

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**FAREEHA PAUL ... MEMBER (Executive)**

*Service Appeal No.363/2023*

Date of presentation of Appeal.....23.02.2023  
Date of Hearing.....11.07.2023  
Date of Decision.....11.07.2023

**Sajid Khan** S/O Jurabaz Khan, Ex, Sub-Inspector, Police Lines,  
Bannu. R/O Village Mira Mast Khail, District Bannu.....*Appellant*

Versus

1. **Province** of Khyber Pakhtunkhwa Peshawar through Inspector General of Police/Provincial Police Officer, Central Police Office, Peshawar.
2. **Regional Police Officer**, Bannu region, Bannu.
3. **Additional Superintendent of Police**, Bannu, (Inquiry Officer).....(*Respondents*)

Present:

Mr. Shahzada Irfan Zia, Advocate.....For the appellant

Mr. Muhammad Jan, District Attorney.....For respondents.

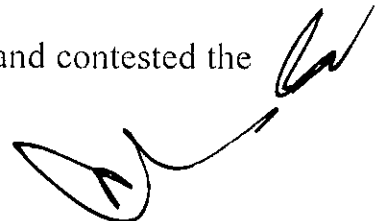
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**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 17.11.2022 PASSED BY RESPONDENT NO.3 WHEREBY THE APPELLANT HAS BEEN AWARDED THE MAJOR PENALTY OF REVERSION FROM THE SUBSTANTIVE RANK OF SUB-INSPECTOR TO THE SUBSTANTIVE RANK OF ASSISTANT SUB-INSPECTOR WITH IMMEDIATE EFFECT AND ON HIS DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER IBID THE RESPONDENT NO.2 (APPELLATE AUTHORITY) ENHANCED THE PENALTY FROM REVERSION TO REMOVAL FROM SERVICE WITH IMMEDIATE EFFECT VIDE IMPUGNED FINAL ORDER DATED 15.02.2023, DISREGARD OF THE RULES AND PRINCIPLES OF NATURAL JUSTICE, THUS BOTH THE IMPUGNED ORDERS ARE LIABLE TO BE SET ASIDE BEING VOID AND ILLEGAL.**



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**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case are that appellant, while holding the post of Sub-Inspector, on certain charges was placed under suspension by respondent No.3 vide order dated 19.09.2022 and a charge sheet alongwith statement of allegations dated 20.09.2022 was served upon him; that the appellant submitted reply to the charge sheet; that respondent No.4 was appointed as Enquiry Officer to probe into the allegations alleged in the charge sheet; that no independent officer was appointed to conduct the enquiry as the respondent No.4 was present on the day of incident as alleged in the charge sheet and his enquiry could not be called an impartial enquiry; that respondent No.4 submitted his enquiry report to respondent No.3 and held the appellant guilty and proposed major punishment against the appellant; that respondent No.3 passed the impugned order dated 17.11.2022 and imposed the major penalty of reversion from the substantive rank of Sub-Inspector to the substantive rank of Assistant Sub-Inspector with immediate effect; that feeling aggrieved from the order, the appellant preferred departmental appeal to respondent No.2 on 29.11.2022 but the appellate authority (respondent No.2) modified the order of respondent No.3 and enhanced the punishment from reversion to removal from service vide order dated 15.02.2023, hence, the present service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the

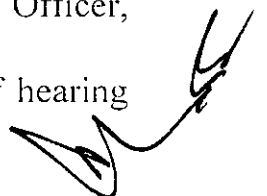


appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

04. The Learned counsel for the appellant argued that the appellant had not been treated in accordance with law and rules. Learned counsel for the appellant contended that the inquiry conducted by respondent No.4 was not impartial but from the findings and proceedings it seemed that the inquiry officer acted as a supporter of the complainant and he was himself present on the day of incident as alleged in the charge sheet. The inquiry proceedings were not conducted according to law and procedure and during inquiry no opportunity of cross-examination was given to the appellant. He further contended that respondent No.2 (appellate authority) modified the order of respondent No.3 and enhanced the penalty from reversion to removal from service, but no show cause notice was served upon the appellant before the impugned final order, which was mandatory under the law, hence the order of respondent No.2 was illegal, void and unsustainable under the law. He prayed that the appeal might be accepted.

05. Vide order dated 17.11.2022, the appellant was awarded punishment of reversion from the substantive rank of S.I to the substantive rank of ASI with immediate effect. The appellant filed appeal against the said order before the Regional Police Officer, Bannu Range, who vide order dated 15.02.2023, while disagreeing with the order of the District Police Officer, Bannu, removed the appellant from service without any notice of hearing



issued to him in respect of the enhancement of the punishment which is in utter disregard of the proviso to clause (d) of Sub-Rule (4) of Rule-11 of the Police Rules, 1975, which reads as under:-

*"Provided that where the Appellate Authority or Review Authority, as the case may be, proposes to enhance the penalty, it shall by an order in writing-*

*(a) Inform the accused of the action proposed to be taken against him and the grounds of such action; and*

*(b) give him a reasonable opportunity to show cause against the action and afford him an opportunity of personal hearing"*

06. Therefore, the appellate order is not sustainable. Resultantly, while accepting this appeal, the order of the Appellate Authority dated 15.02.2023 is set aside and the case is sent back to the Appellate Authority, where the appeal will be deemed pending, to decide it in accordance with law and rules and in case the authority intends to enhance the punishment, it shall give notice to the appellant with an opportunity of hearing, within one month after receipt of copy of this judgment. Cost shall follow the event. Consign.

07. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11<sup>th</sup> day of July, 2023.*



**KALIM ARSHAD KHAN**  
Chairman



**FAREEHA PAUL**  
Member (Executive)