

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

Service Appeal No. 635/2022

Date of Institution ... 27.04.2022
Date of Decision ... 27.03.2023

Mubashir Ali Ex-FC No.509, Police Station Nawanshehr Son of Liaqat Ali
resident of Namli Mair, Tehsil & District Abbottabad.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home & Tribal
Affairs Department, Peshawar and three others.

... (Respondents)

Sardar Muhammad Azeem,
Advocate

... For appellant.

Asad Ali,
Assistant Advocate General

... For respondents.

Mrs. Rozina Rehman ... Member (J)
Mr. Muhammad Akbar Khan ... 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:

**“On acceptance of instant appeal, impugned order dated
20.12.2019 passed by respondent No.4, order dated
19.03.2020 of respondent No.3 and order No.222 dated
14.06.2021 passed by respondent No.2 may graciously be
set aside and appellant be reinstated into service with all
back benefits.”**

2. Brief facts of the case are that appellant was appointed as
Constable in the Police Department on 19.09.2009. On the eventful day,
he was on duty in Police Station Nawanshehr, Abbottabad when one



Arsalan reported the matter of his being beaten by Constables Shakeel, Ahmad Waqas and present appellant when he alongwith his fiancé and family was at the top of Ilyasi Masjid for recreation. The report of complainant was deduced into writing vide Mudd No.18 by Moharrir of Police Station Nawanshehr on 22.04.2014. Charge sheet alongwith statement of allegation was issued to appellant which was replied and a major penalty of dismissal from service was imposed upon appellant. Feeling aggrieved, he filed departmental appeal which was rejected, where-after, he filed service appeal in this Tribunal which was decided with direction to the Department to issue final show cause notice alongwith copy of inquiry report to the appellant. The Department accordingly issued final show cause notice and appellant submitted reply which was not considered and the appellant was removed from service. He filed departmental appeal which was rejected. He then filed revision petition which was also rejected, hence, the present service appeal.

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

4. Sardar Muhammad Azeem Advocate, learned counsel for the appellant argued inter-alia that the impugned orders are illegal, unilateral and sketchy which were not tenable, hence, liable to be set aside as appellant was not treated in accordance with law. He argued that clear cut version of the complainant was discarded only to corner the appellant and that no opportunity was given to the appellant to produce witnesses in support of his claim or to cross-examine the complainant. He submitted that the order was based on surmises and conjunctures and that the order of removal from service is illegal, without lawful authority



being the result of misreading and non-reading of evidence, hence, liable to be set aside.

5. Conversely, AAG argued that appellant alongwith other Police officials deputed on Police guard at Ilyasi Top, beat a citizen namely Arsalan and his family and also took Rs.4200/-, one gold ring and a mobile phone from them. He submitted that the acts and omissions of the appellant were gross misconduct, therefore, he was issued charge sheet alongwith statement of allegations and the matter was properly investigated in departmental inquiry, wherein, appellant was held guilty. He submitted that the acts of the appellant were stigma on Police Force and a gross misconduct under the law, therefore, after fulfillment of all codal formalities, he was awarded major punishment of removal from service according to law.

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 one Arsalan son of Muhammad Javed reported the matter vide Mudd No.18 of Daily Dairy dated 22.04.2014; that he alongwith his family and fiancé were present in the Ilyasi Mosque for recreation, where he went to the hilltop alongwith his fiancé when in the meanwhile a Police Constable alongwith two others stopped him for search who beat him and snatched Rs.2000/- from him while Rs.2200/- and a gold ring from his fiancé besides a mobile phone (QX6) alongwith sim. His report was accordingly recorded and all the three Police Officials i.e. appellant Mubashir Ali, Ahmed Waqas and Shakeel were held responsible for the said act. Admittedly, Constable Shakeel is dead now while Mubashir Ali the present appellant and Ahmed Waqas have filed two separate service

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appeals. They both were issued charge sheet alongwith statement of allegations for the following acts and omissions within the meaning of Police Disciplinary Rules 1975:

"As per DD No.18 dated 22.04.2014 of PS Nawansher, you FC Mubashir Ali No.509 alongwith FC Shakeel No.1071 and FC Ahmed Waqas No.1421 have beaten one Arsalan and his family and also taken a sum of Rs.4200/-, one gold ring and one mobile (Qx6) from them, which is a gross misconduct on your part."

For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations, one Shams Ur Rehman, Additional SP was deputed to conduct formal inquiry against the accused officials. The inquiry report is available on file which shows that Police officials including the present appellant were given proper opportunity of defense. A compromise was also effected with the complainant of the case i.e. Arsalan which was the result of pressure upon complainant. The complainant was admittedly tortured by all the three ex-police officials and they compelled the complainant for compromise later on. The complainant in his own statement clearly submitted that Rs.4200/- was returned by the present appellant Mubashir Ali and Shakeel after lodging report while Ahmed Waqas returned Rs.2000/- before the registration of Nakalmad. Similarly, gold ring and mobile were also returned by the present appellant. A compromise was effected with complainant Arsalan, however right from stoppage of the complainant Arsalan till snatching of different articles from his possession is also proved from the record. It is astonishing as to why criminal case under PPC was not registered against all the three police officials and this fact was also mentioned by the Additional SP Legal on the report of Arsalan vide Nakalmad No.18 that a criminal case under PPC and Police Order be registered against the

Police officials. The matter was tried to be patched up but the complainant narrated the entire story which happened at the hilltop of the Ilyasi Mosque. All the codal formalities were complied with by the respondents. The matter was remitted by this Tribunal to the Department. Copy of inquiry report was provided with and proper final show cause notice was issued in accordance with Khyber Pakhtunkhwa Police Rules, 1975. Reply was submitted by the appellant, where-after, punishment of removal from service was awarded to the appellant vide OB No.284 dated 20.12.2019 by District Police Officer, Abbottabad.

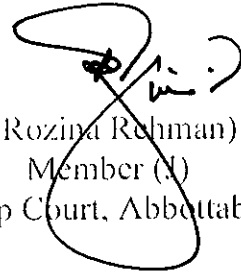
7. In view of the circumstances of the case, we do not find any viable reason to interfere in the impugned order. Resultantly, this appeal having no substance is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

27.03.2023



(Muhammad Akbar Khan)
Member (E)
Camp Court, Abbottabad



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