


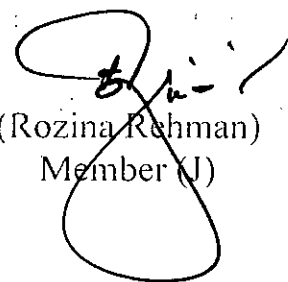
given any opportunity of defense. The Inquiry Officer never visited the judicial lockup in order to meet the accused official in respect of inquiry proceedings. Likewise, the appellant was never summoned in connection with the inquiry proceedings by the Inquiry Officer. He was also acquitted of the charges leveled against him vide FIR No.816 dated 27.05.2019 on the strength of compromise vide order of the learned ASJ-III Kohat dated 08.07.2020.

7. In view of the above circumstance, facts and discussion made herein above the instant service appeal is partially accepted. Appellant is reinstated into service and case is remitted back to the Department for de-novo inquiry within 60 days of the receipt of this judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. The issue of back benefits shall be subject to the outcome of the inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

20.03.2023


(Muhammad Akbar Khan)
Member (E)


(Rozina Rehman)
Member (J)

5. Learned AAG appearing on behalf of the respondents contended that the appellant was charged in a criminal case U/S 302/324 PPC/7ATA dated 27.05.2019. He further contended that besides the instant case, the appellant had several bad entries in his service record. Learned Additional Advocate General argued that the appellant was acquitted from the criminal case on the basis of compromise with the complainant party, which is evident from the court order dated 08.07.2020. Lastly, he submitted that appellant was punished after fulfillment of all codal formalities.

6. From the record, it is evident that appellant while posted at District Malkhana at Police Station City Kohat committed Qatil Amad of his colleague namely Constable Kiramat Ali and attempted to commit murder of HC Sohail Khan by making effective firing. In this regard, a case FIR No.816 was registered against him at Police Station City, Kohat on 27.05.2019 U/S 302/324 PPC/7ATA. He was arrested and sent to judicial lockup. Charge sheet was accordingly issued and for the purpose of scrutinizing the conduct of the appellant/accused official, ASP Saddar, Kohat was appointed as Inquiry Officer. It is on record that the appellant was arrested on the date of registration of FIR and as per inquiry report available on file, charge sheet was delivered to the accused official through OII of the case inside jail as the accused as arrested and sent to the judicial lockup owing to his involvement in a criminal case. He submitted his reply to the charge sheet No.6611/12 dated 28.05.2019 on 31.05.2019. Just charge sheet alongwith statement of allegation was issued and served upon accused official, where-after, he was never associated with the inquiry proceedings which is evident from the record. He was not given proper opportunity of defense. Statement of witnesses were not recorded and the appellant was not

PPC/7ATA dated 27.05.2019 and based on such reason, disciplinary proceedings were initiated against him, which ultimately resulted into imposition of major penalty of dismissal upon the appellant vide order dated 02.06.2019. The appellant filed departmental appeal, which was rejected vide order dated 06.07.2020. Thereafter the appellant filed review petition on 27.07.2020, which was not responded to, hence the instant service appeal was filed on 22.10.2020.

3. We have heard Bilal Ahmad Kakazai Advocate learned counsel for appellant and Fazal Shah Mohmand learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant contended that upon registration of FIR against the appellant, the respondents were required to suspend the appellant till conclusion of criminal case pending against him, but the respondent did not wait for conclusion of the criminal case, rather initiated disciplinary proceedings at the back of the appellant. He further contended that no regular inquiry was conducted and the appellant was condemned unheard; that no charge sheet/statement of allegations was served upon the appellant. He further argued that the appellant was acquitted by the trial court vide judgment dated 08.07.2020. Learned counsel for the appellant explained that after acquittal of the appellant, there was no material available with the respondents to maintain the major penalty of dismissal from service. Learned counsel for the appellant prayed that the impugned orders are against law, facts and principle of natural justice hence not tenable and liable to be set aside.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.12777/2020

Date of Institution	...	22.10.2020
Date of Decision	...	20.03.2023

Abbas Khan son of Nazir Khan (Ex-Constable No.852) R/O
JungleKhel Kohat. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home, Khyber
Pakhtunkhwa, Peshawar and three others.

... (Respondents)

Bilal Ahmad Kakazai,
Advocate ... For appellant.

Fazal Shah Mohmand,
Additional Advocate General ... For respondents.

Mrs. Rozina Rehman ... Member (J)
Mr. Muhammad Akbar Khan ... Member (E)

JUDGMENT

Rozina Rehman, Member(J): The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as follows;

“On acceptance of the instant service appeal, the impugned orders of respondent No. 3 and 4 may kindly be set aside and the appellant may please be reinstated in service with all back benefits.”

2. Brief facts of the case are that the appellant, while serving as constable in police department, was charged in a criminal case U/S 302/324