

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 4526/2021

Date of Institution ... 24.03.2021

Date of Decision... 11.05.2023

Sattar Khan No. 691/M (SI) S/O Sarfraz Khan. R/O Chamdheri, Tehsil & District Mardan. (Presently posted at Police Station Daggar District Buner.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and 05 others.

... (Respondents)

MR. IRFAN ALI YOUSAFZAI,
Advocate

--- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

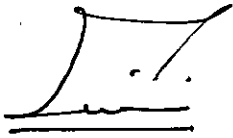
--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Briefly stated that relevant facts are that the appellant while posted as OII in Police Station Swari District Buner, was proceeded against departmentally on the allegations that he being investigation officer in case FIR No. 283 dated 28.07.2020 under sections 302/34 PPC, 37 CPA Police Station Swari had demonstrated irresponsibility and cowardice, which resulted in failure of granting justice to innocent persons which amounted to negligence and gross misconduct on the part of the appellant. On conclusion of the inquiry, the appellant was awarded major penalty of reversion from the rank of Sub-Inspector to substantive rank of Assistant Sub-Inspector vide the impugned order



dated 30.11.2020. The appellant preferred departmental appeal against the same, which was rejected by Regional Police Officer Swat vide order dated 22.02.2021. The appellant has now approached this Tribunal through instant appeal for redressal of his grievance.

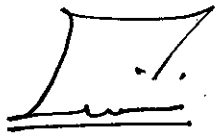
2. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of filing of reply, wherein they refuted the assertion raised by the appellant in his appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. Arguments have already been heard and record perused.

5. The inquiry in the matter was conducted by SDPO Circle Daggar and the inquiry report so submitted by him is available on the record. While going through the inquiry report, we have observed that the inquiry officer had not examined even a single witness in support of the allegations leveled against the appellant. The incriminating material was not put in shape of evidence and thus the appellant was thus not provided an opportunity to rebut the same. Moreover, as per the available record, the appellant was not

provided copy of inquiry report alongwith copy of final show-cause notice. This Tribunal has already held in numerous judgments that issuance of final show-cause notice along with the inquiry report is must under Police Rules, 1975. Reliance is also placed on the judgment delivered by august Supreme Court of Pakistan reported as PLD 1981 SC-176, wherein it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of final show cause notice and non-supply of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him.



6. Moreover, vide the impugned order dated 30.11.2020 the appellant was reverted from the rank of Sub-Inspector to the rank of Assistant Sub-Inspector without mentioning the period for which the same shall remain effective, which is violation of FR-29. The same is reproduced for ready reference as below:-

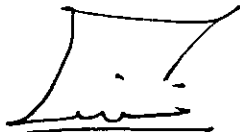
“F. R. 29. If a Government servant is, on account of misconduct or inefficiency, reduced to a lower grade or post, or to a lower stage in his time -scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, it shall operate to postpone future increments and if so, to what extent.”

7. In view of the above discussion, the impugned orders are set-aside and the matter is remitted back to the competent Authority for conducting of de-novo inquiry in accordance with relevant law/rules within a period of 60 days of receipt of copy of this

judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings by providing him opportunity of self defence as well as personal hearing. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.05.2023


(KALIM ARSHAD KHAN)
CHAIRMAN


(SALAH-UD-DIN)
MEMBER (JUDICIAL)