

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 13290/2020

Date of Institution ... 29.10.2020

Date of Decision... 13.06.2023

Nasir Mehmood, Ex-Constable No. 989 District Police Mansehra.
... (Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 02 others.
... (Respondents)

MR. MOHAMMAD ASLAM TANOLI,
Advocate --- For appellant.


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

MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)
MR. MUHAMMAD AKBAR KHAN --- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the appellant has invoked the jurisdiction of this Tribunal with the prayer copied as below:-

“On acceptance of instant service appeal both the orders dated 23.08.2019 and 12.10.2020 may graciously be set-aside and the appellant be reinstated in his service from the date of dismissal with grant all consequential service back benefits.”

 2. Precise facts alleged by the appellant in his appeal are that he had served the Police Department as Constable for about 11 years and always performed his assigned duties with devotion, honesty and to the entire satisfaction of his superiors; that while serving in

Police Lines Mansehra, a false and fabricated complaint was filed against him by one Mst. Atiya Khan that he was having illicit relations with her and that her photographs were taken and huge amount was also taken by the appellant from her by way of blackmailing; that an FIR was registered against the appellant and he was behind the bars, when a show-cause notice dated 09.08.2019 was delivered to him in Jail on 20.08.2019, which was responded on 23.08.2019 by him but not with concentration of mind as he was very much disturbed due to his implication in a false and fabricated case; that without any proper departmental inquiry, the appellant was dismissed from service by the District Police Officer Mansehra vide order dated 23.08.2019 and that too without taking into consideration his reply to the show-cause notice; that the inquiry officer did not associate the appellant with the inquiry proceedings and has failed to prove anything wrong against the appellant; that the departmental Authorities were under obligation to have waited for outcome of the criminal case but the competent Authority dismissed the appellant in a hasty manner without any legal justification. Feeling aggrieved, the appellant preferred departmental appeal dated 14.09.2019 before the Regional Police Officer, Hazara Region, Abbottabad, which was rejected vide order dated 12.10.2020, hence the instant service appeal.

3. On receipt of the appeal and its admission to full hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing

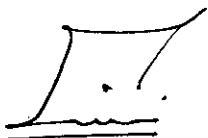
written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his appeal. On the other hand, learned Deputy District Attorney for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.
5. Arguments have already been heard and record perused.
6. A perusal of the record would show that disciplinary action was taken against the appellant on the allegations reproduced as below:-

"that one Mst, Atiya Khan w/o Bilal Ahmad r/o Dhariyal Batang PS Shinkiari has submitted an application against you to worthy Regional Police Officer, Hazara Region Abbottabad and alleged for sexual harassment as well as extracting Rs. 25 lac and 10 tolas gold from her fraudently. On the order of worthy Regional Police Officer, Hazara Region Abbottabad preliminary enquiry was conducted by Addl: SP Abbottabad. From the perusal of preliminary enquiry it transpired that he has illicit relation with the complainant. The complainant has further blamed him that he forced her to get divorce/faskh-e-nikah from her husband. From the above alleged act on his part, it transpired that he is loose character and a black stigma for the entire police force."

During the inquiry proceedings, complainant Mst. Atiya Khan and her husband Bilal Ahmad as well as complainant's mother

namely Tazeem Akhtar were examined. They have supported the allegations leveled by the complainant Atiya Khan against the appellant in her complaint lodged before the Regional Police Officer Hazara Region Abbottabad. According to the inquiry report, the appellant did not appear before the inquiry officer, however submitted written reply dated 15.07.2019 in his defence. In view of non-appearance of the appellant before the inquiry officer, the contention of learned counsel for the appellant that he was not provided an opportunity of cross examination could not be considered as a dent in the inquiry proceedings. The inquiry officer has observed in his findings as below:-



“The undersigned based his findings by mostly relying upon documentary and technical evidence and relevant facts.

As far as the question of leaking of objectionable pictures with criminal intent is concerned, the self explanatory contents of shared images as well as texts are self-evident. Besides it, an FIR 04/2019 has also been registered by FIA in this regard.

The accused constable could have used the objectionable contents to continue illicit relations with the complainant through blackmailing. However, the complainant had enough opportunity to pre-empt and break his silence in time by disclosing the fact and having recourse to law enforcement authorities in due time.”

7. The record annexed by the respondents with their reply/comments supports the allegations against the

appellant. Moreover, the appellant in his reply to the final show-cause notice has taken the stance that the complainant used to send her vulgar photos to the appellant on his personal cell number. The appellant has thus in a way admitted that he was having vulgar photos of the complainant in his cell phone. The appellant has further stated in his reply to the final show-cause notice that complainant Mst. Atiya Khan was not happy on her marriage with Bilal Ahmad and desired to contract marriage with the appellant. Complainant's husband namely Bilal Ahmad is close relative of the appellant, therefore, the appellant was required to have brought all these facts in to knowledge of Bilal Ahmad as well as other elders of the family but no such effort was made by the appellant, which raises question mark on his bona-fide intention. The appellant being a police official was supposed to protect honour of the citizens but he himself got involved in immoral acts, which amount to gross misconduct.

8. In respect of the same allegations, the appellant was also charged in case FIR No. 04/2019 under section 506 PPC/21 PECA Police Station FIA Cyber Crime Abbottabad. Vide order dated 30.01.2021 passed by District & Sessions Judge, the appellant has been acquitted under section 265-K Cr.PC in the afore-mentioned criminal case. Now the question for determination before us is that as to whether the penalty awarded to the appellant in the departmental proceedings could sustain despite acquittal of the appellant in the criminal proceedings? In order to appreciate the

issue in a proper way, it would be advantageous to reproduce Rule-16:3 of the Khyber Pakhtunkhwa Police Rules, 1934, which is as below:-

16:3. Action following on a judicial acquittal. -

(1) *When a Police Officer has been tried and acquitted by a criminal court he shall not be punished departmentally on the same charge or on a different charge based upon the evidence cited in the criminal case, whether actually led or not, unless –*

(a) *the criminal charge has failed on technical grounds; or*

(b) *in the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over; or*

(c) *the Court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or*

(d) *the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or*

(e) *additional evidence admissible under rule 16.25(1) in departmental proceedings is available.*

(2) *.....”*

9. In view of Sub Rule (1) of Rule-16:3 of the Khyber Pakhtunkhwa Police Rules, 1934, mere acquittal of an accused employee would not automatically absolve him from taking of departmental action by departmental Authority. Worhty apex court in its judgment reported as 2022 SCMR 1796 has held as below:-

“12. *The learned counsel for the respondent argued that the respondent was booked in the NAB reference as well, but he was acquitted by the Accountability Court. In response, the learned DAG argued that an acquittal appeal is pending in the Sindh High Court. The underlying principle of initiating disciplinary proceedings is to ascertain whether the charges of misconduct against the delinquent are proved or not, whereas prosecution under the penal*

statutes is altogether different where the prosecution has to prove the guilt of accused beyond any reasonable doubt. The common sense or realism of criminal trial is to mete out punishment of the offences committed by the accused while departmental inquiry is started off for making inquiry into the allegations of misconduct in order to maintain and uphold discipline and decorum in the institution and efficiency of the department to strengthen and preserve public confidence.

13. A civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge. While facing expulsive proceedings on departmental side on account of his indictment on criminal charge, he may not save his job in the event of acquittal as the department may still have reasons to conscientiously consider his stay in the service as inexpedient. The department can assess the suitability of a civil servant, confronted with a charge through a fact finding method, which somewhat inquisitorial in nature, but without the heavier procedural riders otherwise required in criminal jurisdiction to eliminate any potential risk of error. Ref: Dr. Sohail Hassan and others v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708) and District Police Officer, Mianwali and 2 others v. Amir Abdul Majid (2021SCMR 420)."

10. Similarly, worthy apex court in its judgment reported as 2022

SCMR 1770 has held as below:-

"11. The rationale and astuteness of initiating disciplinary proceedings by the employer is to unmask whether the charges of misconduct leveled against the delinquent are proved or not and in case his guilt is proved, what action should be triggered against him under the applicable Service Laws, Rules and Regulations, which may include the imposition of minor or major penalties in accordance with the fine sense of judgment of the competent Authority. Quite the reverse, the acuteness and raison d'être to set into motion the criminal prosecution is altogether different where the prosecution has to prove the guilt of accused beyond any reasonable doubt. Both have distinctive characteristics and attributes with regard to the standard of proof. It is well settled exposition of law that the prosecution in the criminal cases as well as the

departmental inquiry on the same allegations can be conducted and continued concurrently at both venues without having any overriding or overlapping effect. The object of criminal trial is to mete out punishment of the offences committed by the accused while departmental inquiry is inaugurated to enquire into the allegations of misconduct in order to keep up and maintain the discipline and decorum in the institution and efficiency of department to strengthen and preserve public confidence. In the departmental inquiry, the standard of proof is that of "balance of probabilities or preponderance of evidence" but not "proof beyond reasonable doubt", which strict proof is required in criminal trial because the potential penalties are severe. In the case of Dr. Sohail Hassan Khan and others vs. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), this Court held that a civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge arising out of the same impugned transaction; these two are entirely different jurisdictions with different standards of proof as well as procedures; criminal prosecution requires strict proof through a narrowly jacketed procedure and, thus, State's failure on criminal plane does not provide shield of double jeopardy to a delinquent officer. Whereas in the case of District Police Officer, Mianwali and 2 others vs. Amir Abdul Majid (2021 SCMR 420), this Court again held that a civil servant facing expulsive proceedings on departmental side on account of his indictment on criminal charge may not save his job in the event of acquittal as the department still may have reasons/material, to conscionably consider his stay in the service as inexpedient; there are additional reasons to disregard his acquittal inasmuch as criminal dispensation of justice involving corporeal consequences, comparatively, requires a higher standard of proof so as to drive home the charge beyond doubt, an exercise to be routed through a procedure stringently adversarial, therefore, factuality of the charge notwithstanding, procedural loopholes or absence of evidence, sufficient enough to sustain the charge, at times occasion in failures essentially to maintain safe administration of criminal justice out of abundant caution. Departmental jurisdiction, on the other hand, can assess the suitability of a civil servant, confronted with a charge through a fact finding method, somewhat inquisitorial in nature without heavier procedural riders, otherwise required in



criminal jurisdiction to eliminate any potential risk of error, therefore, the Tribunal has undoubtedly misdirected itself in reinstating the respondent, considering his acquittal as the sole criterion in isolation to the totality of circumstances where under he had succeeded to vindicate his position. Reference may be made to the cases of Dr. Sohail Hassan Khan and others v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), Liaqat Ali v. Government of N.W.F.P. through Secretary Health, Peshawar and others (2011 PLC (C.S) 990), Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan (PLD 2010 SC 695), Government of Pakistan through Secretary Ministry of Finance and others v. Asif Ali and others (2007 PLC (C.S.) 271, Superintendent of Police, D.I.Khan and others v. Ihsanullah (2007 SCMR 562), Sami Ullah v. Inspector-General of Police and others (2006 SCMR 554), Ractor Comsats v. Ghulam Umar Kazi (2006 SCMR 1894), Executive Engineer and others v. Zahid Sharif (2005 SCMR 824), Khaliq Dad v. Inspector-General of Police and 2 others (2004 SCMR 192), Arif Ghafoor v. Managing Director, H.M.C, Texila and others (PLD 2002 SC 13), Mir Nawaz Khan v. Federal Government through Secretary, Ministry of Finance, Islamabad and 2 others (1996 SCMR 315), Talib Hussain v. Anar Gul Khan and 4 others (1993 SCMR 2177), Mud Izharul Ahsan Qureshi v. Messrs P.I.A.C. (1994 SCMR 1608), Muhammad Nazir v. The Superintendent of Police, Toba Tek Singh and others (1990 SCMR 1556) Muhammad Tufail v. Assistant Commissioner/Collector (1989 SCMR 316), Muhammad Saleem v. Superintendent of Police, Sialkot and another (PLD 1992 SC 369), Muhammad Ayub v. The Chairman, Electricity Board, WAPDA, Peshawar and another (PLD 1987 SC 195), The Deputy Inspector-General of Police, Lahore and others v. Anis-ur-Rehman Khan (PLD 1985 SC 134) and Begum Shams-un-Nisa v. Said Akbar Abbasi and another (PLD 1982 SC 413).

11. The allegations against the appellant stood proved in a regular inquiry, therefore, his acquittal in the criminal case by itself could not entitle him to his exoneration in the departmental proceedings. It is a well settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the

criminal charge, provided his misconduct is proved in departmental proceedings.

12. In view of the above discussion, it is held that the appeal in hand is without merit, hence dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

13.06.2023



(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)