

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 5912/2021

Date of Institution ... 31.05.2021

Date of Decision... 07.03.2023

Gul Zada, Ex-Constable No. 376, District Police Officer Lower Kohistan,
Hazara Division, Khyber Pakhtunkhwa.

... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 02 others.
... (Respondents)

MR. ABDUL SABOOR KHAN,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

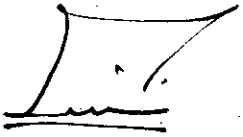
--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

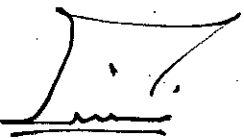
SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that departmental action was taken against the appellant on the allegations of his absence from duty and involvement in case FIR No. 836 dated 21.09.2020 under section 9-C of the Control of Narcotic Substances Act, 1997 registered at Police Station Taxila. The departmental proceedings against the appellant concluded in his dismissal from service vide order dated 01.01.2021 passed by the District Police Officer Lower Kohistan. The departmental appeal of the appellant was also declined vide order



dated 06.05.2021, constraining the appellant to file the instant service appeal:

2. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of filing of reply, wherein they refuted the assertion raised by the appellant in his appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Deputy District Attorney for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

 4. Arguments have already been heard and record perused.

5. The appellant was charged and arrested in case FIR No. 836 dated 21.09.2020 under section 9-C of the Control of Narcotic Substances Act, 1997 registered at Police Station Taxila. On gaining knowledge of the afore-mentioned fact, he was suspended by the District Police Officer, Lower Kohistan vide order dated 23.09.2020 and departmental inquiry was also initiated against him on the same day. Charge sheet as well as statement of allegations were issued to the appellant on the same day i.e 23.09.2020, however the same were served upon him after considerable delay on 10.12.2020, while he was in custody in Adyala Jail Rawalpindi. The appellant was convicted by trial court and was sentenced to rigorous imprisonment for 5½ years

alongwith fine of Rs. 25000/- in default whereof to undergo simple imprisonment for 05 months. The appellant challenged his conviction by way of filing appeal and it is an admitted fact that his appeal was allowed by Lahore High Court, Rawalpindi Bench, Rawalpindi vide judgment dated 03.03.2021 and he was acquitted of the charge leveled against him in the Narcotics case.

6. It is an undeniable fact that departmental action was taken against the appellant while he was in custody. Charge sheet as well as statement of allegations were issued to the appellant on 23.09.2020, however it is quite strange that the same were served upon the appellant after considerable delay on 10.12.2020 i.e after his conviction in the Narcotics case on 30.11.2020. The inquiry officer has not mentioned any reason in the inquiry report regarding considerable delay in serving of the charge sheet and statement of allegations upon the appellant. It is apparent from the record that the inquiry officer initiated inquiry proceedings, when the appellant was already convicted by the trial court. The inquiry officer did not bother to record statement of any single witness in the inquiry proceedings and had even not recorded statement of the appellant, who was in custody at that time. According to the inquiry report, the inquiry officer had only procured the copy of judgment of conviction of the appellant and concluded in a short cut manner that the appellant was guilty of the charge leveled against him. The impugned order dated 01.01.2021 also shows that the competent Authority had awarded major punishment of dismissal from service to the appellant on



findings of the inquiry officer that the appellant was convicted in the concerned criminal case.

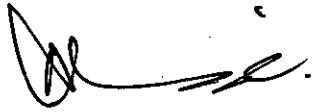
7. It is well settled that criminal as well as departmental proceedings are distinct in nature and both can run parallel. However, it is evident from perusal of the record that the findings of the inquiry officer for holding the appellant as guilty were based solely on his conviction by the trial court. The inquiry officer in his own wisdom had not recorded statement of any witness, which could prove the guilt of the appellant in the departmental proceedings. The appellant was in custody during the inquiry proceedings and was thus unable to properly defend himself in the departmental proceedings taken against him. Neither final show-cause notice was issued to the appellant nor was he provided any opportunity of personal hearing. Although no provision of issuing of final show-cause notice exist in Police Rules, 1975, however august Supreme Court of Pakistan in its judgment reported as PLD 1981 SC-176, has graciously held that rules devoid of provision of final show cause notice alongwith inquiry report were not valid rules. Non issuance of final show cause notice and non-provision of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him.

8. Furthermore, during the course of arguments, learned counsel for the appellant produced copy of order dated 30.11.2018 passed by Regional Police Officer Hazara Region Abbottabad. A perusal of the

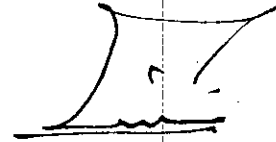
same would show that one Gul Muhammad Constable No. 152, who was serving in the same District Kohistan was convicted in a case registered against him under section 9-CNSA, however he was ultimately acquitted by august Supreme Court of Pakistan and was then reinstated in service by the Regional Police Officer Hazara Region Abbottabad by accepting his departmental appeal.

9. Consequently, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
07.03.2023



(KALIM ARSHAD KHAN)
CHAIRMAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)


ORDER
07.03.2023

Appellant in person present. Mr. Asif Masood Ali Shah,
Deputy District Attorney for the respondents present. Arguments have
already been heard and record perused.

Vide our detailed judgment of today, separately placed on
file, the appeal in hand is allowed by setting-aside the impugned
orders and the appellant is reinstated in service with all back benefits.
Parties are left to bear their own costs. File be consigned to the record
room.

ANNOUNCED
07.03.2023


(Kalim Arshad Khan)
Chairman


(Salah-Ud-Din)
Member (Judicial)