

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, D.I.KHAN

Service Appeal No.12171/2020

Date of Institution	...	06.10.2020
Date of Decision	...	17.04.2023

Muhammad Arshad S/O Jehangir Gul Ex-Constable No.1378, Police
District D.I.Khan.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa and five others.

... (Respondents)

Ghulam Asghar Khan &
Khalid Mehmood,
Advocates

... For appellant

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Rozina Rehman

... Member (J)

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 as copied below;

**“To please take cognizance of this service appeal and
by setting aside the impugned order dated 03.06.2020,
the appellant may please be reinstated in service with
all back benefits.”**

2. Brief facts leading to filing of the instant appeal are that
appellant was appointed as Constable in the Police Department on
05.01.2011. He was performing his official duties regularly when in the

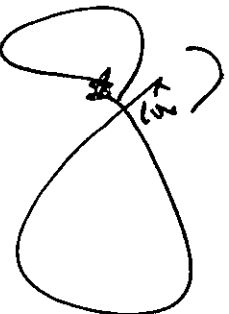


meanwhile he was implicated in a criminal case vide FIR No.505 dated 24.04.2020. On the basis of the above mentioned criminal case, he was proceeded against departmentally and vide impugned order dated 03.06.2020, major penalty of dismissal from service was imposed upon him. Feeling aggrieved, he filed departmental appeal which was not decided within the stipulated time, hence, the present service appeal.

3. We have heard Ghulam Asghar Khan & Asad Mehmood Advocates learned counsel for the 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. Ghulam Asghar Khan & Khalid Mehmood Advocates, learned counsel for appellant, inter-alia, contended that the impugned orders are against law, facts being based on malafide, hence liable to be set aside. They contended that the very foundation of the impugned order is an FIR which too was illegal, unlawful and without legal backing which case was tried in a competent court of Law and the appellant was acquitted of the charges leveled against him, therefore, all the proceedings are liable to be set aside. They submitted that he was not given fair chance to defend his valuable rights rather he was condemned unheard and that even no proper inquiry was conducted in the matter. Further submitted that the impugned order is based on malafide as the appellant was not treated in accordance with law. They, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned DDA submitted that during posting of the appellant at Police Lines, D.I.Khan, a criminal case vide FIR No.505



was registered against him on 24.04.2020 U/S 118 of Police Act, 2017; that appellant was also involved in two other criminal cases, therefore, charge sheet alongwith statement of allegations was served upon him and departmental inquiry was conducted, wherein, he was found guilty and was awarded major punishment of dismissal from service after fulfillment of all codal formalities.

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 FIR No.505 was registered on 24.04.2020 against the present appellant Muhammad Arshad Belt No.1378 U/S 118 of Police Act, 2017. Charge sheet alongwith statement of allegations was accordingly issued under the same allegations and for the purpose of scrutinizing his conduct with reference to the above mentioned allegations, DSP City was appointed as Inquiry Officer. However, inquiry report is not available on file which means that no fair chance was given to the appellant to defend his valuable rights rather he was condemned unheard. Perusal of FIR No.505 would reveal that complainant SHO Fazal Rahim Khan of Police Station Cantt. received information in respect of the present appellant regarding his bad reputation and drinking of alcohol. General allegations were leveled and no evidence was produced rather no proper inquiry was conducted as no witness was examined in presence of accused official and he was not afforded the opportunity of cross-examination. Departmental appeal was not decided within the statutory period, therefore, service appeal was filed and during pendency of the service appeal, his departmental appeal was rejected by Regional Police



Officer D.I.Khan vide order dated 14.10.2020, where-after, he filed revision petition under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975. The matter in respect of his acquittal in FIR No.505 was also brought into the knowledge of the competent authority which is evident from the order of AIG of Police Headquarters Khyber Pakhtunkhwa, Peshawar but even then, his revision petition was rejected. Order of the learned Judicial Magistrate dated 30.11.2020 is available on file which supports the claim of the present appellant. 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 Ilam 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.

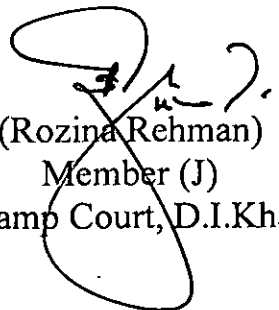


8. For what has gone above, the appeal at hand is accepted. Consequently, the impugned order of imposition of penalty with disciplinary proceedings wherefrom it resulted, are set aside and the appellant is reinstated into service from the date of his dismissal from service with all back benefits. The concerned respondent on receipt of the copy of this judgment shall issue the order of appellant's reinstatement with all back benefits having accrued or accruable from the date of his dismissal from service. With no order as to costs. File be consigned to the record room.

ANNOUNCED.

17.04.2023


(Muhammad Akbar Khan)
Member (E)
Camp Court, D.I.Khan


(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan

Mutazem Shah


ORDER
17.04.2023

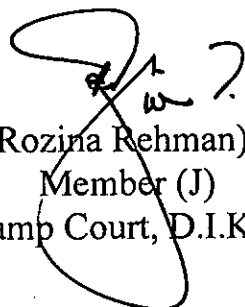
Appellant present through counsel.

Asif Masood Ali Shah learned Deputy District Attorney
alongwith Khalil Khan S.I (Legal) for respondents present.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal at hand is accepted. Consequently, the impugned order of imposition of penalty with disciplinary proceedings wherefrom it resulted, are set aside and the appellant is reinstated into service from the date of his dismissal from service with all back benefits. The concerned respondent on receipt of the copy of the judgment shall issue the order of appellant's reinstatement with all back benefits having accrued or accruable from the date of his dismissal from service. With no order as to costs. File be consigned to the record room.

ANNOUNCED.
17.04.2023


(Muhammad Akbar Khan)
Member (E)
Camp Court, D.I.Khan


(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan

Mutazem Shah