

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

Service Appeal No.2767/2021

Date of Institution ... 12.02.2021
Date of Decision ... 04.05.2023

Bahrul Mulk S/O Noor Ul Huda R/O Bayna, Post Office Choga, Tehsil
Puran, District Shangla.

... (Appellant)

VERSUS

Provincial Police Officer Government of Khyber Pakhtunkhwa at
Central Police Office (CPO) Peshawar and two others.

... (Respondents)

Muhammad Javaid Khan,
Advocate

... For appellant

Fazal Shah Mohmand,
Additional Advocate General

... For respondents

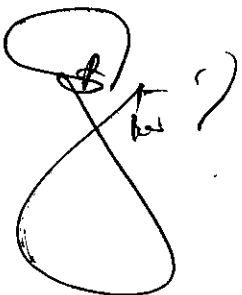
Mrs. Rozina Rehman
Miss Fareeha Paul

... Member (J)
... Member (E)

JUDGMENT

Rozina Rehman, Member(J): The appellant has invoked the jurisdiction of
this Tribunal through above titled appeal with the prayer as copied below:

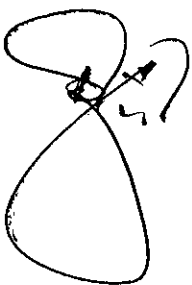
“On acceptance of this service appeal the impugned orders of respondents No. 1 to 3 dated 22.01.2021, 01.09.2022 and 25.06.2020 respectively may kindly be declared illegal, unlawful and unconstitutional, and the reversion of the appellant may be declared illegal, unlawful and unconstitutional and may be reinstated/re-designated to his original rank of ASI with the same seniority position and all other service back benefits.”



2. Brief facts leading to filing of the instant appeal are that appellant was appointed in the Police Department in 1991. He performed his duties honestly during the days of insurgency in the Malakand Region. He was promoted to the rank of Head Constable in 2009 and later on to the rank of ASI in 2011. He was posted as Incharge Police Post Barama, Mingora District Swat when an inquiry was started against him on the strength of an anonymous complaint and he was awarded the punishment of reversion to substantive rank of Head Constable. Feeling aggrieved, he filed departmental appeal which was filed. He then filed revision petition which was rejected by the board, hence, the present service appeal.

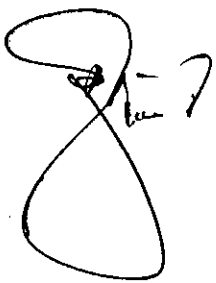
3. We have heard Muhammad Javaid Khan Advocate, learned counsel for the appellant and Fazal Shah Mohmand, learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Muhammad Javaid Khan Advocate, learned counsel for the appellant, inter-alia, contended that the impugned orders are illegal, against law, rules and facts, hence not tenable and liable to be set aside. He contended that no proper inquiry was conducted against the appellant and he was not treated according to law and rules. It was argued that no final show cause notice was issued to appellant before awarding the major punishment and Police Rules, 1975 were violated by the respondents. Lastly, he submitted that no cogent evidence was produced in respect of the allegations but even then he was punished. He, therefore requested for acceptance of the instant service appeal.



5. Conversely, learned AAG submitted that appellant while posted as Incharge of Police Post Barama Police Station Mingora was found involved in corrupt practices and was reported to be a corrupt officer, therefore, an inquiry was conducted against him and after conducting proper inquiry, report was submitted by the Inquiry Officer against appellant who was recommended for punishment. He submitted that the appellant was punished after fulfillment of all codal formalities.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that appellant was posted as Incharge of Police Post Barama PS Mingora when he received charge sheet from Regional Police Officer Malakand Region regarding his involvement in corrupt practices. His bad character was also reported. In order to scrutinize the conduct of appellant, Farman Ullah Khan, Superintendent of Police, Upper Swat was appointed as Inquiry Officer who recorded statements of all concerned. Regional Police Officer then returned the inquiry papers to the office of District Police Officer and issued directions that exemplary punishment be awarded to the appellant. District Police Officer was the competent authority but in the instant case as per order of DPO Swat dated 25.06.2020, charge sheet with statement of allegations were issued by Regional Police Officer vide his office endorsement No.4380-83/E dated 03.06.2020. Regional Police Officer also appointed Inquiry Officer, where-after, he sent the inquiry papers to the office of DPO with certain directions. The inquiry report is available on file. The inquiry Officer recorded statements of Didar Ghani Khan SDPO City




Circle, Muhammad Anwar Khan SHO PS Mingora, Muhammad Rahim Khan OII of PS Mingora and Bakht Sherawan SI Incharge DSB Swat and they all recorded their statements in favor of present appellant. As per their statements appellant had registered almost 50 cases against smugglers and that there was no complaint against him. From the contents of the inquiry report it becomes crystal clear that there was no cogent and reliable evidence against the appellant. He was punished for having relations with women of bad character however no evidence was produced in this regard and he was punished on the strength of spy/secret information. The allegations were not properly proved in accordance with law and procedure. The statements recorded by the Inquiry Officer go in favor of the appellant and there is no evidence which could connect the accused official with the commission of offence.

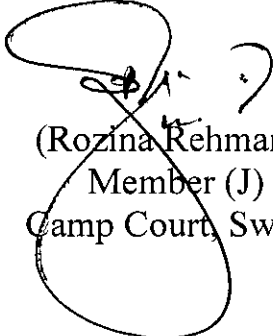
7. For what has gone above, the impugned order of imposition of penalty with disciplinary proceedings wherefrom it resulted, is set aside and appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

04.05.2023


(Fareeha Paul)
Member (E)
Camp Court, Swat

Mutazem Shah


(Rozina Rehman)
Member (J)
Camp Court, Swat