

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7274/2021

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

Mr. Kamal Muhammad, Ex-Head Constable Police Lines, District Dir Upper..... (*Appellant*)

Versus

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
3. District Police Officer, District Dir Upper. (*Respondents*)

Mr. Noor Muhammad Khattak,
Advocate

... For appellant

Mr. Fazal Shah Mohmand,
Addl. Advocate General

... For respondents

Date of Institution.....	11.08.2021
Date of Hearing.....	04.08.2023
Date of Decision.....	04.08.2023

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 11.12.2010 whereby the appellant had been dismissed from service and against the order dated 29.07.2021, whereby his departmental appeal was regretted. It has been prayed that on acceptance of the appeal, the impugned orders dated 11.12.2010 and 29.07.2021 might be set aside and the appellant might be reinstated in service with all back benefits alongwith any other remedy which the Tribunal deemed appropriate.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable vide order dated 04.07.1991 in the Police Department and was promoted to the rank of Head Constable. An FIR was lodged against him under section 302/324/148/149 PPC on 10.09.2010 at P.S Gandigar, District Dir Upper. Due to the said reason he absented himself from duty and the respondents, in spite of knowing the fact that the appellant had been charged in the criminal case, straight away issued the impugned order dated 11.12.2010 whereby he had been dismissed from service with effect from the date of his absence. Vide judgment dated 20.05.2021 in Cr.A No. 444-M/2019, the Honourable Peshawar High Court Mingora Bench honourably acquitted him from the criminal charge and as such he was released from jail on 25.05.2021. After acquittal, the appellant visited the concerned quarter for arrival but the respondent No. 3 handed over the impugned order to him. Feeling aggrieved, he filed departmental appeal but the same was rejected by respondent No. 2 without assigning any cogent reason vide appellate order dated 29.07.2021, hence the instant service appeal.

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 the impugned orders dated 11.12.2010 and 29.07.2021 were against the law, facts, norms of natural justice and material on record, hence



not tenable and liable to be set aside. He further argued that the appellant was not treated in accordance with law and the respondents acted in an arbitrary way with malafide intentions. He further argued that no charge sheet and statement of allegations nor show cause notice was served upon him. According to him no regular inquiry was conducted in the matter nor any chance of personal hearing was afforded to the appellant and harsh penalty of dismissal was imposed upon him which was not commensurate with the facts and circumstances of the case. He requested that the appeal might be accepted as prayed for.

5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was issued charge sheet alongwith statement of allegations and an enquiry committee was constituted to scrutinize the conduct of the appellant. The inquiry committee utilized different sources to inform the appellant for joining the inquiry proceedings, but in vain. He further argued that the appellant was directly charged in brutal murder registered vide FIR No. 279 dated 10.09.2010 u/s 302/324/148/149/PPC P.S Gandigar for killing three innocent persons and injuring four and the appellant remained fugitive from law for a long period of about seven years. According to him the enquiry officer recommended the appellant for imposition of major penalty and hence a final show cause notice was handed over at the appellant's house but he intentionally did not join the proceedings and was rightly dismissed from service by the competent authority. He requested that the appeal might be dismissed.



6. Arguments and record presented before us indicate that the appellant, while serving as Head Constable in the provincial police, was involved in FIR No. 279 dated 10.09.2010 u/s 302/324/148/149 PPC and became an absconder. Being a member of disciplined force, it was expected of him to present himself for arrest which he did not do. He presented himself for arrest in 2017, was proceeded against in the court of law and acquitted vide order dated 20.05.2021 of the Honourable Peshawar High Court, Mingora Bench. On the other hand, the respondent department initiated disciplinary proceedings, on the grounds of absence from his lawful duty, against the appellant by issuing charge sheet and statement of allegations on 14.09.2010. An inquiry was conducted, the report of which is annexed with the reply, which indicates that the Inquiry Officer had found that the appellant, who was the accused in that inquiry, was not at home, when enquired, and that he was an absconder in a case registered against him vide FIR No. 279. When that report was submitted to the competent authority, it was brought to their notice also. In such circumstances, instead of placing the appellant under suspension, they simply carried the proceedings forward and issued final show cause notice on 23.11.2010 and dismissed the appellant from service from the date of his absence.

7. After acquittal, when the appellant submitted his departmental appeal, it was rejected, being badly time barred. It has been noted that after acquittal, the appellant submitted departmental appeal on 08.06.2021 which was rightly done because it would have been a futile exercise on his part to challenge his dismissal from service before earning acquittal in the criminal case from the relevant court of law.



8. In view of the above discussion, it is evident that the absence of the appellant was because of his nomination in FIR and resultant abscontion. It would have been in the fitness of the matter to place him under suspension till the final outcome of the criminal case against him. As he has been acquitted and it is a well settled principle that every acquittal is hounourable, there is no other remedy but to reinstate the appellant.

9. The appeal in hand, is therefore, allowed as prayed for with the directions to the respondents to consider the period he remained absconder as without pay, whereas the period after his arrest till his acquittal be treated as under suspension. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 04th day of August, 2023.*


(FARHEHA PAUL)
Member (I)

Fazle Subhan, P.S


(RASHIDA BANO)
Member (J)