

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No.918/2021

Date of presentation of appeal14.01.2021
Dates of Hearing12.04.2023
Date of Decision.....12.04.2023

**Inayat Zaman S/o Subhan R/o Sassikhel, Rehmat Abad The & District
Karak.**

.....(***Appellant***)

Versus

1. **Provincial Police Office/ Inspector General of Police Khyber Pakhtunkhwa, Peshawar.**
2. **Regional Police Officer Kohat Region, Kohat.**
3. **District Police Officer, Karak.**
4. **Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.**


.....(***Respondent***)

Present:

Mr. Shahid Qayum Khattak,
Advocate.....For appellant.

Mr. Fazal Shah Mohmand,
Additional Advocate General.....For respondents.

.....
SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 30.07.2020 PASSED BY RESPONDENT NO.3 BY WHICH THE APPELLANT HAS BEEN AWARDED MAJOR PENALTY OF REDUCTION IN RANK FROM S.I TO THE SUBSTANTIVE RANK OF ASI, AND AGAINST THE ORDER DATED 23.12.2020 PASSED BY RESPONDENT NO. 2 VIDE WHICH THE DEPARTMENTAL REPRESENTATION/APPEAL FILED BY APPELLANT HAS



BEEN REJECTED AND THE PUNISHMENT WAS ENHANCED TO REMOVAL FROM SERVICE.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts as narrated in the memo and grounds of appeal are that the appellant was appointed as Constable and qualified the basic training, professional and promotion courses and earned promotion to the rank of Sub-Inspector and in the year 2020 transfer and posted in Investigation Wing of the Police Station Yaqoob Khan Shaheed (YKS) Tehsil Takht-e-Nasrati District, Karak; that the appellant, while investigating a criminal case registered vide FIR No. 104 dated 22.02.2020 was issued charge sheet alongwith statement of allegation which was properly replied; that thereafter inquiry was initiated against the appellant and respondent No.3 passed an order dated 30.07.2020 vide which the major punishment of reduction in rank from Sub-Inspector to substantive rank of Assistant Sub-Inspector had been passed against appellant without collecting any evidence; that the appellant filed departmental appeal against the impugned order before respondent No.2, who vide order dated 23.12.2020 rejected the same and enhance the punishment to the removal from service, hence, the instant service appeal.

2. On receipt of the appeal and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.



3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.
4. Learned counsel for the appellant argued that the impugned orders are illegal, unlawful, without authority, based on malafide intention, and against the principles of natural justice. He further argued that it is the settled principle of law that no one should be condemned unheard but in the instant case no proper enquiry was conducted to enquire about the allegations leveled against the appellant. He was not given opportunity to cross examine the witnesses produced against him. No show cause notice was issued to the appellant which was mandatory under the law before passing the impugned orders.
5. As per the facts enumerated above, the appellant was awarded major penalty of reduction in rank from officiating SI to the Substantive rank of ASI vide order dated 30.07.2020 and on appeal the Regional Police Officer, Kohat enhanced the punishment awarded to the appellant and removed the appellant from service vide order bearing endorsement No. 22007-08/EC dated 24.12.2020. Under Rule-11(4) of the Police Rules 1975, the appellate authority was competent to enhance the penalty but with certain conditions. Rule-11(4) of the Police Rules 1975 is reproduced below:

"The appellate authority or Review Authority, as the case may be, may call for the record of the case and comments on the points raised in the appeal or review, as the case may be, from the concerned officer, and on consideration of the



appeal or the review petition, as the case may be, by an order in writing:

(a) Uphold the order of penalty and reject the appeal or review petition; or

(b) set aside the orders and exonerate the accused; or

(c) modify the orders and reduce or enhance the penalty; or

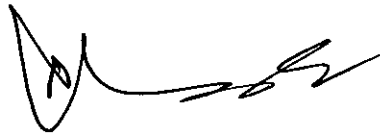
(d) set aside the order of penalty and remand the case to the authority where it is satisfied that the proceedings by the authority or the inquiry officer or inquiry committee, as the case may be, have not been conducted in accordance with the provision of these rules, or the facts and merits of the case have been ignored, with the directions to either hold a de-novo inquiry or to rectify the procedural lapses or irregularities in the proceedings:

Provided that where the Appellate Authority or Review Authority, as the case may be proposes to enhance the penalty, it shall by an order in writing-

(a) inform the accused of the action proposed to be taken against him and the grounds of such action; and

(b) give him a reasonable opportunity to show cause against the action and afford him an opportunity of personal hearing.

6. The above rule requires the appellate authority to inform the accused of the action proposed to be taken against him and the grounds of such action; and give him a reasonable opportunity to show cause against the action and afford him an opportunity of personal hearing. When we see the appellate order in juxtaposition with the provisions of the above rule it would transpire that the provisions of the above rule were not followed as the impugned appellate order does not show that the appellant was informed of the proposed action to be taken against him and the grounds of such action nor was he afforded any opportunity to show cause against the action as well as



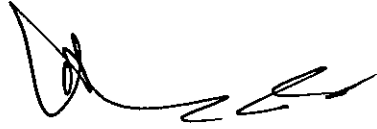
opportunity of personal hearing. Now coming to the original order passed by the DPO, whereby the appellant was awarded major penalty of reduction in rank of officiating S.I to the Substantive rank of ASI, which was passed on the recommendations of the Enquiry Officer copy of which is found placed on file. The report shows that the appellant had conducted investigation in a case FIR No. 104 dated 22.02.2020 and had traced the unknown accused Kamran Ullah, arrested him and recovered a pistol from him, which pistol according to the arrested Kamranullah, was not used by him in the occurrence rather the arrested accused had stated in a statement under Section 161 of the Cr.PC that the crime weapon i.e. the one used in the occurrence was in possession of the co-accused Sajid Ali Shah. It was found in the enquiry that the appellant had conducted defective investigation to the extent of accused Kamran Ullah and the Enquiry Officer recommended appropriate punishment for the appellant. The enquiry report does not show as to how the investigation was defective as there is nothing said about any defect in the investigation conducted to the extent of accused Kamran Ullah by the appellant. It appears that the incharge investigation Inspector Saif Ur Rehman had also interrogated the accused Kamran Ullah, but no progress could be made by him. It also appears from the enquiry report that bail application of the accused Kamran Ullah was dismissed up to the Hon'ble Peshawar High Court, Peshawar level and his application for bail was stated to be pending in the august Supreme Court of Pakistan. The FSL report regarding the comparison of the crime empties recovered from the spot with the weapon allegedly recovered from the accused Kamran Ullah show that both did not match to each other, therefore,



the allegations that the appellant might have recorded incorrect statement of the accused Kamran Ullah regarding weapon offence is also not supported.

7. The result is that, this appeal is allowed and both the impugned orders are set aside thereby reinstating the appellant in service with all back benefits. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12th day of April, 2023.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

Adnan Shah, PA