

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN  
**MUHAMMAD AKBAR KHAN** ... MEMBER (executive)

*Service Appeal No.1145/2022*

Date of presentation of appeal .....21.07.2022  
Dates of Hearing.....12.04.2023  
Date of Decision.....12.04.2023

**Sami Ul Haq, Ex-Constable No. 4477 S/O Ihsan Ul Haq R/O Faiz  
Abad Saidu Sharif Tehsil & District Swat.**

.....(*Appellant*)

Versus

1. **Inspector General** of Police Khyber Pakhtunkhwa.
2. **Commandant Elite Force**, Khyber Pakhtunkhwa Peshawar.
3. **District Police Officer** Swat.

.....(*Respondent*)

Present:

Miss. Roeda Khan, Advocate.....For appellant.

Mr. Muhammad Jan,  
District Attorney.....For respondents.

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST  
THE ORDER DATED 06.04.2017, WHEREBY THE APPELLANT  
HAS BEEN AWARDED MAJOR PUNISHMENT OF DISMISSAL  
FROM SERVICE AND AGAINST WHICH THE APPELLANT  
FILED DEPARTMENTAL APPEAL ON 21.05.2017 AGAINST  
THE IMPUGNED ORDER DATED 06.04.2017 WHICH HAS BEEN  
REJECTED ON 06.02.2018 ON NO GOOD GROUNDS.**

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**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts as narrated in the  
memo and grounds of appeal are that the appellant was appointed as

Constable in District Police Swat on 14.07.2007; that while posted at Elite Force on deputation a charge sheet and statement of allegation was issued to the appellant on 10.02.2017 which was properly replied by the appellant on 03.03.2017; that on 22.11.2017 a final show cause notice was issued to the appellant which was received by the appellant on 29.11.2017 and the appellant replied the same; that finally punishment of dismissal from service was imposed upon the appellant vide impugned order dated 06.04.2017; that feeling aggrieved, the appellant filed departmental appeal on 21.05.2017; that during the pendency of departmental appeal the respondents reinstated the appellant vide order dated 29.09.2017 and the appellant marked his attendance through Naqal Mad Roznamcha No.10 dated 02.11.2017; that thereafter the departmental appeal of the appellant dated 21.05.2017 was rejected on 06.02.2018; that the appellant preferred revision petition against the order dated 06.02.2018 which was also rejected on 27.06.2022, hence, the instant service appeal.

2. On receipt of the appeal and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned District Attorney for the respondents.



4. Learned counsel for the appellant argued that the orders dated 06.04.2017 and 06.02.2018 were void ab-initio because it was passed without fulfilling of all codal formalities. That no regular inquiry had been conducted by the respondents and no chance of personal hearing had been provided to the appellant. She requested that the appeal might my accepted.

5. On the other hand learned District Attorney controvert the contention of learned counsel for the appellant and argued that the appellant has been treated in accordance with law and rules. That the appellant taken arms/ammunition from boxes of Constables Muhammad Alam and Rehman Ali which were later on recovered from the possession of the appellant. Furthermore, the appellant absented himself from lawful duties without prior permission of the Competent Authority and on the basis of this misconduct he was proceeded against departmentally in accordance with law and rules. He further argued that the appellant was reinstated for the purpose of de-novo enquiry which was conducted in accordance with law and rules. The appellant badly failed to prove his innocence therefore, on the recommendations of enquiry officer he was dismissed from service. At the end he submitted that the appeal might be dismissed.

6. After thorough perusal of the record it transpired that Mr. Muhammad Hussain, Deputy Commandant Elite Force, Khyber Pakhtunkhwa Peshawar had vide the impugned order dated 06.04.2017 dismissed the appellant on the allegations of five days absence. The appellant filed departmental appeal to

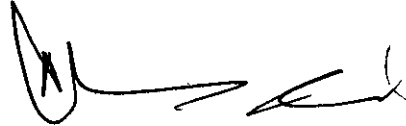


the Commandant Elite Force, Khyber Pakhtunkhwa which too was decided by the same Deputy Commandant (Mr. Muhammad Hussain) vide order dated 06.02.2018 maintaining the dismissal order passed by himself. This alone is sufficient to set at naught both of the above. It appears that Mr. Muhammad Hussain, Deputy Commandant had passed the order dated 06.04.2017 dismissing the appellant from service. The appellant filed appeal and the order dated 06.02.2018 passed by the same officer named Mr. Muhammad Hussain, Deputy Commandant, shows that earlier, on the appeal of the appellant, before the competent authority, a de-novo enquiry was conducted. The Enquiry Officer found the appellant guilty in the matter and recommended him for major punishment. He was issued final show cause notice and provided opportunity of personal hearing before the Deputy Commandant (Mr. Muhammad Hussain) in orderly room on 21.12.2017, 04.01.2018 and 01.02.2018 but he did not appear, therefore, he upheld the dismissal order passed by himself vide No. 6379-87/EF dated 06.04.2017. This act on the part of the respondents seems very strange because when once on appeal of the appellant, de-novo departmental enquiry was ordered which *per-se* meant that the order of dismissal, passed on 06.04.2017, was set aside that is why a de-novo enquiry was directed to be held and when, as alleged in the order dated 06.2.2018 that, de-novo departmental enquiry was conducted, the matter ought to have been placed before the Competent Authority and not the Appellate Authority. It is incomprehensible that Mr. Muhammad Hussain Deputy Commandant could act both as Competent Authority as well as the Appellate Authority. If Mr. Muhammad Hussain, Deputy Commandant was Competent



Authority and Appellate Authority both, then after ordering de-novo departmental enquiry the right of departmental appeal would be taken away. Therefore, we hold that the appellant was not treated in accordance with law. Thus, while allowing this appeal, we remit the matter back to the competent authority to proceed in accordance with the relevant provisions of law and rules before passing any order on the de-novo enquiry. The appellant is reinstated in service and the benefits of the intervening period shall be subject to the final outcome of the departmental proceedings. Costs shall follow the event. Consign.

7. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12<sup>th</sup> day of April, 2023.*



**KALIM ARSHAD KHAN**  
Chairman



**MUHAMMAD AKBAR KHAN**  
Member (Executive)

*\*Adnan Shah, PA\**