

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 4278/2021

BEFORE: **MR. SALAH UD DIN** ... **MEMBER (Judicial)**
MRS. RASHIDA BANO ... **MEMBER (Judicial)**

Mr. Javid Khan, Ex-IHC No. 2008, CCPO, Peshawar.
 (Appellant)

Versus

1. The Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar.
 2. The Senior Superintendent of Police, (Operations) Peshawar.
- (Respondents)

Mr. Syed Noman Ali Bukhari
 Advocate ... For appellant

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

Date of Institution.....30.03.2021
 Date of Hearing.....10.07.2023
 Date of Decision.....10.07.2023

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:

“That on acceptance of this appeal the orders dated 31.12.2022 and 02.03.2021 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 appointed as constable in police department in the year 1996. He was performing his duties up to the entire satisfaction of his superiors. The appellant was posted at Chief Minister Secretariat, when his wife committed suicide but his brother in law charged the appellant for murder of his wife. Case FIR No. 495 dated 25.07.2019 was registered against the appellant, who was arrested and then released on bail vide order dated 30.09.2019 by the competent court of law. The appellant was issued charge sheet and he submitted reply of the same. An enquiry was conducted and enquiry officer in his finding report requested that the enquiry may be kept pending till the finalization of criminal case. The case of the appellant was under trial in the competent court of law and again inquiry was conducted against the appellant without showing any reason and without associating the appellant with the inquiry proceeding. Neither any statement of witness was recorded nor opportunity of defense was provided to the appellant and without any show cause notice, the impugned order dated 31.12.2020 was passed before finalization of the criminal case. Feeling aggrieved, the appellant filed departmental appeal for reinstatement in service which was rejected vide order dated 02.03.2021, 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 appellant submitted that the impugned order is against law and facts and norms of justice, therefore, not tenable and liable to be set aside. He next contended that the appellant was not treated in accordance with law and rules and respondents acted in violation of Article 4, 25 & 38 of the Constitution of Islamic Republic of Pakistan, 1973. He further contended that no show cause notice or statement of allegation were served upon the appellant thus he condemned unheard and the impugned order has no legal effect. He submitted that under CSR-194/194-A the appellant was suspended till the order of the competent court but the appellant was dismissed from which against the law and rules. Lastly he submitted that under the principle of natural justice, fair play and equity, the appellant is entitled for reinstatement into service and the impugned orders are illegal, wrong, unwarranted, hence liable to be set aside, he therefore, requested for acceptance of instant service appeal.

5. Conversely, learned Assistant Advocate General contended that the appellant has been treated in accordance with law and rules. He further contended that appellant being member of discipline force, committed gross misconduct and after fulfillment of all codal formalities he was dismissed from service. He submitted that criminal and departmental proceedings are distinct in nature, can run side by side and order of one authority is not binding on the other. He submitted that appellant was issued charge sheet alongwith statement of allegation and detailed departmental inquiry was conducted as per law/rules and was also

provided full opportunity of defense, but he failed to defend himself and he rightly dismissed from service.

6. Perusal of record would reveals that appellant was nominated in Case FIR No. 495 dated 25.07.2019 registered U/S 302/34 PPC Police Station Katlang, Mardan. Appellant was arrested by the local police and was released on bail by Additional Session Judge, Katlang Mardan vide order dated 30.09.2019. Competent authority after getting information of appellant's being nominated in the above mentioned criminal case, initiated disciplinary proceedings and issued him charge sheet and statement of allegations on 02.10.2019 by appointing SP Rural as Enquiry Officer. Appellant submitted reply of charge sheet on 08.10.2019 by professing innocence. Enquiry officer after providing opportunity of personal hearing to the appellant, recommended that enquiry may be kept pending till decision of the court. But all of sudden without waiting for the decision of criminal case by the competent court of law, respondents again started enquiry vide order dated 28.12.2020 with direction to enquiry officer to conclude it within 24 hours and submit his decisive finding for further disposal. Enquiry officer without summoning appellant again, and recording statements of complainant of criminal case who nominated complainant in a criminal case and other witnesses submitted his enquiry report with recommendation of suitable punishment to the appellant vide enquiry report dated 28.12.2020. Consequently, the appellant was dismissed from service by the competent authority vide impugned order dated 31.12.2020. When once competent authority held that enquiry be kept pending till the decision



of criminal case by the competent court of law, then record is silent about the urgency or element which compel the competent authority to decide it without waiting for result of the criminal case. Moreover, it is against the settled norms of law, rules and fair play that no opportunity of personal hearing and cross examination was provided to appellant. No regular enquiry was conducted by the enquiry officer. He just relied upon the proceedings of criminal case conducted by the police during investigation without waiting for its decision by the court of law. It is also pertinent to mention here that appellant was acquitted vide judgment/order dated 24.11.2022 by Additional Sessions Judge, Katlang in the said criminal case.

7. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. The charging on of the appellant in criminal case was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service. It is established from the record that charges of his involvement in criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.


8. For what has been discussed above, this appeal in hand is accepted and the impugned order dated 31.12.202 is set aside and the appellant is



reinstated in service from the date of his dismissal from service and is entitled to all back benefits. Parties are left to bear their own costs.

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 10th day of July, 2023.*


(SALAH UD DIN)
Member (J)

*Kaleemullah


(RASHIDA BANO)
Member (J)

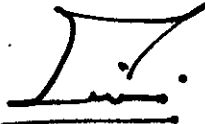
ORDER

10th July, 2023

1. Learned counsel for the appellant present. Mr. Asad Ali Khan,
Assistant Advocate General for the respondents present.

2. Vide our detailed judgement of today placed on file, the appeal
in hand is allowed as prayed for. Costs shall follow the event.
Consign.

3. *Pronounced in open court at Peshawar and given under our
hands and seal of the Tribunal on this 10th day of July, 2023.*



(SALAH UD DIN)
Member (J)



(RASHIDA BANO)
Member (J)

*Kaleemullah