

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 456/2017

Date of Institution ... 11.05.2017

Date of Decision... 16.06.2023

Javed Ex-Head Constable No. 1803, Capital City Police Peshawar.
... (Appellant)

VERSUS

Capital City Police Officer, Peshawar and 02 others.
... (Respondents)

MR. MUJEEB-UR-REHMAN
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:- Brief facts of the case are that the appellant alongwith Constables namely Asghar No. 5503, 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 for medical treatment in Lady Reading Hospital Peshawar. 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. All this amounts to gross misconduct on their parts and against the discipline force."

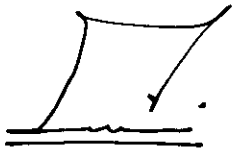
2. On conclusion of the inquiry, final show-cause notice was issued to the appellant, who submitted his reply. The appellant was awarded major punishment of dismissal from service vide order bearing O.B No. 882 dated 24.02.2017. The appellant challenged his punishment through filing of departmental appeal,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

3. On receipt of the appeal and its admission to full hearing, respondents were summoned, who appeared through their representatives and contested the appeal by way of filing written replies raising therein numerous legal as well as factual objections.

4. 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 further argued that

the appellant was having a long unblemished service record and had performed his duty with honest and devotion. He also argued that the appellant has been treated with discrimination as the constable namely Ashfaq No. 4176 and Akhtar Ali 2980 were awarded minor punishments of stoppage of one year annual increment without cumulative effect while 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.

5. On the other hand, learned Deputy District Attorney has argued that the appellant alongwith other police officials were deputed for security duty with the prisoner namely Syed Ali Shah Bukhari, who was required to be shifted with jail, however the appellant and constable Asghar No. 5503 went alongwith the prisoner to a restaurant for taking meal and thus provided an opportunity to the prisoner in his escape. He next argued that the appellant was an experienced constable, however instead of taking the prisoner 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 whole of the police department by extending unlawful cooperation to t prisoners 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.

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

7. A perusal of the record would show 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 for medical treatment. The appellant was deputed as Guard Commander, while FCs namely Asghar No. 5503, Akhtar Ali 2980 and Ashfaq No. 4176 were also 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 appellant alongwith constable Asghar took 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 Constable Asghar took him to a restaurant for taking meal. He has further admitted in his reply that after taking meal, he alongwith the accused went to *Karkhano Market* for shopping. He has further admitted that on the way back from *Karkhano Market*, he left



the accused in the car and went to the restaurant to inform Constable Asghar, however on coming back, they came to know that the accused had escaped. The appellant in his reply also admitted that the accused was not even handcuffed. It is thus crystal clear that in his reply to the charge sheet issued to the appellant, he has admitted his guilt. The allegations against the appellant stood proved in a regular inquiry. The appellant was an experienced police official, however through his casual attitude and sheer negligence in the performance of the official duty, the accused Syed Ali Shah Bukhari made his escape good. The appellant was thus liable for committing gross misconduct.



8. One of the contentions 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 by the appellant on *Shahbashi*. They had not accompanied the accused to the restaurant and their role was quite distinguished from the role of the appellant.

9. In respect of the same allegations, a criminal case was also registered against the appellant as well as others 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 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)”

10. 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)."

11. 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 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).

12. 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.

13. 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)