

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, SWAT

Service Appeal No. 488/2022

Date of Institution ... 01.04.2022
Date of Decision ... 08.03.2023

Latif Khan, Ex-HC No.582 District Police Buner R/O Village Nawagai,
Tehsil Mandanr, District Buner.

... (Appellant)

VERSUS

Superintendent of Police (Investigation), District Police, Buner and three
others.

... (Respondents)

Akhtar Ilyas,
Advocate

... For appellant

Muhammad Jan,
District Attorney

... For respondents

Mrs. Rozina Rehman

...

Member (J)

Miss. Fareeha Paul

...

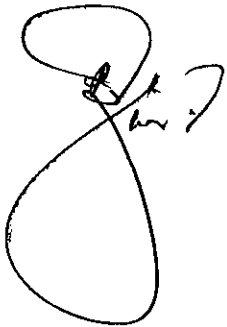
Member (E)

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 the impugned orders dated 02.06.2021 and
24.03.2022 may please be set aside and the respondents be
directed to reinstate the appellant into service with all
back benefits.”**

2. Brief facts of the case are that the appellant was appointed as
Constable in the Police Department in 2007. He was charged in case FIR
No.493 dated 20.12.2020 U/S 302, 324/34 PPC registered at Police
Station Nawagai District Buner and was sent to Judicial Lockup by
competent court of Law. Resultantly he was dismissed from service on



02.06.2021 without waiting for the fate of trial. He filed departmental appeal through Superintendent District Jail Buner at Daggar, which was kept pending till the decision of the case. He was acquitted by the learned court of ASJ-I Buner but his departmental appeal was rejected. Feeling aggrieved, he filed the present service appeal.

3. We have heard Akhtar Ilyas Advocate, learned counsel for the appellant and Muhammad Jan, learned District Attorney for respondents and have gone through the record and the proceedings of the case in minute particulars.

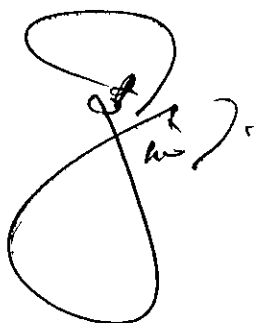
4. Akhtar Ilyas Advocate, learned counsel for the appellant argued inter-alia that the impugned orders are against law and facts being based on conjectures and surmises hence not tenable. He contended that the appellant was in judicial custody and his trial was under process but the Department failed to associate him with any sort of inquiry, therefore, the impugned order has got no force. Learned counsel argued that his acquittal was not taken into consideration by the competent authority as well as by the departmental authority and the order was passed at the back of the appellant. Lastly, he submitted that the appellant was not treated in accordance with law by violating Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973.

5. Conversely, learned District Attorney argued that appellant was directly charged in a murder case vide FIR No.493 dated 20.12.2020 who absconded after the commission of offence. He was arrested on 10.02.2021 and was properly interrogated. During interrogation, he admitted his guilt and he was sent to judicial lockup. Being a civil servant, he was proceeded against departmentally, wherein, he was found

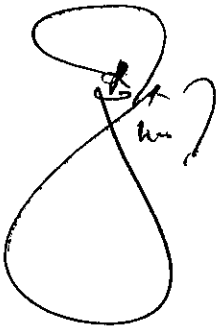
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guilty for the commission of offence, therefore, he was rightly dismissed from service after fulfillment of all codal formalities.

6. From the record, it is evident that appellant was serving in the Police Department as Head Constable. While posted at Investigation Police Station Peer Baba, he was found involved in case FIR No.493 dated 20.12.2020. From the impugned order, it is evident that he was suspended and closed to Investigation Headquarters vide OB No.65 dated 22.12.2020. This order was not produced before the Bench in order to show his suspension. It is on record that after registration of FIR, he was arrested on 10.02.2021 which is evident from the card of arrest available on file as "Annexure-B" with the comments. Charge sheet available on file alongwith statement of allegations would reveal that the same was issued on 31.12.2020. however the record is silent as to whether the same was served upon the appellant as he had not been arrested in the criminal case and it was on 10.02.2021 when he was arrested. It is also on record that as per Nakalmad No.15 of Daily Dairy dated 20.12.2020 one day casual leave was granted to the appellant and on the same very date, he was nominated in FIR No.493 dated 20.12.2020. He was arrested on 10.02.2021. People do abscond due to fear and it was after about one and a half month of the occurrence when he was arrested in the above mentioned case and was sent to the judicial lockup. One Zahir Rehman Khan DSP Investigation had been appointed as Inquiry Officer who did nothing as appellant was confined in jail and the only letter available on file on behalf of the Superintendent of Police Investigation Buner addressed to the Superintendent of Jail Buner at Daggar, wherein, Superintendent of Jail was requested that the inquiry officer may be allowed to record the statement of appellant in order to




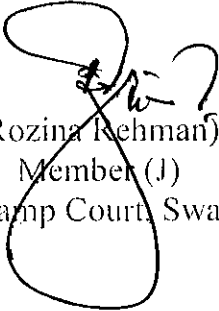
finalize his departmental inquiry. The Inquiry Officer in his finding report recommended that the inquiry proceedings be kept pending till the decision of court in criminal case but the Superintendent of Police, Investigation, Buner awarded major punishment of dismissal from service on 02.06.2021 while the appellant was acquitted of the charges leveled against him in murder case by the learned Additional Sessions Judge, Buner at Daggar vide judgment dated 24.02.2022. Order of Regional Police Officer dated 24.03.2022 would reveal that he did not take into consideration the acquittal order of the appellant and his appeal was rejected vide order dated 24.03.2022. From the record, it is very much evident that no proper suspension order of the appellant was passed and produced. No proper inquiry was conducted and the appellant was not afforded any opportunity of defense. He was not given the opportunity of cross examination. He was condemned unheard as admittedly he was confined in District Jail. His acquittal was not taken into consideration and he was punished. 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 appellant in 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. It is established from the record that charges of his involvement in 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.



7. For the above mentioned facts and circumstances, this appeal is accepted. Appellant is reinstated into service from the date of his dismissal from service i.e. 02.06.2021 with all back benefits. While the absence period w.e.f. the date of registration of FIR No.493 dated 20.12.2020 till the date of his arrest i.e. 10.02.2021 be considered as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
08.03.2023


(Fareeha Paul)
Member (E)
Camp Court, Swat


(Rozina Rehman)
Member (J)
Camp Court, Swat