

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 5894/2020

BEFORE: MRS. ROZINA REHMAN ... MEMBER(J)
MISS FAREEHA PAUL ... MEMBER(E)

Ali Murtaza, Ex-Constable No. 1016 (Swabi District Police) R/O
Sard China, Tehsil Lahor, Swabi (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Inspector General of Police, Central Police Office, Peshawar.
2. Deputy Superintendent of Police Coordination, Headquarter Central Police Lines, Peshawar.
3. Regional Police Officer, Mardan.
4. District Police Officer, Mardan.
5. Deputy Superintendent of Police Razzar, Swabi. (Respondents)

Mr. Munsif Saeed,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney,

... For respondents

Date of Institution..... 19.03.2020
Date of Hearing..... 10.04.2023
Date of Decision..... 10.04.2023

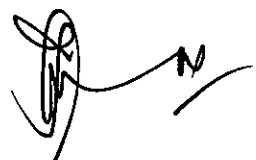
JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 24.07.2017, whereby the appellant was dismissed from service and against the order dated 17.02.2020, whereby his departmental appeal was turned down. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant be reinstated into service with all back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant had been serving in the Police Department at District Swabi as Constable for 09 years. During the course of service, he was nominated in a criminal case vide FIR No. 350 dated 23.08.2016 u/s 324, P.S Yar Hussain, Swabi. Being threatened by his opponents and feeling insecure, the appellant had no other option but to absent himself from duty. The respondents initiated departmental proceedings against him wherein he was not provided opportunity of hearing nor any notice, as required under the law, was served upon him. After conclusion of the inquiry, he was dismissed from service vide order dated 24.07.2019. Feeling aggrieved from the said order, he preferred departmental appeal which was rejected on 17.02.2020 by respondent No. 3; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

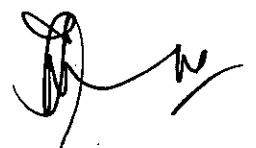
4. Learned counsel for the appellant after presenting the case in detail argued that the respondents had not treated the appellant in accordance with law, rules, policy on the subject and acted in violation of Article 4 & 25 of the Constitution of Islamic Republic of Pakistan. The respondents had neither served any statement of allegations to the appellant nor followed the required procedure before awarding major penalty of dismissal from service. He further argued that the appellant was behind the bar in the criminal case registered against him and after conclusion of trial, he was acquitted of the



charges in the said criminal case. He further argued that respondent No. 3 while rejecting the departmental appeal had not considered the fact that the appellant was behind the bar for more than one year. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant argued that on account of involvement of the appellant in criminal case of attempted murder, proper departmental inquiry was conducted. He further argued that the appellant, despite being member of Police force, was involved in criminal case of attempted murder and failed to join the investigation and remained fugitive for a noticeable period. After proper departmental inquiry, he was dismissed from service against which his departmental appeal was also rejected being badly time barred. Learned Deputy District Attorney requested that the appeal might be dismissed.

6. After hearing the arguments and going through the record presented before us, it transpires that the appellant while serving as Constable in Police was involved in FIR No. 350 dated 23.08.2016 u/s 324 P.S Yar Hussain, Swabi. He was arrested on 29.07.2018, as stated by himself in his appeal before the DIG, Mardan. This indicates that the appellant remained an absconder from 23.08.2016 to 29.07.2018. Departmental proceedings were initiated against him on 29.08.2016 and a charge sheet and statement of allegations was issued. Inquiry was conducted and based on its report, the appellant was issued a final show cause notice and later on dismissed from service on 24.07.2017. He was absconder when the entire inquiry



proceedings were conducted which indicates that he was not involved in the entire proceedings and was condemned unheard. On the other hand, when he surrendered on 29.07.2018, and the case was investigated in the court of the learned Additional Sessions Judge-II Lahor, Swabi and decided on 09.10.2019, the appellant was acquitted of the charges leveled against him in the FIR. It has been held by the superior fora that all acquittals are certainly honourable and that there can be no acquittal which may be said to be dishonourable. Involvement of the appellant in the criminal case was the sole ground on which he had been dismissed from service and the said ground was no more when he was acquitted and hence he emerged as a fit and proper person to continue his service. In this respect we have sought guidance from 1988 PLC(CS)179, 2003 SCMR 215 and PLD 2010 Supreme Court-695 and judgments rendered by this Tribunal in Service Appeal No. 1380/2014 titled "Ilam Nawaz Vs. Police Department", Service Appeal No. 616/2017 titled "Mumtaz Ali Vs. Police Department", Service Appeal No. 863/2018 titled "Fateh-ur-Rehman Vs. Police Department", Service Appeal No. 1065/2019 titled "Naveed Gul Vs. Police Department" and Service Appeal No. 12098/2020 titled "Ali Imran Vs. Police Department".

7. In the light of above discussion, it is clear that the appellant had been acquitted of the charges leveled against him in the FIR and he rightly submitted his departmental appeal, to his competent authority, after his acquittal. The appeal in hand is, therefore, allowed as prayed for. However the period from 23.08.2016 to 29.07.2018 for which the appellant remained




absconder is to be treated as leave without pay. Parties are left to bear their own costs. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 10th day of April, 2023.*


(FAREEHA PAUL)
Member (E)

Fazal Subhan P.S


(ROZINA REHMAN)
Member (J)