

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1105/2018

Date of Institution ... 06.09.2018

Date of Decision... 06.06.2023

Syed Shahab-ul-Amin S/O Syed Islam Shah R/O Village Xupu, P/O Xupu,
Tehsil Mastuj District Chitral.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa (KPK) through the Secretary Home and
Tribal Affairs Khyber Pakhtunkhwa Peshawar and 04 others.

... (Respondents)

SYED GHUFRAN ULLAH SHAH,
Advocate

--- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MS. FAREEHA PAUL

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

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts forming background of the instant appeal are that the appellant was proceeded against departmentally on the allegations that he while on ATS course had been involved in case FIR No. 72 dated 20.10.2017 under sections 302/34 PPC Police Station Mastuj. On conclusion of the inquiry, the appellant was awarded major penalty of dismissal from service vide order dated 09.04.2018 passed by District Police Officer Chitral. The departmental appeal of the appellant was declined vide order dated 06.08.2018, hence the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous

legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. Learned counsel for the appellant argued that the mandatory provisions of Police Rules, 1975 were not complied in the inquiry proceedings and the impugned orders are thus nullity in the eye of law; that disciplinary action was taken against the appellant on the allegations of his involvement in the criminal case, however the appellant has been acquitted by the competent court of law, therefore, the competent Authority was not justified in awarding him the impugned penalty; that one Aslam Baig had died on 14.04.2017, while the appellant was charged for his murder through a belated registration of FIR after a delay of about 06 months; that the appellant was charged in the murder case for ulterior motive with mala-fide intention; that no evidence whatsoever was recorded by the inquiry officer in support of the allegations leveled against the appellant, therefore, the impugned orders are liable to be set-aside.

4. On the other hand, learned Assistant Advocate General contended that the appellant was involved in case FIR No. 72 dated 20.10.2017 under sections 302/34 PPC Police Station Mastuj, therefore, disciplinary action was taken against him in accordance with Police Rules, 1975 and the allegations against him stood proved in proper inquiry; that departmental proceedings are different from criminal proceedings, therefore, mere acquittal of the appellant in the criminal case could not be considered as ground for his exoneration in the departmental proceedings; that regular inquiry was conducted in the matter by complying all legal as well as codal

formalities and the appellant was afforded ample opportunity to defend himself; that statements of seven witnesses were also recorded under section 164 Cr.PC, which corroborated version of the complainant as given the FIR, therefore, the appellant has rightly been dismissed from service.

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

6. A perusal of the record would show that disciplinary action was taken against the appellant on the allegations that he was involved in case FIR No. 72 dated 20.10.2017 under sections 302/34 PPC Police Station Mastuj. Mr. Muhy-ud-Din DSP/HQ Chitral was appointed as inquiry officer in the matter. We have gone through the inquiry report, which would show that the inquiry officer has not bothered to record statement of any witness in support of the allegations leveled against the appellant. The inquiry officer had not even recorded the statement of complainant of the criminal case. What the inquiry officer had done is that the statements of the witnesses recorded under Section 164 Cr.PC in the court of learned Civil Judge/Judicial Magistrate Booni Chitral were annexed by him with the inquiry report. In absence of any cogent and convincing evidence in support of the allegation against the appellant, it is not understandable as to how the inquiry officer come to the conclusion that the allegations against the appellant stood proved.

7. The department had initiated disciplinary action against the appellant on the sole ground that he was charged in case FIR No. 72

dated 20.10.2017 under sections 302/34 PPC Police Station Mastuj, however the appellant has already been acquitted in the said case vide order dated 05.08.2022 passed by learned District & Sessions Judge Upper Chitral. Nothing is available on the record, which could show that the acquittal of the appellant has been challenged by the respondents through filing of appeal before the higher forum, therefore, the order of acquittal of the appellant has gained finality. It is now well settled that acquittal of an accused in a criminal case, even if based on compromise, would be considered as honourable. The appellant was dismissed from service on the sole ground of his involvement in criminal case, however upon acquittal of the appellant, the very ground on the basis of which disciplinary action was taken against him, has vanished away, therefore, the order of dismissal of the appellant cannot remain in field.

8. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

06.06.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)