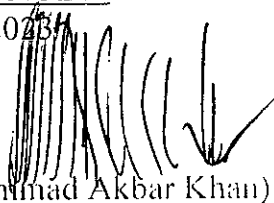


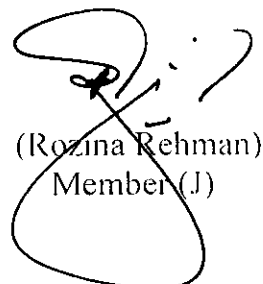
on bail. Both the appellants faced trial in Anti-Terrorism Court-II Peshawar alongwith accused Shaukat and Irfan and vide judgment dated 14th March, 2022 all the four accused i.e. Mohib Ullah, Shah Wali (the present appellants) Shaukat and Irfan were acquitted of the charges leveled against them. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Nomination/Involvement of the appellants in criminal case was the sole ground on which they had been dismissed from service and the said ground had subsequently disappeared through their acquittal, making them re-emerge as a fit and proper persons entitled to continue their service. It is established from the record that charges of their involvement in criminal case ultimately culminated in honorable acquittal of the appellants by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

7. For the above mentioned facts and circumstances, these appeals are accepted and impugned order dated 08.04.2021 is set aside. Appellants are reinstated into service from the date of their dismissal from service i.e. 08.04.2021 with all back and consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

03.04.2023


(Muhammad Akbar Khan)
Member (E)


(Rozina Rehman)
Member (J)

of the disciplined force, their involvement in a murder case was a gross misconduct, hence, after fulfillment of all codal formalities, they were dismissed from service on account of involvement in criminal case.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that one Sher Haidar Khan S.I reported the mater in shape of FIR No.163 dated 10.09.2020 registered at Police Station Bara of District Khyber U/S 302, 353, 324, 427, 186, 148, 149 PPC/7ATA against unknown accused. Both the appellants have not been directly charged in the FIR. Both the appellants were placed under suspension with stoppage of pay with immediate effect being involved in the above mentioned case FIR vide order of District Police Officer, Khyber dated 11.09.2020 i.e. on the next following day of the registration of FIR. Charge sheet and statement of allegations are available on file which are undated and there is nothing on file which could show that these two documents were properly served upon the appellants. As per record, they were arrested on 11.09.2020 and were bailed out by competent court of Law on 05.10.2020. There is nothing on record to show as to whether they were served with charge sheet and statement of allegation inside jail premises or at their home addresses. The only document available on file is their suspension order which was properly replied by the appellants. DSP Headquarter Khyber had been appointed as Inquiry Officer who did nothing and came to the conclusion that the involvement of the appellants in criminal cases is not tolerable being Police personnel and major punishment was recommended. The inquiry report is also undated and it was not shown as to when the inquiry was conducted when the appellants were in jail or



Khyber when in the meanwhile they were charged in case FIR No.163 dated 10.09.2020 registered at PS Bara. That after lodging of FIR they were not even charged in the above mentioned FIR but they were suspended alongwith stoppage of pay. After suspension formal inquiry was conducted and appellants were charge sheeted. They submitted reply and major punishment of dismissal from service was awarded to the appellants on 08.04.2021. Feeling aggrieved, they filed departmental appeal but no decision was conveyed to the appellants, hence, the present service appeal.

3. We have heard Shah Faisal Ilyas Advocate, learned counsel for the appellant and Asad Ali, learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Shah Faisal Ilyas Advocate, learned counsel for the appellant argued inter-alia that the appellants were not directly charged in case FIR No.163 rather they were implicated after four days of the alleged occurrence. That they were charged on 14.09.2020 while they were arrested three days before nomination in the FIR which shows malafide. He submitted that no proper procedure was adopted before passing the impugned order as no opportunity of personal hearing was afforded to the appellants and that the impugned action of the respondents was also repugnant to the Constitution of Islamic Republic of Pakistan, 1973 as appellants were discriminated by the respondents and were deprived of their lawful rights. He, therefore, requested for acceptance of the instant service appeals.

5. Conversely, AAG argued that appellants while posted at PS Bara involved in case FIR No.163 dated 10.09.2020 and that being members

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7469/2021

Date of Institution ... 21.09.2021
Date of Decision ... 03.04.2023

Mohib Ullah Khan, SI, S/O Raza Khan R/O Caste Malik Din Khel, Soor Dhand, Khajori, P.O Bara, District Khyber.

... (Appellant)

VERSUS

District Police Officer, District Khyber, Khyber Pakhtunkhwa and two others. ... (Respondents)

Shah Faisal Ilyas,
Advocate

... For appellant.

Asad Ali,
Assistant Advocate General

... For respondents.

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

JUDGMENT

ROZINA REHMAN, MEMBER (J): This judgment is intended to dispose of two connected service appeals including the present one bearing No.7469/2021 titled "Mohib Ullah Khan Vs. Police Department & others" and Service Appeal No.7473/2021 titled Shah Wali Vs. Police Department & Others" as common question of law and facts are involved therein. The appellants have invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

"On acceptance of this appeal, the impugned order dated 08.04.2021 may graciously be set aside and direct the respondents to reinstate the appellant with all back benefits."

2. Brief facts of the case are that appellant Mohib Ullah Khan was serving as Sub Inspector while Shah Wali as Constable in the Police Department of Khyber Pakhtunkhwa. They were performing their duties with zeal and zest at Police Station Bara, District