

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

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

Service Appeal No.7502/2021

Date of presentation of Appeal.....27.09.2021

Date of Hearing..... 23.05.2023

Date of Decision.....23.05.2023

**Gul Nawaz S/o Malik Mir Askar R/o Borkhi Khall, Collage Colony,
District Kurram.**

.....*Appellant*

Versus

1. **Regional Police Officer**, Kohat Region, Kohat.
 2. **District Police Officer**, District Kurram.
 3. **Deputy Superintendent of Police (Inquiry Officer)** District Kurram.
-(*Respondents*)

Present:

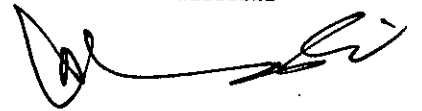
Mr. Asif Hameed Qureshi, Advocate.....For the appellant

Mr. Muhammad Jan,

District Attorney.....For respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER (DISMISSAL FROM
SERVICE) DATED 28.04.2021 OF RESPONDENT NO.2 AND
ORDER OF RESPONDENT NO.1 (APPELLATE
AUTHORITY) DATED 30.08.2021 BY WHICH THE
DEPARTMENTAL APPEAL OF THE APPELLANT HAS
BEEN DISMISSED.**

JUDGMENT



KALIM ARSHAD KHAN CHAIRMAN: Facts of the case are that appellant was serving as Constable in the respondent/department; that a complaint was

lodged by Mustan Ali, Zameen Hussain and Hidayat Ali son of Shaban Ali against the appellant in which they alleged that the appellant was dealing in narcotics; that on the basis of the said complaint an inquiry was conducted against him after issuing a charge sheet and statement of allegations; that after conducting enquiry the appellant was dismissed from service vide impugned order dated 28.04.2021; that feeling aggrieved, he filed departmental appeal which was rejected vide order dated 30.08.2021 and then he filed the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing their respective written replies raising therein numerous legal and factual objections. The defense 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.



4. Learned counsel for the appellant contended that the impugned orders of respondents dated 28.04.2021 and 30.08.2021 were illegal, arbitrary, perverse and also against the relevant rules and procedure. He further argued that respondent No.3 in his report had mentioned the statement of complainants, but did not append/annex the same in his report, therefore, it could safely be presumed that he had not recorded any statement of any person, more-so the statement of appellant had also not been recorded during inquiry proceedings. It was further submitted that no opportunity of cross examination had been given to appellant on the witnesses. He placed reliance on 1987 PLC (CS) 868. The inquiry had not been properly conducted by respondent No.3 as provided under Rule 6(ii) of

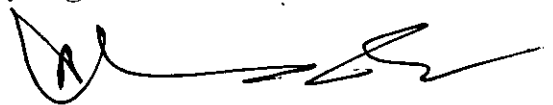
Police Rules, 1975 and thus illegality was committed by violating the ibid statutory rules, therefore, the impugned orders of respondents No.1 and 2 on the basis of departmental inquiry report were unjustifiable/unsustainable under the law and liable to be set aside. He requested that the appeal might be accepted.

5. On the other hand, learned District Attorney argued that the appellant while posted at Stadium Check Post, Upper Kurram was found involved was narcotics peddler and selling narcotics to minors as reported by locals of the area. According to him the appellant had been treated in accordance with law and rules. He requested that the appeal might be dismissed.

6. Enquiry report shows that it was conducted in a slipshod manner and law/rules had not been followed. The inquiry report does not show as to whether any statements of any witnesses were recorded and whether any opportunity of cross examination was afforded to the accused official/appellant, therefore, this report being flimsy is not sustainable. There is a need to conduct proper enquiry associating the appellant with the entire proceedings and afford him to cross examine the witnesses and provide fair opportunity of defense etc. The reliance is placed on the judgment of the august Supreme Court of Pakistan in *C.P No. 545-K/2021 titled "Raja Muhammad Shahid vs Inspector General of Police and others"* wherein the august Supreme Court of Pakistan was pleased to observe in para-4 as under:

"4. Heard the arguments. We have flicked through the enquiry report and find that various witnesses were associated in the enquiry and their statements were also recorded but neither any opportunity was afforded to the petitioner to conduct cross examination, nor is it mentioned that an opportunity of cross examination was afforded, but it was declined by the petitioner. In the abovementioned case of Usman Ghani Vs The Chief Post Master, GPO Karachi and others (2022 SCMR 745), it was held that the foremost aspiration of

conducting departmental inquiry is to find out whether a prima facie case of misconduct is made out against the delinquent officer for proceeding further. The guilt or innocence can only be thrashed out from the outcome of inquiry and at the same time it is also required to be seen by the learned Service Tribunal as to whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution. A distinction also needs to be drawn between a regular inquiry and preliminary/fact finding inquiry. A regular inquiry is triggered after issuing show cause notice with statement of allegations and if the reply is not found suitable then inquiry officer is appointed and regular inquiry is commenced (unless dispensed with for some reasons in writing) in which it is obligatory for the inquiry officer to allow an even-handed and fair opportunity to the accused to place his defence and if any witness is examined against him, then a fair opportunity should also be afforded to cross-examine the witnesses. The doctrine of natural justice communicates the clear insight and perception that the authority conducting the departmental inquiry should be impartial and the delinquent civil servant should be provided a fair opportunity of being heard and if the order of the competent authority based on inquiry report is challenged before the Service Tribunal then it is the legal duty of the Service Tribunal to give some reasons and there should be some discussion of evidence on record which is necessary to deliberate the merits of the case in order to reach a just conclusion before confirming, reducing or setting aside the penalty. Whereas in the case of Federation of Pakistan through Chairman Federal Board of Revenue FBR House, Islamabad and others Vs. Zahid Malik (2023 SCMR 603), it was held that the primary objective of conducting departmental inquiry is to grasp whether a clear-cut case of misconduct is made out against the accused or not. The guilt or innocence is founded on the end result of the inquiry. The learned Service Tribunal may observe whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). The purpose of the cross-examination is to check the credibility of witnesses to elicit truth or expose falsehood. When the statement of a witness is not subjected to the cross-examination, its evidentiary value cannot be equated and synchronized with such statement that was made subject to cross-examination, which is not a mere formality, but is a valuable right to bring the truth out. If the inquiry officer or inquiry committee is appointed for conducting inquiry in the disciplinary proceedings, it is an onerous duty of such Inquiry Officer or Inquiry Committee to explore every avenue so that the inquiry may be conducted in a fair and impartial manner and should avoid razing and annihilating the principle of natural justice which may ensue in the miscarriage of justice. The possibility cannot be ruled out in the inquiry that the witness may raise untrue and dishonest allegations due to some animosity against the accused



which cannot be accepted unless he undergoes the test of cross-examination which indeed helps to expose the truth and veracity of allegations. The whys and wherefores of cross-examination lead to a pathway which may dismantle and impeach the accurateness and trustworthiness of the testimony given against the accused and also uncovers the contradictions and discrepancies. Not providing an ample opportunity of defence and depriving the accused officer from right of cross-examination to departmental representative who lead evidence and produced documents against the accused is also against Article 10-A of the Constitution in which the right to a fair trial is a fundamental right. What is more, the principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, give explanation and contest it before he is found guilty and condemned.

7. Therefore, we allowed this appeal, the impugned order dated 28.04.2021 and order dated 30.08.2021 are set aside with the directions to the department to conduct de novo inquiry. In the course of de novo inquiry, ample opportunity of hearing should be provided to the appellant. The back benefits, if any, shall also be subject to the final outcome of the inquiry. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23rd day of May, 2023.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)