

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7949/2020

Date of Institution ... 10.07.2020

Date of Decision... 03.03.2023

Majid Khan S/O Laiq Badsha R/O Bhora Ghari, Kohat.

... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 02 others.

... (Respondents)

MR. JAVED IQBAL GULBELA,
Advocate

For appellant.

MR. MUHAMMAD JAN,
District Attorney

For respondents.

MR. SALAH-UD-DIN
MS. FAREEHA PAUL

MEMBER (JUDICIAL)

MEMBER (EXECUTIVE)

JUDGMENT:

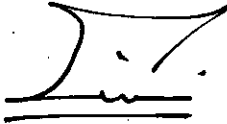
SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that on account of his involvement in case FIR No. 816 dated 05.11.2019 under sections 302/34 PPC registered at Police Station Billitang, disciplinary action was taken against the appellant, which culminated into his dismissal from service vide order bearing O.B No. 1673 dated 23.12.2019. The same was challenged by the appellant through filing of departmental appeal, which was



also rejected vide order dated 25.06.2020, 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 submitted their comments, wherein they refuted the assertions 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 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. We have heard the arguments of learned counsel for the parties and have perused the record with their valuable assistance.

5. The appellant was proceeded against departmentally on the allegations of his involvement in case FIR No. 816 dated 05.11.2019 under sections 302/34 PPC registered at Police Station Billitang. The appellant was placed under suspension vide order dated 06.11.2019 and was charge sheeted on the same date and inquiry was initiated against him. It is evident from the inquiry report that the appellant had submitted application for bail before arrest on 08.11.2019, which was declined vide order dated 27.11.2019 and he was taken into

custody. The appellant was then granted post arrest bail vide order dated 07.01.2020, wherein it is mentioned that the appellant did not remain in abscondence.

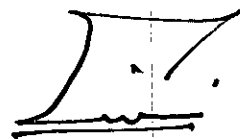
6. The appellant was prosecuted in the court of law for his alleged involvement in the criminal case and he has been acquitted vide judgment dated 29.06.2022 passed by learned Judge Model Criminal Trial Court/ASJ-II Kohat. No doubt, criminal and departmental proceedings could run side by side, however it is to be seen as to whether any cogent and convincing evidence has been brought on the record in the departmental proceedings, which could prove the allegations leveled against the appellant. FIR against the appellant as well as other co-accused was lodged by deceased's father namely Aqil Khan S/O Sohbat Khan, who was an eye witness of the occurrence. The afore-mentioned Aqil Khan was the most material witness in the matter, however the inquiry officer has not bothered to record his statement for reasons best known to him. The inquiry officer has though recorded statements of certain police officials as well as one Abid Khan S/O Mutawali Khan, however no opportunity of cross-examination has been provided to the appellant, therefore, their statements could not be legally taken into consideration as evidence against the appellant.

7. Furthermore, this Tribunal has already held in its various judgments that issuance of final show-cause notice along with

the inquiry report is must even under Police Rules, 1975. Reliance is also placed on the judgment of worthy apex court reported as PLD 1981 SC-176, wherein it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of final show cause notice and non-supply 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. As a sequel to what has been discussed above, we allow this appeal 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
03.03.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(FARIEHA PAUL)
MEMBER (EXECUTIVE)

ORDER
03.03.2023

Appellant alongwith his counsel present. Mr. Muhammad Jan,
District Attorney for the respondents present. Arguments heard and
record perused.

Vide our detailed judgment of today, separately placed on file,
we allow this appeal 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
03.03.2023



(Fareeha Paul)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)