

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2765/2021

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

Bashir Muhammad Sub-Inspector of Police MR-31 District Nowshera.
 (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police Mardan Region Mardan.
3. District Police Office Mardan.

.... (Respondents)

Mr. Javid Iqbal
 Advocate ... For appellant

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

 Date of Institution.....12.02.2021
 Date of Hearing.....03.08.2023
 Date of Decision.....03.08.2023

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:

“On acceptance of this appeal, order dated 17.12.2020 and 15.01.2021 may kindly be set aside and appellant be reinstated in the previous rank of Inspector with all back benefits.”


2. Brief facts of the case, as given in the memorandum of appeal are, that the appellant while posted as Inspector/SHO Risalpur was departmentally proceeded against on the allegations that the he less quantity



of contraband narcotic and replaced it while registering case FIR No. 645 U/S 9(D) CNSA Police Station Risalpur District Nowshera dated 09.11.2020 against the accused Muhammad Ishaq and Haji Khan R/O Qamber Khel District Khyber. The appellant was issued charge sheet alongwith statement of allegations by DPO Nowshera for the alleged misconduct and DSP Headquarter was appointed as enquiry officer. After departmental enquiry final show cause notice was issued to the appellant upon which he submitted reply. Thereafter, major punishment of reduction in rank was imposed upon him. The appellant filed departmental appeal which was rejected vide order dated 17.12.2021, hence the instant 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 Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant was not treated in accordance with law and rules and the orders passed by the respondents are unlawful in the eyes of law. He contended that neither the Norcotic was less than the actual recovery nor it was replaced because the factum of recovery of Norcotic has been proved by the statements of PWS and FSL report during the investigation which was further substantiated by video of the accused in a press conference. No one has made any complaint about the less quantity and replacement of Norcotic. He further contended that all allegations were made on mere hearsay, only to create dent in prosecution case and rescue the accused from the clutches of law. He submitted that enquiry was conducted in haphazard manner and no rules and regulations have been followed. Lastly, he submitted that enquiry



officer by his designation of his scale is not authorized to conduct enquiry against the appellant, therefore, he requested for acceptance of the instant appeal.

5. The learned Additional Advocate General contended that the appellant was treated in accordance with law and rules. He further contended that appellant while posted as SHO Risalpur registered case FIR No. 645 U/S 9(D) CNSA Police Station Risalpur District Nowshera dated 09.11.2020 wherein he showed the contraband less than quantity and also replaced by him which amounts to gross misconduct on his part and rendered him liable for punishment under the Khyber Pakhtunkhwa, Police Rules, 1975. Departmental enquiry was conducted and after fulfillment of all codal formalities major penalty of reduction in rank was imposed upon the appellant.

6. Perusal of record reveals that appellant was issued show cause notice alongwith statement of allegation on 12.11.2020 by appointing DSP HQRs as enquiry officer, who after completing codal formalities submitted his report on 01.11.2020. As a result of inquiry report, final show cause notice was issued to the appellant to which he submitted reply and was finally awarded punishment of reduction in rank from Inspector to Sub-Inspector vide impugned order dated 17.12.2020. Appellant filed departmental appeal on 24.12.2020 which was rejected on 15.01.2021, while instant service appeal is filed on 12.02.2021. Charge sheet was issued with the allegation that while posted as SHO P.S Risalpur, now under suspension at Police Lines, registered case vide FIR No. 645 dated 09.11.2020 U/S 9(D) CNSA P.S, Risalpur against accused Muhammad Ishaq S/O Abid Khan and Haji Khan S/O Zakir Khan wherein he showed the contraband less than the actual amount which amounts to grave misconduct on his part and rendered



him liable for punishment under Khyber Pakhtunkhwa Police Rules, 1975. Saif Ali Khan was appointed as Enquiry Officer who was Inspector (BPS-16) in rank and was transferred/posted on acting charge basis vide order dated 21.10.2020. So inquiry officer on 12.11.2020 till submitting of his report dated 01.12.2020, was Inspector and was not DSP. Under law Rule 5(4) the inquiry officer must be senior in rank to the accused official, so inquiry proceedings conducted by Inspector is against the Police Rules, 1975 as the accused/appellant himself was Inspector at the time of inquiry. Therefore, this inquiry was not in accordance with law and rules being conducted by the officer of the same rank i.e Inspector (BPS-16) to that of appellant.

7. It is a well settled legal proposition duly supported by numerous judgments of the apex court that for imposition of major penalty, regular inquiry by providing opportunity of cross examination is a must. Reliance is placed on 2022 PLC (CS) 985 and 2019 PLC (CS) 224. Moreover, no opportunity of cross examination was provided to the appellant upon the witness who disposed in inquiry against him which is very essential element of regular inquiry. Beside that witnesses who disposed against the appellant also recorded their statement in court of law in that criminal case wherein they supported on oath. Contents of FIR where less quantity of contraband was shown in record. This is also speak otherwise and was not in consonance with their statement recorded during inquiry rather was in contradiction of it.

8. In view of the above, instant appeal is partially allowed. Case is remitted back to the department with direction to conduct denovo inquiry within 90 days of the receipt of this judgment by appointing officer higher in rank from the appellant and also to provide opportunity of self defense



and personal hearing to the appellant. The issue of back benefits shall be subject to the outcome of denovo inquiry. 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 3rd day of August, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemillah