

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

Service Appeal No.1508/2019

Date of Institution ... 08.11.2019
Date of Decision ... 05.05.2023

Constable Jamil Ur Rehman Belt No. 350 posted at Police Line Swat

... (Appellant)

VERSUS

Provincial Police Officer Government of Khyber Pakhtunkhwa at CPO
Peshawar and six others.

... (Respondents)

Shabir Ahmad Khan,
Advocate

... For appellant

Muhammad Jan,
District Attorney

... 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:

**“By acceptance of the instant service appeal, the
impugned order of respondents may kindly be set
aside and the appellant may kindly be restored
back to the position of Head Constable from the
date of reversion.”**



2. Brief facts leading to filing of the instant appeal are that
appellant was recruited as Police Constable in the Police Department.

During service, respondent No.4, SHO Halim Khan, arrested accused Mubarak Ali and Faiz Ur Rehman vide FIR No.690 dated 13.12.2018 registered at Police Station Madyan U/S 9-B/9-C of CNSA and 15-AA. Accused Mubarak Ali fled away from lockup on the same day and the matter was brought into the knowledge of SHO by the appellant. The accused was arrested on the same day but the SHO concerned lodged another FIR against the appellant and respondents No.5 to 7 U/S 223/224 PPC at Police Station Madyan. Charge sheet was issued and SP Upper Swat was nominated as Inquiry Officer. Resultantly, appellant was awarded punishment of reversion from the rank of Head Constable to Constable. Feeling aggrieved, he submitted a departmental appeal which was filed. He then filed revision petition which also met the same fate, hence, the present service appeal.

3. We have heard Shabir Ahmad Khan Advocate learned counsel for the appellant and Muhammad Jan, learned District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

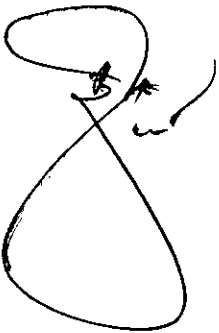
4. Shabir Ahmad Khan Advocate, learned counsel for appellant, inter-alia, contended that appellant locked the accused in the lockup and strict instructions were issued to Santri/respondent No.5 for supervision who failed to take proper care, therefore, the order in respect of reversion of the appellant is against law, facts and material on record, hence, not tenable and liable to be set aside. He contended that appellant was not treated in accordance with law and canons of natural justice as he was not given fair trial as enshrined in Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. It was argued



that the appellant was condemned unheard and was not given proper opportunity of defense. He was discriminated as the Santri who was responsible for the proper custody and protection of main accused Mubarak Ali was not punished. He, therefore, requested for acceptance of instant appeal.

5. Conversely, learned District Attorney contended that an accused namely Mubarak Ali arrested in case FIR No.690 managed to escape from lockup due to negligence of the appellant. He contended that being a responsible supervisory official, he was required to keep proper watch on the lockup but he failed to fulfill his responsibility, resultantly, the accused managed to escape from the lockup. He contended that the appellant was awarded proper punishment 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 a case vide FIR No.690 dated 13.12.2018 was registered in Police Station Madyan U/S 9C-CNSA/15-AA against an accused namely Mubarak Ali who was detained in the lockup of Police Station. The present appellant being Head Constable while posted as MHC Police Station Madyan was charge sheeted on the allegations that he failed to keep proper watch on the detained accused (Mubarak Ali) and failed to fulfill his responsibility. As such, accused managed to escape from the lockup which caused embarrassing situation for the Police Department. All the requisite documents in the light of directions of this Tribunal were produced. No doubt, as per Police Rules as custodian, the Station Clerk



is responsible for the safe custody and dieting of persons in the lockup. The Station Clerk's duties necessitate his continuous presence at the Police Station. Admittedly, appellant was performing the duties of Station Clerk at the relevant time while Constable Saadullah Jan was performing the duties of Santri and had been directed to keep proper watch on the lockup. Proper FIR No.691 was registered on 13.12.2018 against the present appellant Jamil Ur Rehman, Constable Saadullah Jan and Mubarak Ali U/S 223/224 PPC and vide order dated 02.10.2019 of the learned Judicial Magistrate Behrain Swat, accused Jamil Ur Rehman, Saadullah Jan, Hayat Ali and Mubarak Ali were acquitted from the charges leveled against them. In order to scrutinize the conduct of appellant departmental proceedings were also initiated. Departmental inquiry is available on file which shows that the appellant was awarded punishment of reversion to lower rank however, the impugned order is silent in respect of the period as to for how much time the reversion to lower post will remain in force. Rule 4.1(b)(i) of Police Rules, 1975 is silent in this regard, however this is against the fundamental rights as no specific period has been mentioned and as a result he would suffer for an indefinite period. Guidance is sought from Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, wherein it has been mentioned in Rule-4(1)(b)(i) that reduction to a lower post or pay scale would remain in force for a maximum period of five years.

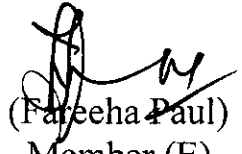
7. Keeping in view the facts and circumstances of the case, this appeal is partially allowed and he is awarded punishment of reversion



from the rank of Head Constable to Constable for one year. Parties are left to bear their own costs. File be consigned to the record room.

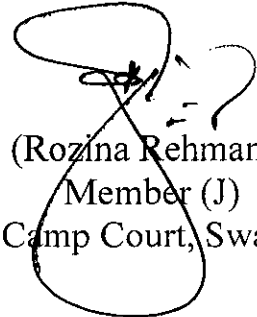
ANNOUNCED.

05.05.2023



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

Mutazem Shah



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