

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**  
**AT CAMP COURT SWAT.**

Service Appeal No. 1546/2022

Date of Institution ... 27.10.2022

Date of Decision ... 07.04.2023

Muhammad Ali Computer Operator BPS-16, District Police Office, District Swat.

... (Appellant)

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and 02 others.

... (Respondents)

MR. IMDAD ULLAH,  
Advocate

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For appellant.

MR. MUHAMMAD JAN,  
District Attorney

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For respondents.

MR. KALIM ARSHAD KHAN  
MR. SALAH-UD-DIN

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CHAIRMAN  
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts surrounding the instant service appeal are that the appellant, while posted as Incharge OG/PG and missing persons branch, had remained absent from duty, therefore, disciplinary action was taken against him. On conclusion of the inquiry, he was awarded major penalty of dismissal from service vide order bearing O/B No. 126 dated 13.09.2022 passed by the then District Police Officer Swat. The appellant being aggrieved of the same, filed departmental appeal before the Regional Police Officer Malakand Region Swat, which was decided vide order dated 22.10.2022, whereby the penalty of



dismissal from service was converted into forfeiture of three years approved service. The appellant has now approached this Tribunal through filing of instant appeal for redressal of his grievance.

2. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of filing of para-wise comments, wherein they refuted the assertion raised by the appellant in his appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned District Attorney for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. At the very outset of his arguments, learned counsel for the appellant contended that the appellant being a Computer Operator, was a member of ministerial staff and in view of Section-44 of Khyber Pakhtunkhwa Police Act, 2017 (hereinafter referred to as the "Act"), the District Police Officer Swat was not the Authority competent to take disciplinary action against him. In order to properly appreciate the contention of learned counsel for the appellant, it would be appropriate to reproduce Section-44 of the Act, which is as below:-

*"Ministerial staff etc. ---(1) Subject to rules, Provincial Police Officer, may appoint ministerial staff and other employees to assist the Police.*

(2) *Any person employed under sub-section (1) shall be under the direction and control of Provincial Police Officer.*

(3) *The powers of direction and control referred to in sub-section (2) shall include the powers of discipline and dismissal.*

(4) *Subjects to rules, Provincial Police Officer, may delegate his powers and authority under this section to an officer of appropriate rank.*

5. While going through Section-44 of the Act, it is crystal clear that disciplinary action against the ministerial staff could either be taken by the Provincial Police Officer himself or by any other officer to whom such powers are delegated by the Provincial Police Officer. In the instant case, the appellant was issued charge sheet as well as statement of allegations by the District Police Officer Swat and disciplinary proceedings were taken against the appellant under Police Rules, 1975. The appellant was dismissed from service by the District Police Officer Swat vide order bearing O.B No. 126 dated 13.09.2022. It appears from perusal of the said order that District Police Officer Swat too had realized at the time of passing of the same that disciplinary proceedings against the appellant could not have been taken under Police Rules, 1975, therefore, in the concluding para of the aforementioned order dated 13.09.2022, it has been mentioned that he was awarding penalty to the appellant as competent Authority under Khyber Pakhtunkhwa Efficiency & Discipline Rules, 1973 as amended in 2011. In view of Section-44 of the Act, Provincial Police Officer was the



competent Authority, therefore, disciplinary proceedings taken against the appellant were coram-non-judice for all intents and purposes.

6. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned order and the matter is remitted to the competent Authority to conduct de-novo inquiry against the appellant in accordance with relevant rules strictly in accordance with law within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the de-novo inquiry by providing him opportunity of self defence as well as personal hearing. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
07.04.2023



(KALIM ARSHAD KHAN)  
CHAIRMAN  
CAMP COURT SWAT




(SALAH-UD-DIN)  
MEMBER (JUDICIAL)  
CAMP COURT SWAT

ORDER  
07.04.2023

Appellant alongwith his counsel present. Mr. Muhammad Jan,  
District Attorney for the respondents present. Arguments have already  
been heard and record perused.

Vide our detailed judgment of today, separately placed on  
file, the appeal in hand is allowed by setting-aside the impugned order  
and the matter is remitted to the competent Authority to conduct  
de-novo inquiry against the appellant in accordance with relevant  
rules strictly in accordance with law within a period of 60 days of  
receipt of copy of this judgment. Needless to mention that the  
appellant shall be associated with the de-novo inquiry by providing  
him opportunity of self defence as well as personal hearing. The issue  
of back benefits shall be subject to outcome of de-novo inquiry.  
Parties are left to bear their own costs. File be consigned to the record  
room.

ANNOUNCED  
07.04.2023



(Kalim Arshad Khan)  
Chairman  
Camp Court Swat



(Salah-Ud-Din)  
Member (Judicial)  
Camp Court Swat

05<sup>th</sup> April, 2023

1. Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney alongwith Mr. Ali Rehman, Inspector (Legal) for the respondents present.

2. Arguments heard. To come up for consideration and order on 06.04.2023 before the D.B at Camp Court Swat. Parcha Peshi is given to the parties.



(Salah-ud-Din)  
Member (J)  
Camp Court Swat



(Kalim Arshad Khan)  
Chairman  
Camp Court Swat

06<sup>th</sup> April, 2023

1. Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Certain points need further consideration, therefore, to come up for order tomorrow i.e 07.04.2023 before the D.B at Camp Court Swat. Parcha Peshi is given to the parties.



(Salah-ud-Din)  
Member (J)  
Camp Court Swat



(Kalim Arshad Khan)  
Chairman  
Camp Court Swat