

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
**AT CAMP COURT ABBOTTABAD**  
**Service Appeal No. 9406/2020**

BEFORE: **MR. KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**MRS. RASHIDA BANO** ... **MEMBER(J)**

**Mohiz Shahzad** (Ex-Constable No. 531) District Police Abbottabad, R/O  
House No. 1392, Mohalla Ferozudin, Tanchi Chowk Abbottabad.  
.... (*Appellant*)

Versus

1. **Inspector General** of Police Khyber Pakhtunkhwa, Peshawar.
2. **Deputy Inspector General** of Police Hazara Range, Abbottabad.
3. **District Police Officer**, Abbottabad.

.... (*Respondents*)


Mr. Adil Khan Jadoon  
Advocate ... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney ... For respondents

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Date of Institution.....11.08.2020  
Date of Hearing.....19.06.2023  
Date of Decision..... 19.06.2023

**JUDGEMENT**



**RASHIDA BANO, MEMBER (J):** The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of the instant service appeal orders dated 18.12.2019 passed by the respondent No.3 and 07.07.2020 passed by respondent No. 2 be declared illegal, unlawful, void ab-initio and be set aside and the appellant be reinstated in service with all back benefits.”



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable in the District Police at Abbottabad. During service the appellant was allegedly involved in case FIR No. 709 dated 18.09.2019 under Section 9C-CNSA Police Station Sarband, District Peshawar and in one another FIR No. 645 dated 01.09.2019 under Section 324 PPC Police Station City Abbottabad. The involvement of the appellant in case FIR NO. 709 is that because friend of the appellant had taken vehicle of the appellant, which was apprehended by the local police and the appellant was released on bail vide order dated 28.02.2020. The involvement in second FIR No. 645 of Police Station City Abbottabad the complainant affected compromise with the appellant and learned Additional District & Sessions Judge-V Abbottabad, vide order dated 21.03.2020, acquitted the appellant. On the basis of those charges, disciplinary proceedings were initiated against him, which resulted into imposition of major penalty of dismissal from service vide order dated 18.12.2020. Thereafter the appellant filed review petition on 13.05.2020, which was dismissed vide order dated 07.07.2020, hence the present service appeal.

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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant had not been treated in accordance with law and rules on the subject, hence the impugned order are liable to be set aside. He contended that no proper inquiry had been conducted and the appellant had not been provided any opportunity of personal hearing and the inquiry being conducted one sided is liable to be set aside. He further argued

that mere involvement in such case was not sufficient for granting major punishment of dismissal from service. That the appellant was acquitted from the charges leveled against him in case FIR No. 645 of PS City Abbottabad and was released on bail in case FIR no. 709 of PS Sarband, Peshawar. Before commencement of trial in case FIR No. 709, the order passed by respondent was against law and liable to be set aside. He therefore, requested for acceptance of the present service appeal.

5. The learned Deputy District Attorney contended that the appellant was involved in case FIR No. 709 dated 18.09.2019 under Section 9C-CNSA/1415CCHSA, Police Station Sarband, District Peshawar and in case FIR No. 645 dated 01.09.2019 under Section 324 PPC Police Station City Abbottabad. The acts and omission of the appellant were misconduct under Khyber Pakhtunkhwa Police Rules 1975. The charge sheet alongwith statement of allegations were issued to the appellant by the Additional Superintendent of Police Abbottabad vide order dated 12.09.2019. Mr. Shamraiz Khan SDPO Abbottabad was appointed as Inquiry Officer who conducted departmental inquiry and submitted finding report on 28.10.2019. In which he held that the charges were proved against the appellant and recommended for punishment. Consequently, final show cause notice was issued to the appellant, who had not given satisfactory reply in response and he was called in orderly room for personal hearing. The appellant failed to adduce any defense. Therefore, being found guilty of misconduct the appellant was awarded major punishment of dismissal from service

6. From the record it is evident that the appellant was condemned unheard by the inquiry officer because he was confined in judicial lock-up at the time of conducting inquiry by inquiry officer in criminal case bearing FIR No. 645 dated

01.09.2019 Police Station City Abbottabad. In their reply the respondents mentioned that inquiry was conducted and proper chance of personal hearing was provided to the appellant but perusal of inquiry report, annexed with the comments, reveals that the appellant was not brought before the inquiry officer, so from the inquiry report it is proved that appellant was not associated with the enquiry proceedings nor was he provided a chance of hearing in accordance with Article 10-A of the Constitution of Islamic Republic of Pakistan 1973, operating of fair trial and inquiry must be provided to every citizen of Pakistan which is missing in the instant case of the appellant because no opportunity of personal hearing and cross-examination given to the appellant as admittedly he was confined/detain in judicial lockup which is violation of law, rules and principle of natural justice. Non-association of the appellant with the enquiry proceedings has rendered the entire enquiry proceedings nullity and any order based on such improper enquiry would not sustain.

7. In light of what has been discussed above, the impugned orders dated 18.12.2019 and 07.07.2020 are set aside. Appellant is reinstated into service and case is remitted to the department with direction to conduct proper de-novo inquiry in accordance with law within 90 days of the receipt of this judgment. Costs shall follow the event. Consign.

8. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 19<sup>th</sup> day of June, 2023.*



**(RASHIDA BANO)**  
Member (J)  
Camp Court, Abbottabad



**(KALIM ARSHAD KHAN)**  
Chairman  
Camp Court, Abbottabad