

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**FAREEHA PAUL ... MEMBER (Executive)**

*Service Appeal No.7862/2021*

Date of presentation of appeal .....08.12.2021  
Dates of Hearing.....23.05.2023  
Date of Decision.....23.05.2023

**Hamid Khan, ASI R/O Jamrood Khyber, at Police Department Khyber Pakhtunkhwa Peshawar.**  
.....(*Appellant*)

Versus

1. **Inspector General of Police, Khyber Pakhtunkhwa.**
2. **District Police Officer, District Khyber.**
3. **Capital City Police Officer Peshawar, at Police Line Peshawar Civil Secretariat Peshawar.**
4. **Superintendent of Police/Headquarters Traffic at Peshawar.**  
.....(*Respondent*)

Present:

Mr.Taimoor Ali Khan, Advocate.....For appellant.

Mr. Muhammad Jan,  
District Attorney.....For respondents.

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 15.10.2021, WHEREBY THE APPEAL OF THE APPELLANT HAS PARTIALLY BEEN ALLOWED AND THE MAJOR PENALTY WAS CONVERTED INTO FORFEITURE OF TWO YEAR OF CONFIRM SERVICE INSTEAD AS A WHOLE AND THUS THE APPELLANT HAS BEEN PENALIZED IN A CLASSICAL CURSORY AND WHIMSICAL MANNER.**

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## **JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** According to the appeal, the appellant was serving as ASI in the respondent department; that the appellant while posted at Takhta Baig Police Post; that an enquiry was conducted against the appellant on the allegations of his alleged involvement in the malpractice having links with undesirable elements, while posted at Takhta Baig Police Station; that after conducting enquiry show cause notice was issued to the appellant; that thereafter, vide order dated 30.05.2020, the appellant was dismissed from service; that the appellant preferred departmental appeal on 22.06.2020 against the said order, which was partially allowed, reinstating the appellant in service with the direction to conduct de-novo enquiry vide order dated 27.08.2020; that after conclusion of de-novo enquiry, the appellant was awarded penalty of forfeiture of two year's approved service vide order dated 15.10.2021, and then he filed the instant service appeal.

2. On receipt of the appeal and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.
3. We have heard learned counsel for the appellant and learned District Attorney for the respondents present.
4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that the impugned

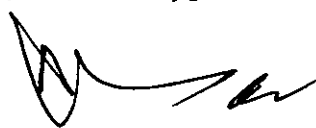


order 15.10.2021 is illegal, unlawful, without lawful authority and the same is liable to be set aside.

5. Learned District Attorney for the respondents argued that the appellant has been treated in accordance with law and rules. He requested that the appeal might be dismissed.

6. This Tribunal in its earlier judgment in service appeal No. 1145/2022 titled "Sami Ul Haq vs Inspector General of Police Khyber Pakhtunkhwa, Peshawar and others" has found as under:-

*"6. After thorough perusal of the record it transpired that Mr. Muhammad Hussain, Deputy Commandant Elite Force, Khyber Pakhtunkhwa Peshawar had vide the impugned order dated 06.04.2017 dismissed the appellant on the allegations of five days absence. The appellant filed departmental appeal to the Commandant Elite Force, Khyber Pakhtunkhwa which too was decided by the same Deputy Commandant (Mr. Muhammad Hussain) vide order dated 06.02.2018 maintaining the dismissal order passed by himself. This alone is sufficient to set at naught both of the above. It appears that Mr. Muhammad Hussain, Deputy Commandant had passed the order dated 06.04.2017 dismissing the appellant from service. The appellant filed appeal and the order dated 06.02.2018 passed by the same officer named Mr. Muhammad Hussain, Deputy Commandant, shows that earlier, on the appeal of the appellant, before the competent authority, a de-novo enquiry was conducted. The Enquiry Officer found the appellant guilty in the matter and recommended him for major punishment. He was issued final show cause notice and provided opportunity of personal hearing before the Deputy Commandant (Mr. Muhammad Hussain) in orderly room on 21.12.2017, 04.01.2018 and 01.02.2018 but he did not appear, therefore, he upheld the dismissal order passed by himself vide No. 6379-87/EF dated 06.04.2017. This act on the part of the respondents seems very strange because when once on appeal of the appellant, de-novo departmental enquiry was ordered which per-se meant that the order of dismissal, passed on 06.04.2017, was set aside that is why a de-novo enquiry was directed to be held and when, as alleged in the order dated 06.2.2018 that, de-novo departmental enquiry was conducted, the matter ought to have been placed before the Competent Authority and not the Appellate Authority. It is*



*incomprehensible that Mr. Muhammad Hussain Deputy Commandant could act both as Competent Authority as well as the Appellate Authority. If Mr. Muhammad Hussain, Deputy Commandant was Competent Authority and Appellate Authority both, then after ordering de-novo departmental enquiry the right of departmental appeal would be taken away. Therefore, we hold that the appellant was not treated in accordance with law. Thus, while allowing this appeal, we remit the matter back to the competent authority to proceed in accordance with the relevant provisions of law and rules before passing any order on the de-novo enquiry. The appellant is reinstated in service and the benefits of the intervening period shall be subject to the final outcome of the departmental proceedings. Costs shall follow the event. Consign."*

7. This question involved in this appeal is no different than the above.
8. Therefore, while allowing this appeal, we remit the matter to the competent authority to proceed in accordance with the relevant provisions of law and rules before passing any order on the de-novo enquiry. The benefits of the intervening period shall be subject to the final outcome of the departmental proceedings. Consign.
9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23<sup>rd</sup> day of May, 2023.*



**KALIM ARSHAD KHAN**  
Chairman



**FAREEHA PAUL**  
Member (Executive)

\*Adnan Shah, PA\*