

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT DERA ISMAIL KHAN.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH UD DIN ... MEMBER (Judicial)

Service Appeal No. 509/2022

Date of presentation of appeal.....01.04.2022
Dates of Hearing.....21.03.2023
Date of Decision.....21.03.2023

Amanullah son of Jamal Din caste Marwat resident of Moazam, Tehsil
& District Dera Ismail Khan, Ex-Head Constable No.1017, D.I.Khan.
.....*Appellant*

Versus

1. **Inspector General of Police**, Khyber Pakhtunkhwa, Peshawar.
2. **Regional Police Officer**, Dera Ismail Khan.
3. **District Police Officer**, Dera Ismail Khan
.....(*Respondents*)

Present:

Mr. Imtiaz Ali Khan,
Advocate.....For the appellant.

Mr. Muhammad Jan,
District AttorneyFor the respondents

Service Appeal No. 536/2022

Date of presentation of appeal.....01.04.2022
Dates of Hearing.....21.03.2023
Date of Decision.....21.03.2023

Abdul Hameed son of Abdul Majeed resident of Thafal, Tehsil
Paharpur District Dera Ismail Khan.
.....*Appellant*

Versus

1. **Inspector General of Police**, Khyber Pakhtunkhwa, Peshawar.
2. **Regional Police Officer**, Dera Ismail Khan.
3. **District Police Officer**, Dera Ismail Khan.
.....(*Respondents*)

Present:

Mr. Imtiaz Ali Khan, Advocate.....For the appellant.

Mr. Muhammad Jan,
District AttorneyFor the respondents

**APPEALS UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST**

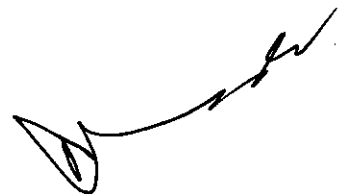
- 1. THE IMPUGNED ORDERS DATED 17.05.2021, AND 18.05.2021 WHEREBY THE APPELLANTS WERE DISMISSED FROM SERVICE**
- 2. ORDERS NO.5243 & 5241 BOTH DATED 06.12.2021 WHEREBY THE DEPARTMENTAL APPEALS OF THE APPELLANTS WERE REJECTED AND**
- 3. ORDER DATED 02.06.2022 WHEREBY THE REVISION PETITION FILED BY THE APPELLANT AMANULLAH WAS ALLOWED AND HE WAS REINSTATED IN SERVICE WHILE PUNISHMENT OF DISMISSAL OF SERVICE WAS CONVERTED INTO FORFEITURE OF TWO YEARS APPROVED SERVICE AND THE INTERVENING PERIOD WAS TREATED AS LEAVE WITHOUT PAY**

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment this and connected appeal No.536/2022 titled "Abdul Hameed versus Inspector General of Police and others" are going to be decided as both are regarding almost the same facts with slight difference that the revision petition of the appellant of connected appeal had not yet allegedly been decided while that of the appellant of this appeal has been allowed, therefore, both the appeals can be conveniently decided together.

2. According to the appeal of Amanullah, he was performing the duties of Head Constable at the Hathala Check post of Police Station Kulachi

District Dera Ismail Khan, when a truck was intercepted at Chehkan by the Station House Officer (SHO) Police Station Saddar and an FIR No.164 dated 03.04.2021 under sections 419/420/468/471/162 of the Pakistan Penal Code against the truck driver and a smuggler; that the appellant remained in quarter guard for 10 days and was released on 12.04.2021 vide DD No.55; that in the meanwhile charge sheet along with summary of allegations was issued vide No.1593-94 dated 02.04.2021 on two allegations first that the appellant allowed a truck carrying Non-Customs Paid (NCP) rice 875 bags and second that the appellant was transferred from check post Hathala to Police Station Paharpur on 02.04.2021 but he did not proceed to the new place of posting; that the appellant submitted reply to the charge sheet that the truck was not carrying NCP rice as the local police failed to hand over the truck to Customs Authorities and the court of learned Additional Sessions Judge had also released to the owner vide order dated 15.04.2021 which was handed over vide DD No.19 dated 15.04.2021 (Annexure-E); that the enquiry officer submitted report recommending reduction in rank to the appellant; that the District Police Officer D.I.Khan did not agree to the report of the enquiry officer and awarded punishment of dismissal to the appellant; that the appellant filed departmental appeal to respondent No.2, who ordered de novo enquiry vide order No.3199/ES dated 28.07.2021; that after the de novo enquiry, the Regional Police Officer D.I.Khan rejected the appeal vide order No.5243 dated 06.12.2021; that the appellant lodged a revision petition to the Inspector General of Police/respondent No.1 for setting aside the impugned dismissal and appellate orders but till filing of the



appeal that was not decided, which was, however, received during the pendency of the appeal and the appellant filed an application for filing amended memorandum and grounds of appeal, which is allowed today and instead of filing amended appeal, the order passed in revision petition was directed to be considered as part of the appeal as the appellant is also challenging the same.

3. The facts of the connected appeal No.536/2022 are that he was posted as Constable at Police Check Post Tariq Shaheed of Police Station Saddar, where a truck, allegedly carrying non-customs paid items, was intercepted at Chehkan by the SHO PS Saddar and FIR No.164 dated 03.04.2021 under sections 419/420/468/471/162 of the Pakistan Penal Code was registered; that the appellant remained in quarter guard for ten days and was released on 12.04.2021 vide DD No.55; that in the meanwhile a charge sheet along with summary of allegations was issued vide No.1599-1600/EC dated 03.04.2021 charging the appellant with the allegation that checking the call phone of smuggler/accused Jamal Wazir had revealed that he was in communication with appellant to pass truck loaded with NCP items through CP Tariq Shaheed unchecked; that the appellant was transferred to Police Station Kirri Khaisore vide OB No.676 dated 02.04.2021 but he failed to obey the orders deliberately; that the appellant submitted reply; that after an enquiry, the District Police Officer, D.I.Khan, awarded punishment of dismissal from service to the appellant; that the appellant filed departmental appeal to the Regional Police Officer (RPO) D.I.Khan, who ordered de novo enquiry vide order No.3200/ES dated 28.07.2021; that after the de novo enquiry, the RPO



D.I.Khan, vide order bearing Endst No.5241 dated 06.12.2021 rejected the appeal; that aggrieved of the same, the appellant filed revision petition to the Inspector General of Police, Khyber Pakhtunkhwa but no action was taken, compelling the appellant to file the connected appeal.

4. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant, however, no specific denial was made in the replies of the two appeals. It was mainly contended that the appeals were badly barred by time; that the links of the appellants were established through cell phone data; that the recommendation of the enquiry officer was not binding upon the competent authority.

5. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

6. The Learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned District Attorney controverted the same by supporting the impugned orders.

7. There are two same allegations on both the appellants. One is that a truck carrying non-custom paid items was intercepted at Chehkan by SHO Saddar; that upon enquiry, it came to surface that the said NCP items were owned by a renowned smuggler Jamal Wazir; that upon checking cellphone



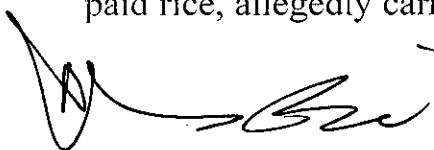
of said smuggler, it revealed that he was in communication with the appellants and both of the appellant let the truck go unchecked through their respective check posts Hathala and Tariq Shaheed. The second allegation was that the appellant Amanullah was transferred to Police Station Paharpur and the appellant Abdul Hameed was transferred to Police Station Kirri Khaisore vide OB No.676 with directions to report at new place of posting immediately but they deliberately did not obey the order with malafide intention. During the initial enquiry conducted by Alamgir Khan SDPO Paharpur, the appellant Amanullah the allegations against him were proved and he was awarded major penalty of dismissal from service but during the de novo enquiry by Fazal Rahim Khan SDPO City Circle conducted on the order of RPO D.I.Khan, the appellant Amanullah was though found guilty of relations with the smugglers and the reduction in the punishment was recommended but even then his appeal was rejected by the RPO D.I.Khan. The IGP KP, however, reinstated the appellant in service and his punishment of dismissal from service was converted into forfeiture of two years approved service with treatment of intervening period as without pay. Similarly, the same proceedings were held in the case of the appellant Abdul Hameed but the enquiry officer of the de novo enquiry Fazal Rahim Khan SDPO City Circle, though held the appellant Abdul Hameed responsible for having contacts established with the smugglers yet recommended permanent stoppage of two increments. However, his appeal was also rejected and by the time appeal was filed his revision petition preferred to the IGP KP was not responded. In the statement record during enquiry, the appellant



Amanullah alleged that because of polio duty there was only one constable for checking at the check post and that was why the thorough checking could not have been made. As to his transfer to Police Station Paharpur it was contended by the appellant that the officer who had to replace him had not arrived at the check post, therefore, he could not leave the check post without proper handing-taking over the charge.

8. It is found that the appellant Amanullah was posted at Police Post Hathala from where allegedly the truck containing non-customs paid items had passed unchecked and the appellant Abdul Hameed was posted at Police Check Post Tariq Shaheed. The appellant Abdul Hameed in his statement recorded during the enquiry stated that on the day of occurrence i.e. on 03.04.2021, he was on polio duty and after polio duty at about 1330 hours he came back to perform duty at the check post from 1400 hours to 1600 hours and during this time no truck or vehicle had passed unchecked and as regards truck No.PKJ-438 that had not passed during his duty hours. As regards his transfer order, he alleged that the Moharrar Staff had not informed him about the same.

9. Main allegation against the two appellants is allowing the truck carrying non-customs paid items. This allegation is not tenable for manifold reasons. Firstly except the non-custom paid rice no other item was alleged to be in the truck. Leaving aside the question whether or not the rice was an import item on which custom duty is levied as that is quite irrelevant for decision of these appeals, the undisputed fact is that the alleged non-custom paid rice, allegedly carried by the truck No.PKJ-438, was never handed over



to the Customs Authorities rather that was released to the owner by ordinary court, which undisputed fact belies the allegations of allowing a truck carrying non-custom paid items to pass through the check posts unchecked, where the appellants were posted. When the items along with truck were returned to the owner, then it can safely be held that those were not being carried by unlawful means holding the appellants liable for the same. As to the non-relinquishment of charge and non-joining the new places of postings of the appellants, they had sufficiently explained the same and their stances taken in their statements could not be rebutted by the official respondents.

10. Therefore, the punishment awarded to both the appellants were not justified hence not sustainable. As a resultant consequence, we allow both the appeals and set aside the punishments awarded to both the appellants by directing the respondents to reinstate the appellants from the date of dismissal along with all consequential benefits. We direct that the costs of the appeal shall follow the result. Consign.

11. *Pronounced in open Court at Dera Ismail Khan and given under our hands and the seal of the Tribunal on this 21st day of March, 2023.*



KALIM ARSHAD KHAN
Chairman
Camp Court D.I.Khan



SALAH UD DIN
Member (Judicial)
Camp Court D.I.Khan