

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

Service Appeal No. 7262/2021

Date of Institution ... 12.08.2021

Date of Decision... 04.05.2023

Imran Khan S/o Jan Muhammad, (Ex-Levy Sepoy). R/o Cast Mula Khel, Tapa Char Khela, Village Badan, Tehsil Upper District Orakzai, presently residing at Shahu Khel Road, Umar Abad, Tehsil & District Hangu.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Civil Secretariat, Peshawar and 04 others.

... (Respondents)

MR. MUHAMMAD ILYAS ORAKZAI,
Advocate

--- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

--- For respondents.

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

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant appeal are that the appellant was appointed as Levy Sepoy vide order dated 16.06.2010. During the course of his service, he was charged in case FIR No. 562 dated 06.06.2017 under section 377 PPC Police Station City Hangu. The appellant was arrested and after facing trial, he was convicted by the learned Additional Sessions Judge Hangu vide judgment dated 07.06.2018 and was sentenced to undergo one year rigorous imprisonment. Upon his conviction, the appellant was terminated from service vide order dated 01.08.2018 passed by the then Deputy Commissioner District

Orakzai. The appellant challenged his conviction through filing of criminal appeal No. 698-P/2018 before the august Peshawar High Court, Peshawar. Vide judgment dated 25.03.2019, passed by august Peshawar High Court, Peshawar, the judgment dated 07.06.2018 passed by Additional Sessions Judge Hangu was set-aside and the matter was remanded to the trial court. In the post remand proceeding, the appellant was acquitted vide judgment dated 11.06.2019 passed by the then Additional Sessions Judge-I Hangu. Upon his acquittal, the appellant preferred an application/ departmental appeal before the Deputy Commissioner District Orakzai on 26.06.2019 for his reinstatement in service. Vide letter dated 10.07.2019 the application/departmental appeal of the appellant was forwarded to the Deputy Inspector General of Police Kohat Region Kohat, who vide letter dated 16.01.2020 had observed that as the appellant was terminated from service by the Deputy Commissioner Orakzai, therefore, the matter was beyond the jurisdiction of police. The appellant then preferred Writ Petition No. 1818-P/2020 before the august Peshawar High Court, Peshawar, which was disposed of vide judgment dated 18.03.2020, wherein it was held that the fate of departmental appeal of the appellant may be decided by the concerned Deputy Commissioner or Commissioner concerned as the case may be. The departmental appeal of the appellant was dismissed by the Commissioner District Orakzai vide order dated 29.03.2021, hence the instant service appeal.




2. On admission of the appeal for regular hearing, notices were issued to the respondents. Respondent No. 5 contested the appeal by

way of submitting para-wise comments. Respondents No. 1 to 4 failed to submit reply/comments despite several opportunities being granted to them, therefore, their right of submission of reply/comments was struck of vide order dated 20.12.2022.

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 Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by respondent No. 5.

4. Arguments have already been heard and record perused.



5. A perusal of the record would show that the impugned order of termination of the appellant dated 01.08.2018 was passed on the sole ground of his conviction by the trial court in case FIR No. 562 dated 06.06.2017 registered under section 377 PPC Police Station City Hangu. The respondents have not produced any documentary evidence which could show that any departmental action in the shape of inquiry was taken against the appellant on account of his involvement in the concerned criminal case. Admittedly, the appellant has now been acquitted by the trial court vide judgment dated 11.06.2019. In view of acquittal of the appellant, the very charge, on the basis of which the appellant was terminated from service, has vanished away. Nothing is available on the record, which could show that the acquittal order of the appellant has been challenged by the department through filing of appeal before the higher forum and the

same has thus attained finality. The available record does not show that the appellant had remained gainfully employed in any service during the period during which he remained out of service on account of his termination from service.

6. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
04.05.2023



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



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT ABBOTTABAD