

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 1184/2016

Date of Institution ... 19.10.2016

Date of Decision... 17.05.2023

Asfandiyar, Constable No. 1349, Previous No. 107, District Charsadda.

... (Appellant)

**VERSUS**

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 02 others.

... (Respondents)

SYED NOUMAN BUKHARI,  
Advocate

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--- For appellant.

MR. ASIF MASOOD ALI SHAH,  
Deputy District Attorney

--- For respondents.

MR. SALAH-UD-DIN  
MR. MUHAMMAD AKBAR KHAN

--- MEMBER (JUDICIAL)  
--- MEMBER (EXECUTIVE)


**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- According to the averments in the appeal, the appellant was falsely charged in case FIR No. 1276 dated 26.09.2008 under sections 324/34 PPC Police Station Charsadda and he thus remained absent from duty which resulted in his dismissal from service vide order dated 05.06.2009 passed by District Police Officer Charsadda without issuing him any charge sheet or statement of allegations; that the appellant was acquitted on 04.09.2015, where-after he submitted departmental appeal, which was allowed by Deputy Inspector General of Police Mardan Region Mardan-I vide order dated 26.05.2015 and the appellant was ordered



to be reinstated in service with immediate effect by treating the intervening period as leave without pay; that the appellant preferred appeal before the Inspector General of Police Khyber Pakhtunkhwa Peshawar challenging the order dated 26.05.2016 to the extent of treating of the intervening period as leave without pay. The same was, however, rejected vide order dated 23.06.2016. The appellant has now approached this Tribunal by way of filing instant service 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 Deputy District Attorney for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. We have heard the arguments of learned counsel for the parties and have perused the record.

5. A perusal of the record would show that the appellant was dismissed from service vide order dated 05.06.2009 passed by District Police Officer Charsadda, which was challenged by the appellant through filing of departmental appeal before the Deputy

Inspector General of Police Mardan Region Mardan-I, who while allowing the departmental appeal of the appellant vide order dated 26.05.2015 has observed as below:-

*“After going through the available record and also hearing the appellant in person in orderly room held in this office on 13.05.2015, I have come to the conclusion that appellant was dismissed without affording opportunity of being heard nor he was given opportunity to submit defence against the penalty imposed. His previous record was checked and no major punishment was found in his record. He has more than 17 years of service and dismissal from service with a single stroke of pen seems unjustified and harsh. There is no denying that the appeal is time barred and here in disposal of this case, I would like to refer to a well settled principle of law that procedural technicalities should not be allowed to prevail on dispensation of substantial justice. Procedural laws are meant to advance the cause of justice and not to thwart it. The Supreme Court of Pakistan in Criminal Original Petition No. 90/2009 has held that while deciding a case, principles of natural justice “audi alteram partem” and other fundamental rights should be observed which guarantee the right of petitioner that he should not be condemned unheard. The order passed by the then District Police Officer has been passed in violation of universally accepted principles of natural justice, the petitioner was not heard nor reasons for his absence, apparently which were beyond his control, were not taken into account and thus caused serious prejudice to him. (Emphasis provided)*





*In view of the above, I accept the appeal in hand.  
He is reinstated in service with immediate effect and  
the period he remained out of service to be regularized  
as leave without pay.*

6. Keeping in view his own findings in the order dated 26.05.2015 as reproduced above, the Deputy Inspector General of Police Mardan Region Mardan-I was not justified in treating the out of service period of the appellant as leave without pay. Nothing is available on the record, which could show that the appellant had remained gainfully employed in any service during the period during which he remained out of service.

7. In view of the above discussion, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
17.05.2023

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

  
(MUHAMMAD AKBAR KHAN)  
MEMBER (EXECUTIVE)