

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 460/2017

Date of Institution ... 15.05.2017

Date of Decision... 16.06.2023

Asghar Khan, Ex-Constable No. 5503, Police Line, Peshawar.
... (Appellant)

VERSUS

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

SYED NOMAN ALI BUKHARI,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

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

JUDGMENT:

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

“that on acceptance of this appeal, the orders dated 20.04.2017 and 24.02.2017 may be set-aside and the respondents may be directed to reinstate the appellant with all back and consequential benefits. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of appellant.”

2. Precise facts forming the background of the instant appeal are that the appellant alongwith Head Constable Javed No. 1803 as well as Constables Ashfaq No. 4176 and Akhtar Ali 2980 were deputed for

escort duty of prisoner namely Syed Ali Shah Bukhari, who was involved in a criminal case under sections 365-B/376/34 PPC and was admitted in Lady Reading Hospital Peshawar for medical treatment. The appellant was proceeded against departmentally on the allegations reproduced as below:-

“Reportedly, HC Javed No. 1803/guard commander alongwith FC Asghar No. 5503, FC Akhtar Ali No. 2980 & FC Ashfaq No. 4176 while posted at Police Lines were deputed for the security duty with prisoner namely Syed Ali Shah Bukhari involved in case u/s 365-B/376/34-PPC. Being guard commander, HC Javed 1803 has left 02-constables Akhtar Ali No. 2980 & Ashfaq No. 4176 on his own discretion while only one constable Asghar No. 5503 retained for security duty. Due to their negligence & cowardice in the discharge of lawful duty the said prisoner was escaped from their custody. A case to the effect was registered vide FIR No. 682 dated 22.12.2016 u/s 223/224-PPC PS East Cantt: Peshawar.”

3. On conclusion of the inquiry, final show-cause notice was issued to the appellant, who submitted his reply. The appellant was awarded major punishment of dismissal from service vide order bearing O.B No. 882 dated 24.02.2017. The appellant challenged his punishment through filing of departmental appeal, which was dismissed vide order dated 20.04.2017 passed by Capital City Police Officer Peshawar, hence the instant service appeal.

4. On receipt of the appeal and its admission to full hearing, respondents were summoned, who appeared through their

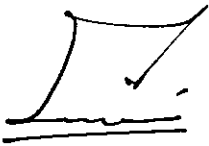
representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

5. Learned counsel for the appellant contended that the appellant had not committed any misconduct and the inquiry proceedings were conducted against him in sheer violation of mandatory provision of Police Rules, 1975. He next argued that the inquiry officer did not make any effort to dig out the real facts and the appellant was not even provided any opportunity of cross-examination. He next argued that as the appellant was under the command of Head Constable Javed, therefore, he could not be held liable for any lapse in duty on his part. He further argued that the appellant was having a long unblemished service record and had performed his duty with honesty and devotion. He also argued that the appellant has been treated with discrimination as the constables namely Ashfaq No. 4176 and Akhtar Ali 2980 were awarded minor punishments of stoppage of one year annual increment without cumulative effect, which the appellant has been awarded major penalty of dismissal from service. In the last he argued that as the appellant has already been acquitted in the criminal case registered against him on the same allegations, therefore, he is entitled to be reinstated in service with all back benefits.

6. On the other hand, learned Deputy District Attorney has argued that the appellant and Head Constable Javed No. 1803 went along with the accused to a restaurant for taking meal and thus provided an opportunity to the accused for his escape. He next argued that the appellant was an experienced constable, however instead of taking the


accused to jail, he accompanied the prisoner to the restaurant for taking meal, which was gross misconduct on part of the appellant. He further argued that such like employees of the police department could not be retained in police service for the reason that they bring bad name to the police department by extending unlawful cooperation to accused as well as other law violating people. He next contended that the escaped accused was involved in so many other criminal cases and the appellant had fully facilitated him in making his escape good. He also argued that the appellant has confessed his guilt in the inquiry proceedings, therefore, his acquittal in the criminal case is of no avail to him.

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



8. The facts emanating from the record are that one Syed Ali Shah Bukhari was involved in a criminal case registered under Sections 365-B/376/34 PPC and was admitted in Lady Reading Hospital Peshawar. The appellant alongwith Guard Commander Javed as well as FCs namely Akhtar Ali 2980 and Ashfaq No. 4176 were deputed for security duty with the accused mentioned above. The accused was discharged from the hospital on 22.12.2016 and was to be taken to jail, however the appellant alongwith Head Constable Javed accompanied him to a restaurant located in Town area and later on the accused made his escape good. The competent Authority conducted regular inquiry into the matter by issuing charge sheet as well as statement of allegations to the appellant. Superintendent of Police City

was appointed as inquiry officer in the matter. In his reply to the charge sheet issued to the appellant, he has categorically admitted that instead of taking the accused to jail, he alongwith Javed took him to a restaurant for taking meal. He has further admitted in his reply that after taking meal, Head Constable asked him to stay in the restaurant, while he alongwith the accused went to *Karkhano Market* for shopping. The appellant has also admitted that the accused was not even handcuffed. The appellant was though under the Command of Head Constable Javed at the relevant time, however he deliberately avoided to bring the matter into the knowledge of his high-ups. This clearly shows that the appellant had willingly accompanied Head Constable Javed and the accused for taking meal in the restaurant.

 Moreover, when Head Constable Javed and the accused left for shopping in *Karkhano Market*, the appellant remained in the restaurant for about 03 hours but even then he did not inform his high-ups about the episode. The appellant was an experienced police official, however through his casual attitude and sheer negligence in performance of the official duty, the accused Syed Ali Shah Bukhari made his escape good. The appellant was thus liable of committing gross misconduct.

9. One of the contention of learned counsel for the appellant is that co-accused namely Ashfaq No. 4176 and Akhtar Ali 2980 were awarded minor penalties of stoppage of one annual increment without cumulative effect, while the appellant has been awarded major penalty of dismissal from service. The afore-mentioned contention of learned counsel for the appellant is having no force for the reasons that on the

relevant day, the above mentioned constables were sent on *Shahbashi* by Head Constable Javed. They had not accompanied the accused to the restaurant and their role was quite distinguished from the role of the appellant.

10. In respect of the same allegations, a criminal case against the appellant as well as others was also registered vide FIR No. 682 dated 22.12.2016 under sections 223/224 PPC Police Station East Cantt Peshawar. Vide judgment dated 08.12.2022, the appellant has been acquitted in the said 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)

11. 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:-

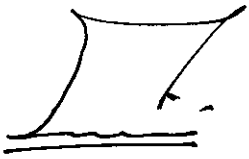
“12. The learned counsel for the respondent argued that the respondent was booked in the NAB reference as well, but he was acquitted by the Accountability Court. In response, the learned DAG argued that an acquittal appeal is pending in the Sindh High Court. The underlying principle of initiating disciplinary 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 conscionable 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,

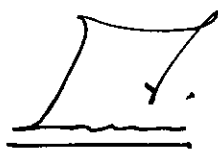
Mianwali and 2 others v. Amir Abdul Majid (2021SCMR 420).”

12. Similarly, august Supreme Court of Pakistan 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 Ghaffoor 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).

13. As aforesaid, the allegations against the appellant stood proved in the departmental proceedings, 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.

14. Consequent upon the above discussion, it is held that the appellant in hand is without merit and is, therefore dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.06.2023


(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)