

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD.

Service Appeal No. 3314/2020

Date of Institution ... 23.04.2020

Date of Decision ... 27.04.2023

Mohammad Aslam S/O Rehmatullah, (Ex-Sub Inspector Police No. 194/H),
R/O Village Riyala (Dakhli Tarnwae) Tehsil and District Abbottabad.

... (Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 02 others.
... (Respondents)

MR. MOHAMMAD ASLAM TANOLI,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

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

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Briefly stated the relevant facts are that the appellant while posted as Officer Incharge Investigation Police Station Havelian District Abbottabad, was proceeded against departmentally on the allegations reproduced as below:-



"i. During Police custody, weapon of offence i.e Pistol 30 bore was recovered from the accused Riaz Shah s/o Aslam Shah r/o Ghari Phulgran while Kalashnikov was used in the offence rather 30 bore Pistol.

ii. *Similarly, empties of Kalashnikov were recovered from crime scene instead of 30 bore pistol which are also not matching with the case file.*

iii. *After expiry of 02 days Police custody of the accused, you being I.O. of the case has failed to obtain more Police custody of the accused.*

2. On conclusion of the inquiry, the appellant was awarded the punishment of dismissal from service vide order dated 20.12.2019 passed by the then District Police Officer Abbottabad. The same was challenged by the appellant by way of filing of departmental appeal, which was disposed of vide order dated 16.03.2020 passed by the then Regional Police Officer Hazara Region Abbottabad, whereby the punishment of dismissal from service was converted into major punishment of compulsory retirement from service. The appellant has now approached this Tribunal through filing of the instant appeal for redressal of his grievance.

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

4. 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 Deputy District Attorney for the respondents has controverted the arguments of

learned counsel for the appellant and has supported the comments submitted by the respondents.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The allegations against the appellant are that he had not made proper investigation in the case and his inefficiency and unprofessional attitude brought bad name to the Police Department, which amounts to misconduct. According to the available record, the appellant was transferred from Police Station Lora to Police Station Nawanshehr on 29.10.2019. On the following day i.e 30.10.2019, he was transferred to Police Station Havelian and he allegedly took charge in the said Police Station at 08:00 P.M. The accused Riaz Shah was already in police lockup being arrested in the concerned criminal case on the same day and the investigation of the case was entrusted to the appellant. This fact has not been denied by the respondents that after lodging of the FIR, the case was initially investigated by other police officer/officers and that five accused were already on bail at the time of arrest of the accused Riaz Shah. The allegation No. 2 as mentioned in the statement of allegations is vague in nature and gives an impression that only empties of Kalashnikov were recovered from the crime scene, which is incorrect for the reason that according to the site plan, besides empties of Kalashnikov, some empties of 30 bore pistol were also recovered from the crime scene. The 30 bore pistol allegedly recovered on



pointation of accused was not declared by the appellant as weapon of offence in his investigation. According to the recovery memo prepared in respect of the recovery of 30 bore pistol, it was the accused who alleged that he had used the recovered pistol in commission of offence.

7. While going through the inquiry report, it is evident that the inquiry officer did not bother to put any incriminating material to the appellant by way of examining even a single witness to support the allegations against the appellant in the departmental proceedings. The inquiry was conducted in a slipshod manner and nothing is available on the record, which could show that there existed any mala-fide on part of the appellant. We are conscious of the facts that controversy in question is linked to a heinous crime, therefore, we refrain from giving any findings of such nature which may cause prejudice to either of the parties in the criminal case.

8. According to the story as narrated by the complainant Nazakat Khan in the *Murasila*, the accused were present inside police post Rajoia and started firing upon them as soon as they reached the main gate of the police post. It is evident from perusal of the FIR that the unfortunate incident took place inside the Police Post Rajoia Police Station Havelian District Abbottabad. The allegations that the accused were duly armed with fire arm weapons and had fired on the complainant party from inside the police post, were serious in nature. The available record, however

does not show as to whether any action was taken against those, who were responsible for such serious lapse of security.

9. In view of the above discussion, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
27.04.2023



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT ABBOTTABAD



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