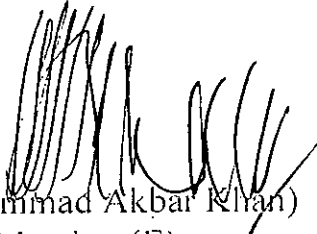
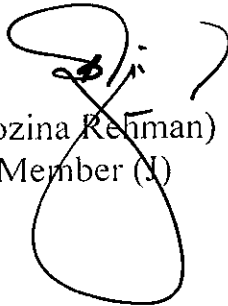


back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

03.04.2023


(Muhammad Akbar Khan)
Member (E)

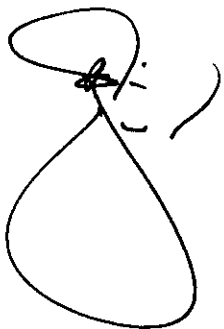

(Rozina Rehman)
Member (J)

Mutazem Shah

punishment did not wait for the outcome of criminal case and awarded major punishment on 28.09.2016. He succeeded in getting bail from High court on 17.07.2017, where-after, he filed departmental appeal which was rejected on 14.11.2017. 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. Involvement of the appellant in the criminal case was the sole ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.

7. It is established from the record that charges of his involvement in the criminal case ultimately culminated in honorable acquittal of the appellant 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 and judgments rendered by this Tribunal in Service Appeal No.1380/2014 titled Ham Nawaz Vs. Police Department; Service Appeal No.616/2017 titled Mumtaz Ali Vs. Police Department; Service Appeal No.863/2018 titled Fateh-ur-Rehman Vs. Police Department; Service Appeal No.1065/2019 titled Naveed Gul Vs. Police Department and Service Appeal No.12098/2020 titled Ali Imran Vs. Police Department.

8. For what has been discussed above, this appeal is accepted and the impugned order 28.09.2016 is set aside alongwith other orders on the appeal of the appellant and the appellant is reinstated in service with all



Peshawar. The inquiry report is available on file which shows that just history of the case was narrated by the Inquiry Officer and nothing else was done. The inquiry Officer never met the appellant as he was in jail. Statement of witnesses were not recorded and accused official was not given any opportunity of cross-examination. He was condemned unheard which is evident from the inquiry report. Final show cause notice is available on file which was issued on 21.07.2016 when admittedly accused official was behind the bars and the same note is available at the bottom of the final show cause notice but no cogent evidence was produced before this Bench in order to prove proper service of final show cause notice upon the accused official. Admittedly, he was convicted and sentenced to suffer 22 months imprisonment as his under trial period was taken into consideration by the trial Court. He then filed an appeal in the august Peshawar High Court from the judgment of the learned Judge Special Court (CNS) Peshawar and vide judgment of Peshawar High Court dated 06.03.2023 present appellant Muhammad Zubair was acquitted of the charges leveled against him and his conviction and sentence was set aside. He filed departmental appeal when he was bailed out but his departmental appeal was rejected and service appeal was filed on 08.12.2017. As per Rule-16.3 of Police Rules, 1934 when a Police Officer is tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge based upon the evidence cited in the criminal case. In the instant case, he was departmentally proceeded against on the allegation of his involvement in a criminal case. The District Police Officer, Torghar while awarding major



Opium was recovered from his possession; that he was arrested on spot, where-after, he was suspended and proper departmental inquiry was initiated against him. He was given show cause notice and after dismissal, he was properly informed and copy of the order was given after his release from jail. He contended that he was punished after fulfillment of all codal formalities.

6. From the record it is evident that departmental proceedings were conducted against the present appellant while posted at Police Station Darbani on the following grounds:

“Constable Muhammad Zubair No.198 presently posted at Police Station Darbani, found involved in case FIR No.53/15 U/S 9C-CNSA-ANF Peshawar on the allegation of supplying Poppy which was shameful for you as well as create bad manners in the Police Department which amount to gross negligence in the performance of Government duty”.

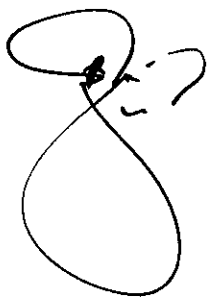
From the above mentioned statement of allegation, it is evident that he was proceeded against departmentally on the allegation of his involvement in criminal case. Ijaz Khan, DSP Headquarter was deputed to conduct formal departmental inquiry against the accused. It merits to mention here that charge sheet is not available on file and just statement of allegation is on record but the respondents failed to prove service of the charge sheet alongwith statement of allegation upon the appellant who was inside jail right from his arrest till 7th July, 2017 i.e. the date when he was admitted to bail by the august Peshawar High Court,

departmentally and was dismissed from service on 28.09.2016. He filed departmental appeal which was rejected, hence, the present service appeal.

3. We have heard Taimur Ali Khan Advocate learned counsel for appellant and Asif Masood Ali Shah learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Taimur Ali Khan Advocate, learned counsel for the appellant contended that the impugned orders are against law, facts and norms of justice, therefore, not tenable and liable to be set aside; that one sided inquiry was conducted against the appellant as he was never associated with the inquiry proceedings and the inquiry report was never provided to the appellant which is also against law and rules. Learned counsel argued that appellant was not given fair trial as enshrined under Articles-4 & 25-A of the Constitution of Islamic Republic of Pakistan, 1973 and that due to false involvement in a criminal case, it was for the department to wait till the conclusion of a criminal case but without waiting for the conclusion of criminal case, appellant was dismissed from service. Lastly, it was submitted that no charge sheet alongwith statement of allegation or show cause notice were ever communicated to the appellant and no proper inquiry was conducted in the matter. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned DDA submitted that the appellant while posted at Police Station Darbani found involved in case FIR No.53/15 U/S 9C-CNSA/ANF Peshawar and a huge quantity of 2400 gm of



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1425/2017

| | | |
|---------------------|-----|------------|
| Date of Institution | ... | 08.12.2017 |
| Date of Decision | ... | 03.04.2023 |

Muhammad Zubair, Ex-Constable No.198, Police Station Darbani.

... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and
two others.

... (Respondents)

Taimur Ali Khan,
Advocate

... For appellant.

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents.

Mrs. Rozina Rehman

... Member (J)

Mr. Muhammad Akbar Khan

... Member (E)

JUDGMENT

Rozina Rehman, Member(J): The appellant has invoked the jurisdiction
of this Tribunal through above titled appeal with the prayer as copied
below:

**“That on acceptance of this appeal, the order dated
14.11.2017 and 28.09.2016 may be set aside and the
respondents may be directed to reinstate the appellant
with all back and consequential benefits”.**

2. Brief facts of the case are that appellant joined the Police Force as
Constable on 26.09.2011. While serving in the Police Department, he
was falsely implicated in a criminal case. He was proceeded against

