

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 1482/2022

Date of Institution ... 13.10.2022

Date of Decision... 14.07.2023

Behroz Khan, Reader to SP (Investigation) District Nowshera.
... (Appellant)

VERSUS

The District Police Officer, Nowshera and 02 others.
... (Respondents)

MR. RIZWANULLAH,
Advocate --- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General --- For respondents.

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

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts giving rise to filing
of the instant service appeal are that disciplinary action was taken
against the appellant on the allegations reproduced as below:-




“that he while posted at PS Pabbi now under suspension at Police Lines, Nowshera, as per report of SDPO Pabbi vide his office letter No. 297/St dated 31.03.2015 that he (SI Behroz Khan) has initiated an enquiry vide DD No. 36 dated 06.02.2014 u/s 156 (ii) Cr.PC with regard to robbery of a Motorcycle, a Mobile set Model G-5 and cash amount of Rs; 40000/- from Abdul Aleem r/o Pabbi and handed over the enquiry to SI Israr Khan on 14.03.2014 upon his transfer. It is worth to mention here that the said enquiry was re-entrusted to him on 25.05.2014 upon the transfer of SI Israr Khan which is missing, which amounts to grave misconduct on his part and rendered him liable for punishment under Khyber Pakhtunkhwa Police Rules, 1975.”

2. On conclusion of the inquiry, the appellant was awarded minor punishment of stoppage of two annual increments with cumulative

effect vide order dated 10.06.2015 passed by District Police Officer Nowshera. The appellant challenged the same through filing of departmental appeal, which was rejected vide order dated 30.06.2022. The revision petition of the appellant was also rejected by Inspector General of Police Khyber Pakhtunkhwa Peshawar vide order dated 01.09.2022 on the ground that the same was badly time barred. The appellant then filed the instant service appeal before this Tribunal for redressal of his grievance.

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.

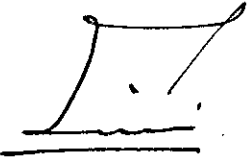


4. Learned counsel for the appellant has argued that the inquiry proceedings were conducted in derogation of mandatory provisions of Police Rules, 1975 as the appellant was neither provided any opportunity of cross-examination of the witnesses nor he was afforded any opportunity to produce evidence in his defence. He next argued that the rights of the appellant guaranteed under Articles 4 and 10-A of the Constitution of Islamic Republic of Pakistan have been violated. He further argued that the inquiry against the appellant was initiated on the direction of Provincial Police Officer Khyber Pakhtunkhwa, who was not competent Authority and the inquiry proceedings against the appellant were thus coram-non-judice. He further argued that the allegations against the appellant were not at all proved in the inquiry

proceedings but even then, the appellant was awarded the minor punishment in a cursory manner through the impugned non-speaking order dated 10.06.2015. He also argued that no final show-cause notice alongwith inquiry report was provided to the appellant and he was thus unable to properly defend himself in the inquiry proceedings. He next contended that the appellate as well as revisional Authorities had rejected the appeal and revision petition of the appellant in a cursory manner without assigning any cogent reasons, therefore, the appellate as well as revisional orders are in derogation of Article-24 of General Clauses Act. He next contended that the impugned orders were passed in a mechanical and perfunctory manner, therefore, the same are liable to be set-aside. Reliance was placed on 2005 SCMR 1814, 1997 SCMR 1073, 2016 SCMR 108, 2019 SCMR 640, 2015 PLC 259, 2017 PLC (C.S) 180, 2009 SCMR 339, 2023 SCMR 603, 2003 SCMR 104, 2022 SCMR 636, 2022 SCMR 627, PLD 2008 Supreme Court 412, 2003 SCMR 1126, PLD 1981 Supreme Court 176, 2009 SCMR 605, 1995 SCMR 1593, 1989 SCMR 1690, 2003 SCMR 1140, 2003 SCMR 215, 1980 SCMR 850 and judgment of this Tribunal dated 23.11.2017 rendered in Service Appeal No. 1014/2012.

5. On the other hand, learned Assistant Advocate General for the respondents has contended that the impugned punishment was awarded to the appellant by the competent Authority vide order dated 10.06.2015, while the appellant filed departmental appeal on 10.03.2022, which was badly time barred. He next argued that as


the departmental appeal of the appellant was badly time barred, therefore, the appeal in hand is not maintainable and is liable to be dismissed on the ground of limitation alone. He also argued that a regular departmental inquiry was conducted against the appellant by providing him opportunity of self defence as well as personal hearing. He next argued that there exist no provision in Police Rules, 1975, whereby the competent Authority is required to give final show-cause notice alongwith inquiry report to the delinquent official/officer. He next contended that the appellant was found guilty in the inquiry proceedings, therefore, he has rightly been awarded the impugned punishment.



6. Arguments have already been heard and record perused.

7. A perusal of the record would show that one Abdul Aleem S/O Amin Khan resident of Banda Nabi District Nowshera had submitted an application to the officer incharge police station Pabbi, wherein he had alleged that on 01.01.2014, he was proceeding on his unregistered motorcycle at evening time, when four unknown persons stopped him and snatched the motorcycle as well as an amount of Rs. 40000/- and one cell phone from him. The report of the complainant was incorporated in Daily Diary vide Mad No. 36 dated 06.01.2014 and inquiry under section 156 (ii) Cr.PC was entrusted to the appellant. According to the respondents, the appellant was later on transferred and the inquiry was then entrusted to Sub-Inspector Israr Khan, however on transfer of Sub-Inspector Israr Khan, the inquiry was again entrusted to the appellant. The

respondents were thus required to have first established that the inquiry was re-entrusted to the appellant, however they have not annexed even a single document with their comments which could show that the inquiry was again entrusted to the appellant. Moreover, the appellant had taken specific stance in the grounds of appeal that the mandatory provisions of Police Rules, 1975 were not complied in the inquiry proceedings but despite that, the respondents did not bother to even annex the inquiry record alongwith their comments to justify that the inquiry proceedings were conducted by complying the mandatory provisions of Police Rules, 1975. The available record does not show that any witnesses were examined in the inquiry proceedings and the appellant was provided an opportunity of cross-examination as well as self defence.




8. The available record does not show that final show-cause notice alongwith inquiry report was given to the appellant. Although there exist no provision in Police Rule, 1975 whereby giving final show-cause notice alongwith inquiry report was required, however worthy apex court in its judgment reported as PLD 1981 Supreme Court 176 has held that the rules devoid of provision of final show-cause notice alongwith inquiry report were not valid rules. Similarly, this Tribunal has already delivered a judgment in Appeal No. 1040/2014 titled "*Gulab Khan versus Provincial Police Officer*" decided on 26.09.2017 wherein it has been decided that the issuance of final show-cause notice alongwith


inquiry report is must under police rules. Non issuance of final show cause notice and non-supply of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as in such a situation, he was not in a position to properly defend himself in respect of the allegations leveled against him.

9. So far as the question of limitation is concerned, the issue being one of financial nature is not hit by bar of limitation. Even otherwise too, keeping in view the facts and circumstances of the case, it would be highly unjustifiable to deny the right of the appellant merely on technical ground of limitation.

10. Consequently, the impugned orders are set-aside and the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
14.07.2023


(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)