

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 713/2019

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN  
MISS FAREEHA PAUL ... MEMBER(E)

Sherzada, Ex-Head Constable No. 1569, Elite Force, Khyber  
Pakhtunkhwa, Peshawar. .... (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Commandant Elite Force, Khyber Pakhtunkhwa,  
Peshawar. .... (Respondents)

Mr. Taimur Ali Khan,  
Advocate

... For appellant

Mr. Fazal Shah Mohmand,  
Addl. Advocate General

... For respondents

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Date of Institution.....28.05.2019

Date of Hearing.....23.05.2023

Date of Decision..... 23.05.2023

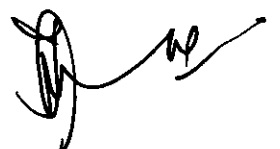
**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against three orders, one dated 16.01.2019, whereby major penalty of removal from service was imposed upon the appellant, second dated 26.02.2019 whereby his departmental appeal was rejected and third dated 07.05.2019, whereby his revision petition was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant might be reinstated into service with all back and



consequential benefits alongwith any other remedy which the Tribunal deemed fit and appropriate.


2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the police force in the year 1998 as Constable and after completion of due trainings, he was promoted to the rank of Head Constable and transferred to Elite Force, Khyber Pakhtunkhwa. While serving in the respondent department he was falsely implicated in a criminal case vide FIR No. 354 dated 17.09.2016 u/s 436/427/381/411 PPC, P.S Kohsar Islamabad and arrested on the same day. On the basis of the said FIR, inquiry was conducted against him in which no proper chance of association was provided to him as he was in jail at that time. He was released on bail on 19.12.2016 and reported for duty but he was informed that he had been dismissed from service vide order dated 23.11.2016. Feeling aggrieved, he filed departmental appeal and revision petition but both were rejected on 22.02.2017 and 23.05.2017, respectively. He filed service appeal No. 711/2017 before the Service Tribunal which was finally decided on 19.10.2018 and the impugned order dated 23.11.2016 was set aside and the appellant was reinstated in service. The respondents were directed to conduct denovo inquiry strictly in accordance with rules. In compliance of judgment dated 19.10.2018, the appellant was reinstated into service. Charge sheet alongwith statement of allegations was served upon him which was duly replied by him and he denied the allegations leveled against him. Denovo inquiry was conducted and on the recommendations of the enquiry officer, major punishment of removal from service was imposed upon the



appellant vide order dated 16.01.2019. Feeling aggrieved, he filed departmental appeal which was rejected on 26.02.2019. Then he filed revision petition before the PPO under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 which was also rejected on 07.05.2019; hence the present appeal on 28.05.2019.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail argued that the impugned orders were against the law, facts and norms of justice. According to him, the denovo enquiry was not conducted according to the prescribed procedure as no proper opportunity of defence was provided to him; neither statements of witnesses were recorded in the presence of the appellant nor he was given opportunity to cross examine them. He further argued that during the denovo enquiry, only the appellant was called by the inquiry officer, whereas the complainant, who was an ex-IGP, was not called. He further argued that as the criminal case was pending before the competent court of law when the inquiry was conducted, therefore under CSR-194-A, the respondent department should have suspended the appellant till the conclusion of criminal case but without conclusion of criminal case, he was removed from service. He requested that the appeal might be accepted as prayed for.



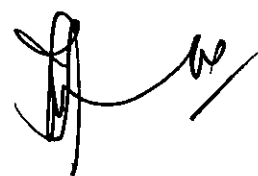
5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was involved in a criminal case u/s 436/427/381/411 and was arrested by the local police of P.S Kohsar, Islamabad. His guilt was established by the CCTV footage as on the day of occurrence, he was found inside the house of the complainant. He further argued that the appellant was released on bail on the basis of compromise with the complainant which further confirmed the guilt of the appellant. He contended that a proper enquiry was conducted and on the recommendations of the enquiry officer, the appellant was removed from service. He requested that the appeal might be dismissed.

6. After hearing the arguments and going through the record presented before us, it is evident that the appellant, while serving in the respondent/ department, was involved in a criminal case under Sections 436/427/381/411 PPC P.S Kohsar, Islamabad. The FIR dated 17.09.2016 was registered on the request of Nawab Akbar Khan Hoti, Ex-I.G of Police, Khyber Pakhtunkhwa. The appellant was arrested on the same day when the FIR was registered. The department initiated an inquiry against him and as a result he was dismissed from service, about which he allegedly came to know when he was released on bail. After exhausting the right of departmental appeal and revision petition, he filed a service appeal before this Tribunal, which was accepted with the directions to the respondents to reinstate the appellant and conduct denovo inquiry strictly in accordance with rules. In pursuance of the judgment of the Service Tribunal dated 19.10.2018, a denovo inquiry was ordered and charge sheet and statement of allegations were issued on



02.01.2019. In response to the charge sheet the appellant responded with the request to postpone the proceedings of inquiry till the final outcome of proceedings of criminal court/Sessions Judge, Islamabad, which was not accepted and the Deputy Commandant Elite Force, Khyber Pakhtunkhwa upheld his major punishment of removal from service vide his order dated 16.01.2019. Departmental appeal of the appellant as well as his Revision Petition were also rejected by the Commandant Elite Force vide order dated 26.02.2019 and AIG/Establishment vide order dated 07.05.2019 respectively.

7. While going through the proceedings of denovo inquiry, we noted that it had not been conducted in the light of rules, as directed by the Service Tribunal in its judgment dated 19.10.2018. While conducting the denovo inquiry, the inquiry officer did not record any statement of the complainant i.e the ex-IGP, Mr. Akbar Khan Hoti, as he was the material witness, without whose statement proper conclusion could not be arrived at. Further, no chance of cross examination was given to the appellant which is a clear violation of the rules. Another point, that was noted while going through the record, was that for conducting denovo inquiry, Mr. Waqar Ahmad, Acting SP/HQrs, Elite Force, Peshawar was appointed as Inquiry Officer who submitted his report on 07.01.2019. The impugned order dated 26.02.2019, passed by the Commandant Elite Force, as against that, while disposing of the departmental appeal of the appellant, mentions denovo inquiry conducted by one Mr. Salim Riaz. A report dated 25.02.2019, forwarded to the Commandant Elite Force Khyber Pakhtunkhwa, with reference to his



letter dated 13.02.2019, by Salim Riaz, is available on record. According to that report, the Inquiry Officer, Mr. Salim Riaz, went through certain papers that were sent to him. He collected the service record of the appellant. He further sent two competent police officials of Elite Force to Islamabad for collecting evidence, summoned the appellant and recorded his fresh statement. All this procedure adopted by the Inquiry Officer indicates that he totally depended on already available documents and never bothered to go to the scene of actual happening to collect the evidence himself. Moreover, he only recorded the statement of the appellant, without giving him any opportunity to cross examine the witnesses, mentioned in the denovo inquiry as well as the complainant. These shortcomings make this inquiry faulty and ironically the Commandant Elite Force has based his order on the same Inquiry report.

8. Above all, FIR had already been registered and the case was subjudice in the court of law, therefore, it was in the fitness of the matter to place the official under suspension till the outcome of proceedings in the court of Judicial Magistrate, Islamabad. Learned counsel for the appellant produced an order dated 17.11.2022 passed by the Judicial Magistrate in case FIR No. 354/16 dated 17.09.2016 vide which the appellant has been acquitted of the charges leveled against him. The detailed judgment provides that during the course of hearing the complainant of the FIR, Mr. Akbar Khan Hoti, appeared before the Honourable Judicial Magistrate and submitted a compromise deed signed by him and the accused (appellant in the present service appeal) alongwith a statement recorded overleaf the compromise



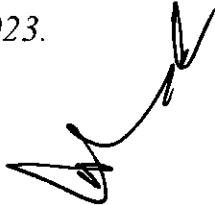
deed, wherein he categorically stated that he had forgiven all accused persons namely Sherzada and three others in the name of Allah and that he did not want to pursue the case any further and that he had no objection on the acquittal of the accused persons from that case. It is an undisputed fact that every acquittal is an honourable acquittal.

9. The above mentioned facts make this entire process faulty. It seems that the respondents have not taken the directions of this Tribunal given in its judgment dated 19.10.2018 seriously and conducted a denovo inquiry and later a re-inquiry, in a slipshod manner, without taking into consideration the requirements of the rules, was shown to have been conducted.

10. In view of the foregoing, this service appeal is allowed with the directions to the respondents to conduct the inquiry strictly according to the rules by providing a fair opportunity to the appellant to present his case and cross examine the witnesses and the complainant in order to arrive at an informed decision. The process is to be completed within 60 days of the receipt of copy of this judgment. The date of receipt of judgment be acknowledged. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 23<sup>th</sup> day of May, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
CHAIRMAN