

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.4836/2021

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

Sher Shah S/O Pir Shah Jehan, Village Piran Mango, Tehsil & District
Mardan. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department, Civil Secretariat, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Mardan.
4. District Police Officer, Mardan.

... (Respondents)

Mr. Amin Ur Rehman Yousafzai
Advocate

... For Appellant.

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For Respondents.

Date of Institution	...	15.04.2021
Date of Hearing	...	02.08.2023
Date of Decision	...	02.08.2023

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 instant appeal the impugned orders dated 09.09.2020, 12.10.2020 and 17.03.2021 may be set aside and appellant may be reinstated in service with all back benefits.”

2. Brief facts of the case are that appellant was enlisted in Police Department as Constable vide order dated 04.01.2011. He was performing



his duties up to the entire satisfaction of his superiors. He was charged in FIR No. 338 dated 09.04.2020 under Section 324, 353, 186, 224, 25, 148 and 149 read with 15 AA registered at Police Station MPS Saddar Mardan. On the strength of that FIR the appellant was dismissed from service. Feeling aggrieved he filed departmental appeal against the impugned order which was rejected on 12.10.2020. Thereafter he filed revision petition which was also rejected on 17.03.2021, hence the instant service appeal.

2. We have heard learned counsel for the appellant and Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

3. Learned counsel for appellant contended that the impugned orders passed by the respondents are against the law and rules, hence liable to be set aside. He further contended that neither regular inquiry was conducted nor any opportunity of personal hearing was given to the appellant and he was condemned unheard which attracts the doctrine of *audi alteram partem*. Lastly, he submitted that he was proceeded against departmentally on the allegations that he was involved in case F.I.R No.338 dated 09.04.2020 and that was the only stigma but the appellant was acquitted by competent court of law, therefore, the impugned orders may kindly be set aside.

4. Conversely learned Deputy District Attorney submitted that appellant was treated in accordance with law and rules. He contended that appellant was placed under suspension on account of involvement in case F.I.R No.338 dated 09.04.2020 at Police Station Saddar, Mardan. On account of the aforementioned allegations, he was issued charge sheet alongwith statement of allegations and Inquiry Officer during the course of inquiry, provided all lawful opportunities to the appellant to produce evidence in his defense but



fiasco and that after fulfillment of all codal formalities, report was submitted and appellant was rightly dismissed from service.

5. From the record, it is evident that appellant was proceeded against departmentally on the allegations that during service he was involved in case FIR No.338 dated 09.04.2020 U/S 452, 354, 506/34 P.P.C Police Station Saddar, Mardan. The appellant was issued charge sheet on 22.04.2020 with the allegation that he alongwith his brother behaved violently when police tried to disperse the public for the purpose of main lockdown due to Covid-19. On 09.04.2020 appellant submitted his reply to the said charge sheet on 01.05.2020 and claimed innocence and denied his presence on the spot of occurrence. Enquiry Officer had not provided opportunity of cross examination to the appellant upon complainant and witnesses of FIR No. 338 in which appellant was charged which is mandatory for a fair trial. So when appellant was not provided with opportunity of cross examination and self defense then in such a situation inquiry is not conducted in accordance with settled rules, procedure and law. Therefore, same cannot be relied upon for giving major punishment of dismissal from service.


6. As discussed earlier that the only allegation against the appellant was his involvement in the criminal case but the appellant was acquitted in the criminal case registered against him vide F.I.R No.338 by the competent court of Law on 30.04.2022.


7. It has been held by the superior fora that all the acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Involvement of the appellant in the criminal case was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared, therefore, his acquittal, made him re-emerge as fit and proper person and entitle him to continue his service.



8. For what has been discussed above, we consider that the appeal in hand merits acceptance. It is, therefore, allowed as prayed for. 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 2nd day of August, 2023.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

Kalceemullah