

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1073/2022

Date of Institution	...	17.06.2022
Date of Decision	...	12.04.2023

Ijaz Ahmad Ex-LHC No.1498, Police Post Chato PS Lund Khwar,
Mardan.

... (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
Miss Fareeha Paul

... Member (J)
... 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 this appeal, the order dated
07.01.2021, 31.05.2021 and 02.06.2022 may kindly be
set aside and the appellant may be reinstated into his
service with all back and consequential benefits.”**

2. Brief facts leading to filing of the instant appeal are that
appellant was appointed in the Police Department in 2008. During
service when he was posted as Incharge of Police Post Chato, a criminal
case was registered against the appellant vide FIR No.491 dated



08.12.2020 at Police Station Kharki U/S 324/34 PPC. He applied for Bail Before Arrest which was granted on 10.12.2020 however his BBA was recalled on 22.12.2020 and he was arrested in the said criminal case. He was suspended and inquiry was initiated against him. Show cause notice was issued which was replied by his father as he was behind the bars who requested for keeping the inquiry pending till the decision of criminal case but he was dismissed from service vide order dated 07.01.2020. He filed departmental appeal which was rejected. In the meanwhile, he was also acquitted of the charges leveled against him by the competent court of Law. After receiving the rejection order of departmental appeal, he filed revision petition which was partly accepted and penalty of dismissal from service was converted into penalty of compulsory retirement, hence, the present service appeal.

3. We have heard Taimur Ali Khan Advocate 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. Taimur Ali Khan Advocate, learned counsel for appellant, inter-alia, contends that the impugned order is against law, facts, norms of justice, therefore, not tenable and liable to be set aside. Learned counsel submitted that the inquiry conducted against the appellant was not according to the prescribed procedure as he was behind the bars and was never associated with the inquiry proceedings which is violation of law and rules; that no opportunity of defense was provided during the inquiry proceedings which was violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. It was further



contended that appellant was acquitted by the competent court of Law and there remained no ground to penalize the appellant but even then his request was not honored. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned Deputy District Attorney contended that the appellant being involved in a criminal case vide FIR No.491 dated 08.12.2020 was considered as arrested by the local police because he had arranged BBA which was later on recalled and he was taken into custody by the local police. He submitted that the appellant failed to make a case for further probe because no material could come to surface to suggest malafide intention or ill will on the part of complainant. Lastly, he submitted that he was properly proceeded against departmentally on account of his involvement in a criminal case and he was awarded punishment after fulfillment of all codal formalities.

6. From the record it is evident that departmental proceedings were initiated against appellant under the allegations that while posted at Police Post Chato P.S Lund Khwar, he was charged in case vide FIR No.491 dated 08.12.2020 registered at Police Station Kharki U/S 324/34 PPC. Vide OB No.2210 dated 11.12.2020 he was placed under suspension and closed to Police Lines, Mardan. Charge sheet alongwith statement of allegations was issued on 14.12.2020 and for the purpose of scrutinizing the conduct of the accused official with reference to the allegations mentioned above, one M. Inam Jan, SDPO City was nominated as Inquiry Officer. The record is silent in respect of any service of charge sheet upon the appellant. FIR No.491 was chalked out

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against three persons including the present appellant on 08.12.2020 and he applied for Bail Before Arrest on 10.12.2020 which was recalled vide order of the learned Additional Sessions Judge, Mardan at Katlang dated 22.12.2020. There is nothing on file which could show that he was served through Jail Superintendent. Inquiry report is available on file which shows that just statement of IO/OH of PS Kharki was recorded and the matter was discussed with the SHO concerned. The present appellant was not associated with the inquiry proceedings. He was not given any chance of defense. Witnesses were not cross-examined by the present appellant as he was not given any chance of cross-examination. Final show cause notice was issued on 30.12.2020 when admittedly appellant was behind the bars. As per record, present appellant was admitted to Bail vide order dated 03.01.2022 of learned Judicial Magistrate, Katlang and was acquitted alongwith two others by the learned Judicial Magistrate, Katlang vide order dated 11.01.2022. 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

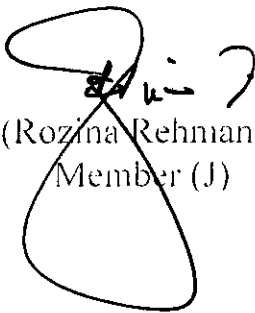


Appeal No.1380/2014 titled Ilam Nawaz Vs. Police Department;
Service Appeal No.616/2017 titled Muntaz Ali Vs. Police Department;
Service Appeal No.863/2018 titled Fateh-ur-Rehman Vs. Police
Department; Service Appeal No.1065/2019 titled Naveed Gul Vs.
Police Department and Service Appeal No.12098/2020 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 with all back benefits. Parties are left
to bear their own costs. File be consigned to the record room.

ANNOUNCED
12.04.2023


(Farzeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

Mutazem Shah