

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 4306/2020

BEFORE: MRS RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Zia-ur-Rehman, Ex-Naib Qasid (BPS-03) Government Degree College,
Hangu. (*Appellant*)

Versus

1. The Secretary Higher Education, Khyber Pakhtunkhwa Peshawar.
2. The Director, Higher Education, Khyber Pakhtunkhwa, Peshawar.
3. The Principal, Government Degree College, Hangu. (*Respondents*)

Mr. Noor Muhammad Khattak
Advocate ... For appellant

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

Date of Institution.....	13.05.2020
Date of Hearing.....	17.07.2023
Date of Decision.....	17.07.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 20.08.2018 whereby major penalty of removal from service was imposed on the appellant and against no action taken on the departmental appeal of appellant within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned order dated 20.08.2018 might be set aside and the appellant be reinstated into service with all back benefits alongwith any other remedy which this Tribunal deemed fit and appropriate.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Naib Qasid (BPS-03) in the respondent department vide order dated 15.12.2017. During service of the appellant an FIR No. 648 u/s 380 dated 08.07.2018 in P.S City Hangu was lodged against unknown person. Later on, appellant and two other employees of the college were falsely implicated in the aforementioned FIR. On the basis of the said FIR, the respondent department removed the appellant from service vide impugned order dated 20.08.2018 without fulfilling the legal formalities and without waiting for the decision of the learned trial court. Later on, the appellant was acquitted in the criminal case by the learned Additional Sessions Judge-II, Hangu vide judgment dated 27.11.2019. After acquittal in the criminal case, he filed departmental appeal on 24.12.2019 before the appellate authority but no reply was received till filing of the instant appeal on 13.05.2020.

3. Respondents were put on notice who submitted written replies/ comments on the appeal. We heard the learned counsel for the appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that no charge sheet and statement of allegations were served upon the appellant before passing the impugned order dated 20.08.2018. He further argued that neither show cause notice was served upon the appellant nor chance of personal hearing/defence was afforded to him and that the



complainant was not cross-examined by him. He requested that the appeal might be accepted.

5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that on 07.07.2018, the appellant alongwith his two friends committed theft from Computer Lab. of the college. According to him, the appellant and his co-accused were identified through CCTV footage and all the three were arrested by the police and respondent No. 3 constituted a committee on 09.07.2018 to conduct fact finding inquiry. On the recommendation of the said inquiry, vide office order dated 17.07.2018, inquiry committee was constituted to conduct formal inquiry into the matter. Charge sheet was served upon the appellant and opportunity of personal hearing was afforded to him wherein he confessed his guilt. Thereafter, show cause notice was served upon him on 02.08.2018 and after fulfillment of all the codal formalities, he was removed from service vide order dated 20.08.2018. The learned AAG further argued that the appellant was convicted by the learned trial court vide judgment dated 18.09.2019 but later on acquitted by appellate court vide judgment dated 27.11.2019. He further argued that no departmental appeal was available in official record. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it appears that the appellant, while serving as Naib Qasid in Government Degree College, Hangu was implicated in FIR u/s 380 PPC. As stated by the learned counsel for the appellant, no charge sheet and statement of allegations were served upon the appellant while he was behind the bar and that he was not afforded



any opportunity to defend his case or cross examine any witness and hence any inquiry conducted by the respondent department was against the law and rules. The respondents on the other hand, have attached two inquiry reports, one is a preliminary inquiry and the other is a formal inquiry. Perusal of the inquiry report shows that the statement of the appellant was recorded in writing. He was inquired in the form of a questionnaire to which he responded in writing, and both the documents have been attested by the Incharge Judicial lockup, Hangu. It has further been noted that the Inquiry Committee states in its report that they cross examined the appellant in the light of his statement but the report is silent on an extremely important aspect of cross examination of witnesses by the appellant. The departmental inquiry report only identifies the appellant in the CCTV recording. There is no evidence of theft being committed by him. The judgment of learned Additional Sessions Judge-II, Hangu was also perused simultaneously to ascertain the facts. It was found in that judgment that the case of the prosecution was entirely based on circumstantial evidence; neither the appellant was charged in the initial report nor the occurrence was witnessed by anyone. Statement of the appellant taken in the custody of police has not been accepted by the learned ASJ. As the prosecution could not prove its case, the appellant was acquitted vide judgment dated 27.11.2019.


7. It is a well settled principle that "every acquittal is honourable" and when an accused official is acquitted from a criminal charge after trial by the competent court of law, he cannot be ousted from his service. When the charge could not be proved in the court of law, there was no reason to pass



any adverse order of punishment for the appellant by the departmental authority.

8. In view of above, the service appeal is allowed as prayed for with the directions to the respondent department to consider the appellant as under suspension from the date the FIR was lodged and he was arrested till his acquittal. 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 17th day of July, 2023.*


(FAREEHA PAUL)
Member (E)

Fazle Subhan, P.S


(RASHIDA BANO)
Member (J)