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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT ABBOTTABAD

Service Appeal No. 10012/2020

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

Munir Nisar No. 111, Police Lines Mansehra.

.... (Appellant)

Versus

1. District Police Officer, Mansehra.

2. Deputy Inspector General, Hazara Range, Abbottabad.

.... (Respondents)

Mr. Shad Muhammad Khan
Advocate

...

For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

...

For respondents

Date of Institution.....02.09.2020
Date of Hearing.....25.07.2023
Date of Decision.....25.07.2023

JUDGEMENT

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 the instant service appeal both the impugned orders dated 21.04.2020 and 23.07.2020 may kindly be set aside.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as constable on 23.11.2003. He was performing his duties with the entire satisfaction of his superiors. One Amir, registered a case against the

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appellant vide FIR No.83 dated 16.02.2020 U/S 324 PPC at Police Station Garhi Habibullah, Mansehra. The appellant was issued charge sheet and he submitted reply of the same. District Police Officer Mansehra appointed an inquiry officer, who recorded statement of the appellant and gave his findings. Thereafter, major penalty of dismissal from service was imposed upon the appellant vide order dated 21.04.2020 by respondent No. 1. Feeling aggrieved, appellant filed departmental appeal before respondent No. 2 and major penalty of dismissal from service was converted into minor punishment of stoppage of three annual increments with cumulative effect with immediate effect and treating intervening period as leave without pay. 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He contended that orders passed by the respondents are against the facts and law and are not maintainable in the eyes of law. He submitted that no final show cause notice was issued to the appellant, so the entire proceedings are null and void in the eyes of law. He therefore, requested for acceptance of instant service appeal.

5. The learned Deputy District Attorney argued that the appellant has involved himself in case FIR No. 83 dated 16.02.2020 U/S 324 PPC Gharhi Habibullah. The appellant was proceeded against departmentally and he submitted reply to charge sheet which has found unsatisfactory. After fulfillment of all codal formalities he was dismissed from service. Later on, dismissal from service was converted into minor penalty of stoppage of three annual increments with

cumulative effect and period during which the appellant was out of service was treated as leave without pay.

6. Perusal of record reveals that appellant was serving as constable in police department since 23.11.2003. He was charged in FIR No. 83 U/S 324 PPC dated 16.02.2020 of P.S Garhi Habibullah. As a consequence of which disciplinary action was initiated against him by DPO Mansehra and he was issued charge sheet alongwith statement of allegations by appointing Ajmal Khan Inspector R.I Mansehra as inquiry officer. Inquiry officer submitted his finding/report on 04.03.2020. Competent authority vide order dated 21.04.2020 awarded major punishment of dismissal from service to the appellant. Appellant filed departmental appeal before DIG Hazara Range Abbottabad on 25.04.2020, which was partially accepted by the appellate authority on 23.07.2020 wherein major punishment of dismissal from service was set aside and converted into stoppage of three annual increment with cumulative effect with immediate effect by treating intervening period as leave without pay.

7. Statement of complainant of FIR No. 83 dated 16.02.2020 was recorded by the inquiry officer wherein he categorically stated that there was no intention of the appellant to kill him which means that offence under section 324 PPC was not constituted on the basis of which appellant was issued charge sheet and statement of allegation and faced disciplinary proceedings. Moreover, appellant was acquitted from the charges by the competent court of law vide order dated 09.09.2020. Although prosecution later on submitted complete challan of FIR No. 83 U/S 337-H PPC instead of 324 PPC. When allegation and nature of offence was altered having regard to the peculiar circumstances of the criminal case then in such a situation competent authority is required to initiate fresh disciplinary proceedings but same was not initiated. Otherwise too, when complainant of the



case does not want to charge the appellant, then in such a situation to give punishment to appellant is against the principle of natural justice, fair trial and policy . It has been held by the worthy apex court that all acquittals are honorable and there can be no acquittal which can be termed as dishonorable. August Supreme Court of Pakistan in its judgment reported as 2001 SCMR 269 has held that where the criminal charges were not established before a competent court of law and the civil servant was acquitted on those specific charges, the departmental proceedings exactly on the same charges would be solely irrelevant and unjustified.

8. It is admitted on record that complainant of case FIR No. 83 and appellant are close relative and friends. Pistol was of the injured complainant of FIR No. 83 and empty was stuck in the chamber of pistol, which was removed by the appellant. Appellant during performance of his service always remained careful and vigilant, that is why his carrier is unblemished. So in our view when appellant is acquitted by competent court of law any proceeding as a result of said criminal case will have to be culminated in favour of the appellant, therefore, awarding of any kind of punishment to the appellant is against the spirit of law and rules.

9. For what has been discussed above, the appeal in hand is allowed. Costs shall follow the event. Consign.

10. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 25th day of July, 2023.*



(SALAH UD DIN)

Member (J)

Camp Court, Abbottabad

*Kaleemullah



(RASHIDA BANO)

Member (J)

Camp Court, Abbottabad