

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

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

Service Appeal No.620/2022

Date of presentation of Appeal.....26.04.2022
Date of Hearing.....24.07.2023
Date of Decision.....24.07.2023

Abid Khan, Ex-IHC No. 3293, Incharge PP Shaheedian Mardan.....Appellant

Versus

1. **The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.**
2. **The Regional Police Officer, Mardan Region Mardan.**
3. **The District Police Officer, Mardan.....(Respondents)**

Present:

Mr. Taimur Ali Khan, Advocate.....For the appellant

Mr. Fazal Shah Mohmand,
Additional Advocate General.....For respondents.

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**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 10.03.2022, WHEREBY
THE APPELLANT WAS DISMISSED FROM SERVICE,
AGAINST THE ORDER DATED 05.04.2022, WHEREBY
THE DEPARTMENTAL APPEAL OF THE APPELLANT
HAS BEEN REJECTED FOR NO GOOD GROUNDS**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts of the case as stated in the memo of appeal are that appellant was appointed in the respondent department in the year 2012; that he was posted as Incharge Police Post Shaheedian and on 02.09.2021 after arrival from routine Shabahsi, he was on duty as mobile officer in the Police Station Rustam mobile where LHC Niaz Ali called him that he had arrested a young man namely Kamran

alongwith unlicensed pistol of 30 bore and asked to register an FIR against him on which the appellant replied that the accused alongwith case property should be brought to the Police Station Rustam and then registered an FIR against the accused, however, LHC Niaz Ali without permission of the appellant and concerned SHO registered an FIR No. 1057 dated 01.09.2021 U/S 15AA PS Rustam against the accused Kamran on his own and released him on Machalka and on 02.09.2021 LHC Niaz Ali with the connivance of his brother LHC Tariq Ali No. 627 called the accused Kamran to Kacheri Mardan and sent him to the judicial lock up for the reason that on 03.09.2021, the brother of accused Kamran namely Amir Sajjad with the connivance of Kamran committed a murder on which FIR No. 889 dated 03.09.2021 U/Ss 302/324/34 PPC Police Station Toru was registered in which the accused Kamran was also charged for commission of offence so as to facilitate the accused Kamran to get benefit of plea of *ali-bi* in a murder case; that on the basis of above reason, charge sheet alongwith statement of allegations were served and replied by the appellant, in which he denied the allegation and clearly mentioned in his reply that neither he prepared the Murasila of the case nor dictated anyone and stated that the Murasila had been written by LHC Niaz Ali and also brought that to the Police Station without his notice. Similarly he neither prepared remand judicial nor signed that and requested to send the same for FSL for analyzing; that the respondent department conducted enquiry against the appellant; that show cause notice was issued to the appellant, which was properly replied by the appellant; that finally the appellant was dismissed from service vide impugned order dated 10.03.2022; that feeling aggrieved, the appellant

preferred departmental appeal on 17.03.2022 which was rejected on 05.04.2022, 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 Additional Advocate General for respondents.

04. The Learned counsel for the appellant argued that the appellant was innocent and the allegations leveled against him was totally wrong and baseless; that no material in support of the allegations against the appellant was available but even then the inquiry officer has wrongly held that the allegations against the appellant stood proved; that inquiry conducted against the appellant was not according to the prescribed procedure as neither statements were recorded in the presence of the appellant nor gave him opportunity of cross examination, which is violation of law and rules and as such the impugned orders are liable to be set aside on this ground alone.

05. Learned Additional Advocate General argued that the impugned orders were according to law, facts and norms of justice, hence, liable to be maintained; that plea taken by the appellant was baseless, because he had been properly proceeded against departmentally by issuing him charge sheet with statement of allegations and full opportunity of hearing. He submitted that during the inquiry proceedings, the appellant had been properly

heard in Orderly Room, but he had failed to present plausible reason in his defense, hence, he had served with final show cause notice, the reply of which found unsatisfactory. Further submitted that the appellant had been heard twice but he had failed to justify his innocence, therefore, major penalty of dismissal from service commensurate with the gravity of misconduct of the appellant. He concluded that the stance taken by the appellant was baseless because he had been treated in accordance with law. Therefore, he requested for dismissal of the instant service appeal.

06. During the course of arguments, learned counsel for the appellant referred to the consolidated judgment dated 25.10.2022, passed by the Tribunal in Service Appeal No.569/2022 and stated that case of the appellant was similar to the appellants of the above mentioned service appeal, therefore, instant service appeal might also be accepted on the same footing. The concluding Para of judgment in Service Appeal No.569/2022 is reproduced as under:

"In view of the above discussion, the appeal in hand as well as connected Service Appeal bearing No.570/2022 titled "Tariq Ali Versus District Police Officer Mardan and two others" are allowed by setting-aside the impugned orders and the appellants are reinstated in service for the purpose of de-novo inquiry. The de-novo inquiry shall be completed within a period of one month of the receipt of copy of this judgment, strictly in accordance with relevant law/rules. Needless to mention that the appellants shall be fully associated with the inquiry proceedings by providing them fair opportunity to cross examine the witnesses as well as production of evidence in their defence. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record".

07. Perusal of record reveals that the present appellant has also not been given proper opportunity of defence. No opportunity of cross examination has been provided to the appellant during the course of inquiry proceedings. After the occurrence, inquiry was conducted, the copy of which was also not given to the appellant and by issuing a final show cause notice, the impugned order of dismissal from service has been passed, which cannot be sustained.

08. Therefore, we allow this appeal, set aside the impugned orders and direct that de-novo inquiry be conducted in this matter. We further direct that the appellant be reinstated for the purpose of de-novo inquiry. The said inquiry is to be conducted within 30 days of the receipt of judgment, strictly in accordance with law/rules. The appellant shall be fully associated with the inquiry proceedings by providing him fair opportunity of personal hearing and cross examination. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Consign.

09. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24th day of July, 2023.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)