

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1284/2022

Date of Institution ... 01.09.2022
Date of Decision ... 05.04.2023

Kashif Hussain Son of Zahid Hussain Said Afzal, Ex Constable Khyber Pakhtunkhwa Police, Resident of Sheikh Abad Rajjar Utmanzai Tehsil & District Charsadda.

... (Appellant)

VERSUS

The Inspector General of Police Khyber Pakhtunkhwa Peshawar and four others.

... (Respondents)

Rashid Rauf Swati,
Advocate

... For appellant.

Asad Ali,
Assistant Advocate General

... For respondents.

Rozina Rehman

... Member (J)

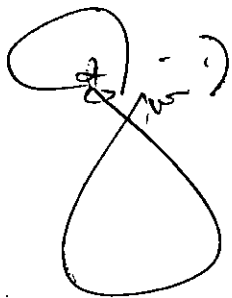
Muhammad Akbar Khan

... 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;

“On acceptance of the appeal the impugned orders dated 16.10.2020 passed by respondent No.5 and order dated 20.12.2020 passed by respondent No.4, and order dated 03.05.2021 passed by the respondent No.3 may graciously be set aside and appellant, may be reinstated to service with all legally due benefits.”



2. Brief facts leading to filing of the instant appeal are that appellant was appointed as Constable on 03.06.2009. He was performing his duty with full devotion and to the entire satisfaction of his superiors. During service, he was involved in a criminal case vide FIR No.53 dated 25.01.2020 of Police Station Umarzai, Charsadda and disciplinary proceedings were initiated against him. Consequently, he was dismissed from service on 16.10.2020. He filed departmental appeal which was also dismissed. He filed revision which also met the same fate. After earning acquittal in criminal case vide order dated 16.07.2020, he filed appeal but the same was not responded to, hence, the present service appeal.

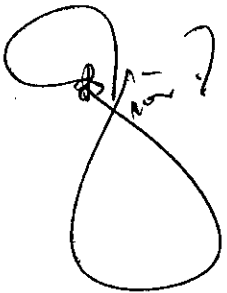
3. We have heard Rashid Rauf Swati Advocate learned counsel for the appellant and Asad Ali, learned Assistant Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Rashid Rauf Swati Advocate, learned counsel for appellant, inter-alia, contends that the impugned order is against law, facts and service record and not tenable. He contended that the appellant performed his duties properly with full dedication and that the impugned order is arbitrary, based on malafide, discriminatory and is not maintainable. Learned counsel submitted that the appellant was condemned unheard and fundamental rights of the appellant were infringed by violating the principles of natural justice. Further submitted that no charge sheet and statement of allegations were issued to appellant and no opportunity of personal hearing was provided to the appellant. Lastly, he submitted that proper procedure was not adopted

by the respondents while passing the impugned orders and as such damaged the career of appellant without any justification, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned AAG submitted that appellant was proceeded against departmentally on charges of his involvement in a criminal case vide FIR No.53 dated 25.01.2020 U/S 9C of CNSA of Police Station Umarzai. He contended that besides commission of criminal offence, the appellant being a member of a disciplined force, committed professional misconduct, therefore, departmental proceedings were initiated against appellant and after fulfillment of all codal formalities, he was punished according to law.

6. From the record it is evident that appellant was appointed as Recruit Constable (Band Staff) in CCP Peshawar vide order dated 03.06.2009 and was allotted Constabulary No.3078. During service, he was charged in case FIR No.53 dated 25.01.2020 registered at Police Station Umarzai U/S 9C of CNSA for allegedly keeping 950gm of Charas. He faced trial in the Court of learned Additional Sessions Judge-I/JSC Charsadda. It merits a mention here that during cross-examination of the complainant, learned defense counsel requested to de-seal the parcel of the alleged contraband which was allowed by the Court and accordingly it was de-sealed in open Court in the presence of Senior Public Prosecutor. It was found that instead of alleged contraband, pieces of mud were recovered about which the complainant failed to give plausible explanation. In this view of the matter, the present appellant was acquitted U/S 265-K Cr.PC vide order dated 16.07.2022 of the learned Additional Sessions Judge-I Charsadda. The



inquiry report is available on file which clearly shows that Inquiry Officer requested for keeping subject inquiry pending till the final decision of verdict of the competent Court but this fact was not taken into consideration by the competent authority and order of dismissal was passed. 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.

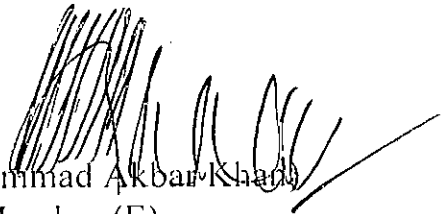
7. It is established from the record that charges of his involvement in the criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695 and judgments 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.

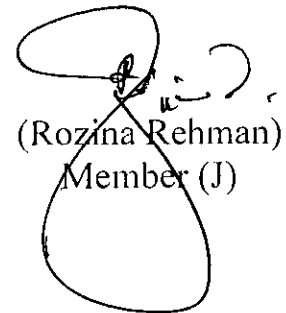
8. For what has gone above, the appeal at hand is accepted. Consequently, the impugned order of imposition of penalty with disciplinary proceedings wherefrom it resulted, are set aside and the appellant is reinstated into service from the date of his dismissal from service with all back benefits. The 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.

05.04.2023


(Muhammad Akbar Khan)
Member (E)


(Rozina Rehman)
Member (J)