

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

Service Appeal No. 9404/2020

BEFORE: ROZINA REHMAN --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Muhammad Bashir Sub Inspector No. 423/H Abbottabad.
..... (*Appellant*)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Abbottabad..... (*Respondents*)

Present:-

MUHAMMAD ASLAM TANOLI,
Advocate --- For Appellant.

ASAD ALI KHAN,
Assistant Advocate General --- For respondents.

Date of Institution.....17.08.2020
Date of Hearing.....27.03.2023
Date of Decision.....27.03.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer as copied below;

“On acceptance of instant service appeal both orders dated 19.04.2019 and 20.07.2020 may graciously be set aside and the appellant be restored his 01 year withheld increment with grant of all consequential service back benefits.”

02. Brief facts of the case are that the appellant while performing his duty as SHO Police Station Nawanshehr, was informed that three-four suspected youngsters in a vacant house are busy in gambling. In response, he directed ASI Zubair to visit and ascertain the situation. He visited the place along with other officials, arrested 04 persons and brought to Police Station and put them in lock-up. However, the nobles of that locality approached the appellant and assured that those suspected persons were gentlemen having good moral character. Besides, the appellant also collected information telephonically about them from their concerned police stations. Consequently, ASI Zubair was directed to release them on production of personal indemnity bonds. Another allegations was that a lady namely Noreen Bibi used to visit the office of the appellant but the appellant denied the allegation by stating that his office was a public office and that lady once visited in connection with a complaint. On the basis of these two allegations the appellant was awarded punishment of withholding of one annual increment with cumulative effect. Feeling aggrieved, the appellant filed departmental appeal on 15.05.2019, which was filed on 20.04.2020 hence the present service appeal.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Assistant Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant argued that the impugned orders are illegal unlawful against the facts and principle of natural justice hence liable to be set aside for the reason that no proper inquiry was conducted by the

respondent; no chance of personal hearing had been afforded to the appellant before issuing the impugned order; that the respondents had not treated the appellant in accordance with law rules and regulations and had acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan. He further contended that the impugned orders are unjust, unfair hence not sustainable in the eyes of law; that appellate authority also failed to abide by the law and did not take into consideration the grounds taken by the appellant in the memo of appeal and has awarded penalty of "withholding of one year increment" with cumulative effect. Learned counsel for the appellant submitted that the allegations leveled against the appellant in the charge sheet are ambiguous in nature, and based on surmises and conjectures, therefore, he requested for acceptance of the instant service appeal.

05. Learned Assistant Advocate General on behalf of respondents contended that the impugned orders are quite legal, based on facts and justice, hence, the orders are lawful and maintainable; that the appellant has been dealt in accordance with law and proper departmental inquiry was conducted and appellant was awarded punishment on recommendation of inquiry officer, therefore, the punishment commensurate with proved charges of misconduct. Learned Assistant Advocate General further contended that the appellant did not perform his lawful duties faithfully, honestly and fairly, as the appellant supported the criminals for wrongful gains. He pointed out that the appellant was served with specific allegations contained in the charge sheet, proper departmental inquiry was conducted as the appellant was awarded punishment on strong evidence. Therefore, he requested for dismissal of the instant service appeal.

06. With the assistance of learned counsel for the appellant and learned Assistant Advocate General we scrutinized the available record, the charges leveled against the appellant and proceedings and findings of the inquiry viz-a-viz the charges/allegations. The statement of allegations against the appellant contained the following two specific allegations/charges;

(1) *It has been reported that on 06.03.2019 gambling was in progress in passport office Maira Madroch, you were informed about this gambling, the local police of PS Nawasher raided the said gambling den and arrested following gamblers and seized the stake amount of Rs. 11000/12000-with gambling material and handed over to you for legal action.*

1. Muhammad Shafaqat S/o Sabir r/o Lower Malikpura.
2. Zeshan S/o Nizam uddin r/o Sir Syed Colony Mandian.
3. Zaheer S/o Allah Dad r/o Tahoor Sydian.
4. Agash S/o Sarfaraz r/o Supply

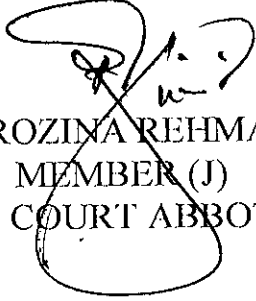
Later on the amount was distributed among yourselves and further took illegal gratification of Rs. 20000/25000/- and released them without taking any legal action for personal motive.


(2) *Reportedly, a private lady namely Noureen r/o Mansehra found mostly in your office due to with people of the area are fragrant. Your this corrupt, ignoble and unprofessional act earned bad name for police department in the eyes of general public, which is tantamount to gross misconduct.*

Contents of the inquiry report reveals that both the charges against the appellant stood disproved after thorough scrutiny. However, the inquiry officer recommended for imposition of minor penalty upon the appellant for lack of command and supervision on part of the appellant. The question of efficiency was not part of the charges/allegations against the appellant. It was a fresh charge which was made the ground for imposition of penalty upon the appellant without providing him opportunity of defense and scrutinizing his conduct in that context under the Police Rules, 1975.

07. For what has been discussed in Para-6 above we are constrained to set aside the impugned orders dated 19.04.2019 and dated 20.07.2020 and restore one year withheld increment of the appellant. Consign.

08. *Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal this 27th day of March, 2023.*


(ROZINA REHMAN)
MEMBER (J)
CAMP COURT ABBOTTABAD


(MUHAMMAD AKBAR KHAN)
MEMBER (E)
CAMP COURT ABBOTTABAD