

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7908/2021

Date of Institution ... 17.12.2021
Date of Decision ... 03.04.2023

Amir Malik, Ex-Constable No.1723, Operation Staff, Kohat.

... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

Taimur Ali Khan,
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:


“That on the acceptance of this appeal, the order dated 27.10.2020, 05.01.2021 and 26.11.2021 may kindly be set aside and the respondents may further be directed to reinstate the appellant into his service with all back and consequential benefits.”

2. Brief facts of the case are that appellant was appointed in Levies Force in 2012 and he was performing his duty with great devotion and honesty. After absorption of the Levies Force in the Police Department, appellant became the member of Police Force and in the Police Department too, he performed his duty with great devotion. Before

merger of Levies Force in the Police Department, appellant was working under the command of Deputy Commissioner/Commandant Levies Kohat and during that period, an FIR dated 160 was registered against some unknown persons on 02.06.2014 at Police Station, KDA Kohat U/S 382/34 PPC. The name of appellant was also included in that criminal case and he was arrested on 18.08.2019. After merger of the Levies Force in the Police Department, charge sheet alongwith statement of allegations were served upon appellant which was replied, final show cause notice was issued to the appellant and he was dismissed from service vide order dated 27.10.2020. He filed departmental appeal which was rejected. He then filed revision petition which also met the same fate, hence, the present service appeal.

3. We have heard Taimur Ali Khan 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. Taimur Ali Khan Advocate, learned counsel for the appellant argued inter-alia that the impugned orders are against law, facts, norms of justice and material on record, hence, not tenable and liable to be set aside. He contended that that inquiry was not conducted according to the prescribed procedure as neither statements were recorded in the presence of appellant nor opportunity of cross-examination was provided which is violation of law and rules; that no opportunity of defense was provided to the appellant during inquiry proceedings, which is violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. He contended that the appellant clearly mentioned in his reply to the charge sheet that he was present at Shendhand Hospital on duty at the time of occurrence and that he was not directly charged in the FIR but the



Inquiry Officer failed to unearth the hidden facts. Lastly, he submitted that he was falsely implicated in the criminal case and that he was dismissed from service without waiting for the conclusion of criminal case which act is against the norms of justice. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned AAG argued that the appellant before absorption was serving under the command of Deputy Commissioner/Political Authorities Kohat and during his posting a robbery took place, wherein, unknown accused had taken away salary of Levy Khasadar and to this effect case FIR No.160 was registered. That during the course of investigation of criminal case, appellant alongwith four others were traced out as accused in the aforementioned criminal case. He was arrested and was suspended. He submitted that after fulfillment of all codal formalities, he was punished according to law..

6. From the record, it is evident that appellant while posted at the office of Deputy Commissioner, Kohat was proceeded against departmentally for being involved in case FIR No.160 dated 02.06.2014 registered at Police Station KDA Kohat U/S 382/34 PPC. He was served with charge sheet alongwith statement of allegations. SDPO Headquarters Kohat was appointed as Inquiry Officer, however, inquiry report is not available on file and it was not produced despite directions. Copy of FIR No.160 is available on file which shows that it was registered by one Muhammad Shoaib against unknown accused on 02.06.2014. The appellant was arrested in the instant case on 18.08.2019 and he was charge sheeted on 23.12.2019. It is also on record that the present appellant was not directly charged in the FIR. Case was tried in a competent court of Law and in the meanwhile, APP submitted an




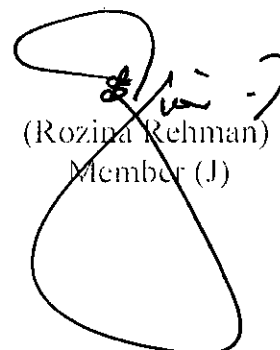
application seeking discharge of the accused U/S 494 Cr.PC read with Section-5 (B) of Prosecution Act and vide order dated 01.04.2022 of the learned Senior Civil Judge (ADMN)/Judge MTMC Kohat, present appellant alongwith four others were acquitted U/S 294-A of Cr.PC read with Section 494(2) Cr.PC. It 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 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.

03.04.2023.


(Muhammad Akbar Khan)
Member (E)


(Rozina Rehman)
Member (J)