

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

Service Appeal No. 607/2019

BEFORE: ROZINA REHMAN --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Mr. Abid Hussain, Ex-Constable No. 34 Capital City Police Peshawar
..... (*Appellant*)

VERSUS

1. The Senior Superintendent of Police (Operation), Khyber Pakhtunkhwa Peshawar.
2. The Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar
..... (*Respondents*)

Present:-

SYED NOMAN ALI BUKHARI,
Advocate --- For Appellant.

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

Date of Institution.....19.04.2019
Date of Hearing.....04.04.2023
Date of Decision..... 04.04.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of this appeal, the order dated 23.12.2015 and 22.03.2019 may please be set aside and the appellant may be reinstated into service with all back benefits. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of appellant.”

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02. Brief facts of the case are that the appellant, while serving as Constable in the Police department was imposed major penalty of dismissal from service vide order dated 23.12.2015 on the allegation of his involvement in criminal case vide FIR No. 607 dated 24.08.2015 U/S 365A-155C-347/147-149 PPC PS Khazana. The appellant was discharged/acquitted vide order dated 27.07.2018 by the competent court, thereafter the appellant filed departmental appeal on 06.08.2018 which was rejected vide order dated 22.03.2019 hence the present service appeal on 19.04.2019.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant argued that the impugned orders dated 23.12.2015 & 22.03.2019 are against the law, facts, norms and principle of natural justice hence liable to be set aside. Learned counsel for the appellant further argued that upon registration of FIR against the appellant, the respondents were required to suspend the appellant under CSR-194, till conclusion of criminal case pending against him, but the respondent did not wait for conclusion of the criminal case, rather initiated disciplinary proceedings at the back of the appellant. Learned counsel for the appellant contended that neither proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and the appellant was condemned unheard; that no charge

sheet/statement of allegations was served upon the appellant. He further argued that the appellant was honorably discharged/acquitted by the trial court vide judgment dated 27.07.2020. Learned counsel for the appellant explained that after acquittal of the appellant, there was no material available with the respondents to maintain the major penalty of dismissal from service. On the question of limitation, learned counsel for the appellant argued that similar nature service appeal titled "Farman Ali Vs. Police Department and others", was accepted by this Hon'ble Tribunal and according to the Superior Court Judgment no limitation run in the cases where same relief was already granted. To strengthen his arguments he relied on PLD 2010 Supreme Court 695, 2021 SCMR 1313 and judgment of Service Tribunal in Service Appeal No. 265/2017.

05. Learned Deputy District Attorney on the other hand contended that the appellant while posted at PS Khazana was proceeded against on the allegations of his involvement in criminal case vide FIR No. 607 dated 24.08.2015 U/S 365A-155C-347/147-149 PPC. He further contended that sub-rule 3 of Rule-5 of Police Rules 1975 empowers the competent authority to dispense with the inquiry proceedings and serve show cause notice on the accused official/officer. He next contended that the criminal and departmental proceedings are quite different and can run side by side, therefore, departmental proceedings was concluded without waiting of criminal case registered against the appellant. Learned Deputy District Attorney pointed out that impugned order of dismissal from service was issued on 23.12.2015, whereas the appellant filed departmental appeal on 06.08.2018, which is badly time barred; that

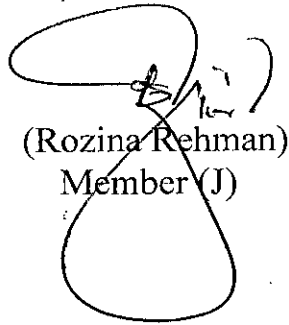
when an appeal before departmental authority is time barred, service appeal before Service Tribunal is incompetent. It was the arguments of learned Deputy District Attorney that all the codal formalities were fulfilled and the punishment awarded to the appellant in accordance with law and rules.

06. Perusal of record would reveal that after registration of FIR dated 24.08.2015, departmental proceedings were initiated against the appellant vide order dated 23.12.2015. In the meanwhile, he was acquitted from the charges vide order dated 27.07.2018 i.e. much later than impugned order. It is pertinent to mention here that the prudent way and the principle of justice demand that the respondents should have waited for the culmination of criminal proceedings against the appellant and thereafter initiation of departmental proceedings would have been justified, fair and transparent. Besides, it has been held by the superior courts that all acquittals are considered honorable and there can be no acquittal which may be said to be dishonorable. Nomination/involvement of the appellant in the criminal case was the sole ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service. It is established from the record that charges of his involvement in criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. Reliance is placed on 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.


07. In view of the above, the appeal is accepted and appellant is reinstated into service with all back benefits. Costs shall follow the event.

Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 04th day of April, 2023.*



(Rozina Rehman)
Member (J)



(Muhammad Akbar Khan)
Member (E)