

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No.3866/2021

Date of presentation of Appeal.....24.03.2021
Date of Hearing.....25.07.2023
Date of Decision.....25.07.2023

Mr. Asif Khan, Ex-Constable No.853, Headquarter City Traffic Police, Peshawar.....(Appellant)

Versus

1. **The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.**
2. **The Chief Capital City Police Officer, Peshawar.**
3. **The Superintendent of Police, Headquarters City Traffic Police, Peshawar.....(Respondents)**

Service Appeal No.4812/2021

Date of presentation of Appeal.....07.04.2021
Date of Hearing.....25.07.2023
Date of Decision.....25.07.2023

Mr. Azmat Ullah, Ex-Constable No.602, (Police Department Khyber Pakhtunkhwa) S/O Hazrat Yousaf, R/O Ghar Mali Khel, Masho Khel, P.O Badhber, District Peshawar.....(Appellant)

Versus

1. **The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.**
1. **The Capital City Police Officer, Police Lines, Peshawar.**
2. **The Superintendent of Police, Headquarters City Traffic Police, Peshawar.....(Respondents)**

Present:

Mr. Mir Zaman Safi, Advocate.....For the appellant in S.A #.3866/2021
Syeda Ume Habiba, Advocate.....For the appellant in S.A #.4812/2021
Mr. Muhammad Jan, District Attorney..For the respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 29.12.2020 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANTS AND AGAINST THE IMPUGNED APPELLATE ORDERS DATED 02.03.2021 & 11.03.2021 WHEREBY THE DEPARTMENTAL APPEALS OF THE APPELLANTS HAVE BEEN REJECTED



CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment the above two appeals are being decided as they are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

1. Facts of the appeals as enumerated in the memoranda and grounds are summarized as under:

a. **Asif Khan SA 3866 of 2021:**

Appellant was serving as Constable in the Police Department. He was implicated in criminal case vide FIR No.810 dated 10.07.2020 U/S 365/147/149/5 Exp/15AA/182 PPC at Police Station Badhber, due to which, he was suspended vide order dated 31.08.2020; that the appellant approached the Court of the learned Additional District & Sessions Judge-IX Peshawar for want of pre-arrest bail which was granted to the appellant and BBA was confirmed vide order dated 06.10.2020. In the meanwhile, the respondents conducted fact finding inquiry. Resultantly, he was dismissed from service on 29.12.2020 i.e. before the final decision of the Court in the said FIR vide which the appellant was acquitted. Feeling aggrieved, he filed departmental appeal but the same was rejected on 02.03.2021, hence, the instant service appeal.

b. **Azmat Ullah SA 4812 of 2021**

Appellant was serving as Constable. He was implicated in two criminal cases, i.e. FIR No.810 dated 12.08.2020 U/S 365/147/149/5 Exp/15AA/182 PPC at Police Station Badhber and FIR No.525 dated

05.06.2020 U/S 342/427/149/PPC at Police Station, Badhber, due to which, he was suspended with immediate effect; that the appellant approached the Court of the learned Additional District & Sessions Judge-IX Peshawar for want of pre-arrest bail which was granted to the appellant and BBA was confirmed vide order dated 06.10.2020. In the meanwhile, the respondents conducted fact finding inquiry. Resultantly, he was dismissed from service on 29.12.2020 before the decision in the criminal case, by the Court before the final decision in the said FIR vide which the appellant was acquitted. Feeling aggrieved, he filed departmental appeal but the same was rejected on 11.03.2021, hence, the instant service appeal

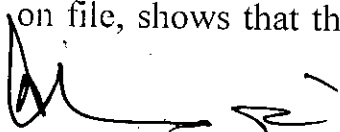
2. On receipt of the appeals and admission to full hearing, the respondents were summoned, they put appearance and contested the appeals by filing their respective written replies raising therein numerous legal and factual objections.

The defense setup was a total denial of the claim of the appellants.

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

4. The Learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney assisted by the learned counsel for respondents, controverted the same by supporting the impugned order(s).

5. It appears in the FIR No.810 that none of the appellants have been charged for any overtact. Besides, the affidavit of the complainant party, placed on file, shows that they have declared the appellants innocent having not been



involved in the criminal case on the basis of which, they were proceeded against departmentally. Moreover, the Inquiry Officer did not bother to conduct inquiry properly as no opportunity of cross-examination seems to have been provided to the appellants during the course of inquiry. Last, but not the least, the charge sheet and statement of allegations were issued by Chief Traffic Officer, Peshawar, whereas, the impugned order was passed by Superintendent of Police Headquarters, City Traffic Police, Peshawar.

6. For the stated reasons, especially, the innocence/none involvement of the appellants in the above circumstances rendered the entire departmental proceedings of no avail, therefore, on acceptance of these appeals, we set aside the impugned orders and order reinstatement of the appellants with all back benefits. The period of absence shall be treated as leave of the kind due. Consign.

7. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 26th day of July, 2023.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)