

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 14058/2020

BEFORE: MRS. RASHIDA BANO ... MEMBER(J)
MISS FAREEHA PAUL ... MEMBER (E)

Muhammad Adil (Ex-Constable No.3218 FRP/PR) S/O Sarwar Khan,
R/O Village Spenkai, Tehsil Shabqadar District Charsadda.
.... (Appellant)

Versus

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
 2. Regional Police Officer, Hazara Region, Abbottabad.
 3. District Police Officer, Torghar.
- (Respondents)

Mr. Imran Khan
Advocate ... For appellant

Mr. Asad Ali Khan
Assistant Advocate General ... For respondents

Date of Institution.....14.10.2020
Date of Hearing.....26.06.2023
Date of Decision..... 26.06.2023

JUDGMENT

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 the impugned orders dated 13.01.2020 and 17.05.2020 may please 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 initially appointed as constable in police department in the year 2009. In the year 2015-16 the appellant passed the Drill Course and was posted as PTC Drill Instructor at Hangu. He was performing his duties with zeal and zest. While returning from duty place Hangu he reached Peshawar at Isha prayer time which was late and due to bad weather condition, he decided to stay at Police Lines Peshawar. On that very night, an alleged theft/incident occurred. Two constables made an allegation upon the appellant for theft of purse and mobile phone. On the basis of said allegation of theft, the appellant was served with charge sheet alongwith statement of allegations. Inquiry committee was constituted which recommended him for major penalty of removal from service vide order dated 03.01.2020. Feeling aggrieved, the appellant filed departmental on 13.01.2020, which was rejected on 03.02.2020. Thereafter, he filed revision petition, which was also dismissed vide order dated 07.09.2020, 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 Assistant Advocate General and perused the case file with connected documents in detail.


4. Learned counsel for the appellant argued the appellant has not been treated in accordance with law and rules, hence, his rights secured and guaranteed under the law were badly violated. He argued that the appellant was not provided opportunity of personal hearing thus, he has been condemned unheard. He further argued that during proceeding neither the statement of the appellant was recorded nor any chance was given to him for cross-examination, as no allegations were proved against him, this fact was



ignored which shows malafide on the part of the respondents. He contended that the appellant had never committed any act or omission which could be terms as misconduct. He, therefore, requested for acceptance of the instant service appeal.

5. The learned Assistant Advocate General contended that appellant being member of Police Force was obligated to secure the lives and property of public but he involved himself in a moral turpitude nature offence by stealing mobile phone and cash amount from his colleagues. He further argued that while posted as Drill Instructor at Hangu, he came to Police Lines Peshawar instead of his home, where he deceitfully showed himself that he was selected for refresher course and arrived just now. He submitted that in fact he stayed there for ulterior motives for stealing mobile phone and cash amount from his colleague constables at night. On the basis of that allegation, an inquiry committee was constituted and proper departmental proceedings were initiated against him. He was issued charge sheet and statement of allegations against which the appellant submitted his reply, which was found unsatisfactory. Thereafter, a final show cause notice was serve but reply to that was also unsatisfactory. Lastly, he submitted that after fulfillment of all codal formalities, he was removed from service.

6. Perusal of record reveals that appellant was removed from service on the allegation of theft that is a misconduct, vide order bearing No. 15-17/DA dated 13.01.2020. Main allegation is of theft but interestingly no criminal case in respect of alleged theft by the appellant was lodged by the respondents even by complainants whose articles were allegedly stolen by the appellant. Theft is cognizable offence in accordance with definition provided in Pakistan Panel Code 1860. Record is silent about lodging of any



FIR by the constable whose purse and mobile phone was allegedly stolen by the appellant; only one daily dairy bearing No.07 dated 02.11.2019 of FRP/HQR Peshawar was maintained by the respondent. Although enquiry officer mentioned in his inquiry report that he recorded statement of alleged complainants namely constables Unaid No. 7761, Irfan No. 8361, Zeeshan No. 9281 besides statements of Imran, Asmat Ullah, Ihsan Ullah, Sohail Rauf and Mr. Jangir Khan No. 522 Naib of FRP but except statement of the appellant, all other statement of constables including alleged victims and incharge of the premises is not available on record as the same is not with reply by the respondents which means that no such statement was infact recorded by the inquiry officer, otherwise it would have been available on record and annexed alongwith parawise comments by the respondents. Yet another important thing is the recovery memo vide which alleged stolen articles were recovered from the possession of the appellant or upon his pointation. If statement of all concerned are recorded by the inquiry officer, then he will have to provide proper chance of cross examination to the appellant upon victims/complainants and all other constables i.e who were present at the time of alleged recovery of stolen purse and mobile phone at the time of his pointation and interrogation of the appellant.

7. In accordance of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, fair trial and inquiry is the fundamental right of every citizen of Pakistan but in the instant case, no such opportunity of cross-examining the alleged complainants, eye witness and premises incharge was provided which is violation of settled norms of law and rules. Moreover, when no criminal case in shape of first information report (FIR) was lodged, it means that no criminal act of cognizable nature has been committed i.e theft by the appellant as is alleged in D.D No. 07 dated 02.11.2019, otherwise, too when



appellant came there and stayed only for one night and at time of his entry and stay in the barrack one constable Imran was present in the barrack and if the appellant infact committed theft, then he must have seen it but as per inquiry report he was not an eye witness of the occurrence. It is also careless and irresponsible behavior of all the three alleged complainants who left their valuable articles in the barrack. When appellant came for the first time to spend one night there, then how he came to know about existence of water tank where he could conceal easily all the alleged stolen articles. Complainants i.e Constable Unaid, Irfan and Zeeshan will be in a better position to answer this query that whether infact theft was committed or not but appellant was not provided opportunity to dig out the truth and real facts which is violation of Rule 6(ii) of Police Rules 1975.

8. For what has been discussed above, the appeal in hand is allowed as prayed for. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26th day of June, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)