KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
M. AKBAR KHAN ... MEMBER (Executive)

Service Appeal No. 205/2021

Date of presentation of Appeal.....31.12.2021
Date of Hearing..... 29.05.2023
Date of Decision.....29.05.2023

Ayat Ullah, SHO, Police Station, Cantt: Kohat.
.....***Appellant***

Versus

1. **The Regional Police Officer,** Kohat Region Kohat.
2. **The District Police Officer,** Kohat.
.....(***Respondents***)

Present:

Mr. Ashraf Ali Khattak, Advocate.....For the appellant.

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

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ WITH POLICE RULES, 1975 AND RULE-19 OF GOVERNMENT SERVANTS (EFFICIENCY AND DISCIPLINE) RULE, 2011 AGAINST THE IMPUGNED FINAL ORDER OF THE RESPONDENT NO.1 BEARING ENDST NO.19063/EC DATED KOHAT THE 01.12.2021, WHEREIN HE REJECTED THE DEPARTMENTAL APPEAL OF THE APPELLANT PREFERRED AGAINST THE ORDER PASSED BY RESPONDENT NO.2 VIDE OB NO.590 DATED 30.08.2021, WHEREBY HE AWARDED PUNISHMENT OF STOPPAGE OF THREE INCREMENTS WITHOUT ACCUMULATIVE EFFECT AND INTERVENING PERIOD WAS TREATED AS UNAUTHORIZED LEAVE WITHOUT PAY.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts leading to filing of the instant appeal are that the complainant of case F.I.R No. 1593 dated 15.12.2019 registered at Police Station City Kohat U/S 365 P.P.C reported regarding the kidnapping of his son by a person in police uniform. The gunners of the appellant had allegedly telephonic contact with the charged accused before and after occurrence. The appellant was also suspected for contact with the accused on the eventful day i.e. before and after the occurrence. He was charged sheet alongwith statement of allegations, where-after, he submitted reply and after issuance of the final show cause notice, appellant was awarded major punishment of dismissal from service vide order dated 16.01.2020; that feeling aggrieved, the appellant preferred departmental appeal on 20.01.2020 which was disposed of on 25.06.2020; that the appellant then filed service appeal No. 3325/2020 which was partially accepted vide judgment dated 28.07.2021 and the case was remitted to the department with the direction to receive reply of the appellant to the final show cause notice within seven days of the receipt of this judgment and then to pass a speaking order according to law; that the respondents issued final show cause notice to the appellant which was replied by the appellant; that the respondent No. 2 imposed minor punishment of stoppage of three increments without cumulative effect and the intervening period is treated as un-authorized leave without pay on the principle of "No work, no pay" vide impugned order dated 31.08.2021; that the appellant preferred departmental

appeal against the impugned order on 26.09.2021 which was rejected on 30.11.2021, hence, 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 appellant contended that the appellant has not been treated in accordance with law, rules and policy governing the subject and acted in violation of Article, 3,4 and 10A of the Constitution of Pakistan, 1973. The appellant was neither charged by the complainant nor Enquiry Officer of the criminal case procured any evidence which could connect the appellant with alleged accusation provided in the charge sheet and statement of allegations. Since there was no evidence against the appellant, therefore, he has not made an accused person in criminal case. In the circumstances the penal impugned order was not tenable in the eyes of law and liable to be set aside. Lastly, he submitted that the instant appeal might be accepted.

5. This Tribunal in its earlier judgment in service appeal No. 3325/2020 titled "Ayat Ullah versus Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and two others" has found in para-6 and 7 as under:-

> *"6. In view of the above, without touching other merits of the case, this Bench is of the opinion that consequent upon the completion of inquiry conducted against the appellant he was served with final show cause notice on 15.01.2020 and he was required to show cause in response to the final show cause notice within 7 days of its delivery but on the very next date, i.e. on 16.01.2020, impugned order was passed, whereby major punishment of dismissal from service was imposed upon appellant. It has been mentioned in the impugned order that the appellant was served with final show cause notice, reply was received and found unsatisfactory, whereas, from the record it is crystal clear that appellant was not given proper opportunity and no such reply was submitted by the appellant to the final show cause notice.*
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> *7. Keeping in view the above discussion, this appeal is partially accepted and case is remitted to the Department with direction to receive reply of the appellant to the final show cause notice within 7 days of the receipt of this judgment and then to pass a speaking order according to law. Parties are left to bear their own costs. File be consigned to the record room."*

6. on remand, a show cause notice was issued to the appellant and he was heard in person, where-after vide order dated 31.08.2021, although the appellant was reinstated into service, but a minor punishment of stoppage of three annual increments with cumulative effect was imposed upon him. Aggrieved from the said impugned order, he filed departmental appeal, which was rejected on 30.11.2021 and, hence, this appeal. After remission of this case, the service appeals of two other officials, who were also proceeded as a result of the same enquiry, were allowed by this Tribunal vide judgment

dated 02.12.2021 reinstating them in service with all back benefits. The crux of the judgment of the Tribunal is that the complainant party of case FIR No. 1593 had patched up the matter with the nominated accused Farhad and main accused was discharged vide order of the learned Judicial Magistrate-II on 10.10.2022; that one of the appellant was Driver Constable with SHO, Ayat Ullah, present appellant; that he was not charged by the complainant in FIR; that the allegations in respect of contact of the appellant of those two appeals with the nominated accused Farhad in case FIR No. 1593 had also no force as the accused Farhad was not charged by the complainant party. Apart from above, in the statement of Anwar Shah, Inquiry Officer, the allegations against the appellant, could not be proved, as no evidence was collected regarding the factum of bringing the complainant and the abductee in the Vitz car (case property of same case), allegedly in the use of the appellant. Similarly, Israr Khan's statement was recorded during the enquiry, wherein too nothing, about the allegations against the appellant, was referred. Same is the case with the statement of Mst. Fatima Gul complainant of the criminal case. She rather denied the presence of the appellant with the Vitz Car. In the charge sheet besides other two irrelevant allegations one material allegation was that the appellant had contact with the accused on the eventful day i.e. before and after the occurrence. Regarding this allegation the enquiry officer has, though, found that the contact of the appellant with the accused of the criminal case was established, yet there is nothing, in support of the findings, placed on record, especially when the complainant did not charge the accused for the offence.

Therefore, the allegation, against the appellant could not be said to have been proved.

7. As a sequel to the above, we are constrained to allow this appeal and set aside the impugned orders dated 30.08.2021 and 01.12.2021. 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 29th day of May, 2023.***

KALIM ARSHAD KHAN
Chairman

MUHAMMAD AKBAR KHAN
Member (Executive)

Adnan Shah, P.A