal dated 10.10.2016. The impugned orders therefore, are not to sustain also in view of judgments of Apex Court cited here-in-before.

Resultantly, the appeal in hand is allowed as prayed for. Parties are left to bear their respective costs. File be consigned to the record room.


(HUSSAIN SHAH)
MEMBER(E)


(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
31.12.2018


Service Tribunal,
Peshawar

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

72/15

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE FAISAL ARAB

S-1 CIVIL PETITION NO. 697-P OF 2018

(On appeal from the judgment/order dated 03.07.2018 passed by Khyber Pakhtunkhwa Service Tribunal in Appeal No.1025/2017)

Provincial Police Officer, K.P. Peshawar & others ...Petitioner(s)

VERSUS

Farman Ali ...Respondent(s)

For the Petitioner(s): Barrister Qasim Wadood, Addl. AG KPK

For the Respondent(s): N.R.

Date of Hearing: 27.8.2019

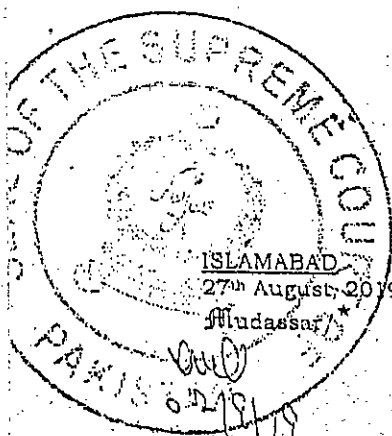
ORDER

MUSHIR ALAM, J.— We have heard learned Additional Advocate General Khyber Pakhtunkhwa and also gone through the available record. No case, in the facts and circumstances of the case, for interference is made out. Even the complainant of the FIR on the basis of which he was proceeded did not appear before the authority concerned. Resultantly, leave is declined and the petition is dismissed.

Sd/-J

Sd/-J

Certified to be True Copy



Court Associate
Supreme Court of Pakistan
Islamabad

GR No: 542-1/15
Date of Pre: 28/8
No of Pages: 3
No of Exhibits: 0
Requisition Fee Rs: 500
Copy Fee in: 100
Court Fee Stamp: 6800
Date of Commencement: 6/9/19
Date of delivery of: 6/9/19
Compared by: 6/9/19
Received by: 6/9/19

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1025 /2017

Farman Ali, EX- Sub-Inspector,
S/o Muhammad Shah, R/o Village Mazar
District Charsadda.

Khyber Pakhtunkhwa
Service Tribunal

Entry No. 1017

Dated 28/8/2017

.....(Appellant)

VERSUS

1. The Provincial Police Officer, KPK Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The Senior Superintendent of Police (operation). Peshawar.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 23.12.2015 WHEREBY, THE APPELLANT HAS BEEN DISMISSED FROM THE SERVICE AND AGAINST THE ORDER DATED 02.08.2017 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

Filed to-day

[Signature]
Registrar

28/8/17

Re-submitted to -day
and filed.

[Signature]
Registrar

13/9/17

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 23.12.2015 AND 02.08.2017 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1025/2017

Date of Institution ... 28.08.2017

Date of Decision ... 03.07.2018

Farman Ali, Ex-Sub-Inspector,
S/O Muhammad Shah, R/o Village Mazar
District Charsadda.

..... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others.
..... (Respondents)

Mr. Syed Noman Ali Bukhari,
Advocate

--- For appellant.

Mr. Muhammad Jan,
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Executive)
--- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The brief facts are that the appellant has been dismissed from service vide impugned order dated 23.12.2015 against which he preferred departmental appeal which was rejected on 02.08.2017, hence the instant service appeal on 28.08.2017.

ARGUMENTS

3. Learned counsel for the appellant argued that he was charged in FIR No. 607 under Section 365-A-155C-347/147-149 PPC dated 24.08.2015 and was placed

under suspension vide order dated 25.8.2015. Disciplinary proceedings were initiated under sub-rule-3 of Rule-5 of the Police Rules, 1975, whereby direct show cause notice was served on the appellant to which he replied. After cancellation of BBA on 12.09.2015 the appellant was arrested by the police. Upon culmination of enquiry proceedings major penalty of dismissal from service was imposed on him vide impugned order dated 23.12.2015. Learned counsel for the appellant further contended that his case was not dealt with according to CSR-194. That the appellant was sentenced to life imprisonment by the Anti Terrorist Court. Thereafter he filed appeal in Peshawar High Court and upon acceptance he was acquitted of the charges vide judgment dated 01.06.2017. Subsequently, he was released from jail. Upon release from jail departmental appeal on 16.06.2017 which was rejected on 02.08.2017 followed by present service appeal. There are the numerous judgments of the superior courts that in case major penalty is to be awarded to a government servant proper enquiry must be conducted. No chance of personal hearing was afforded to the appellant and as such condemned unheard. Reliance was placed on case law reported as PLD 2010 Supreme Court 695. The circumstances of both the cases are quite similar.

4. On the other hand learned Deputy District Attorney argued that sub-rule-3 of Rule-5 of Police Rules 1975 has given powers to the competent authority to dispense with enquiry proceedings and served show cause notice on the accused official/officer. The court proceedings and departmental proceedings are quite different and can run side by side. Punishment awarded to the appellant strictly in accordance with law and rules.

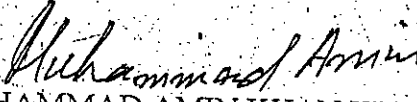
CONCLUSION

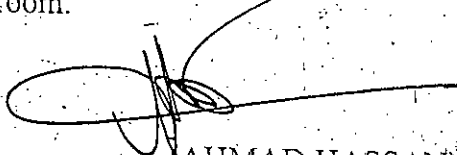
5. Perusal of relevant record revealed that after registration of FIR against the appellant was placed under suspension and departmental proceedings were initiated against him vide order dated 25.08.2015. After cancellation of his BBA he was arrested by the Police on 12.09.2015. It is pertinent to mention here that the appellant had surrendered to law and the respondents were required to follow the procedure laid down in CSR-194. The prudent way and the principle of natural justice demanded that the respondents should have waited for culmination of criminal proceedings against the appellant and thereafter initiation of departmental proceedings would have been justified, fair and transparent. In many cases of similar nature recourse to the aforementioned procedure was made by the respondents in the past.

6. No doubt sub-rule-3 of Rule-5 of Police Rules 1975 has given powers to the respondents to dispense with regular enquiry but in the presence of so many judgments of the superior courts that in case major penalty is to be awarded, regular enquiry should be conducted. In these circumstances action taken by the respondents lacks the backing of law. It is pertinent to mention here that the appellant was behind the bars and released in the light of judgment of Peshawar High Court dated 01.06.2017. On the other hand impugned order was passed on 23.12.2015 and respondents failed to submit any documentary evidence that the same was ever served on the appellant. As the impugned order was not served on the appellant so he had no other remedy but to prefer departmental appeal on 16.06.2017 after acquittal/release from jail. In these circumstances his departmental appeal is not hit by limitation, as circumstances were beyond his control and valid.

justification has been given in the above stated paras. Moreover, after acquittal from the criminal case, the charge on the basis of which he was punished and awarded major penalty is no more in the field. Judgment of the Supreme Court of Pakistan relied upon by the learned counsel for the appellant is quite relevant to the appeal in hand. Circumstances of both the case are similar.

7. As a sequel to the above, the appeal is accepted and the impugned order dated 23.12.2015 is set aside and the appellant is reinstated in service. The intervening period may be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER


(AHMAD HASSAN)
MEMBER

ANNOUNCED
03.07.2018