

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 727/2016

Date of Institution ... 28.06.2016

Date of Decision... 21.08.2023

Constable Noor Rehman (No. 95) S/O Abdul Diyan. R/O Nai Abadi Bahader
Kot, District Kohat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Inspector General of Police,
Peshawar and 04 others.

... (Respondents)

MR. MUHAMMAD JAHANGIR MOHMAND.
Advocate

--- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise averments as raised by the
appellant in his appeal are that he while posted as Rider in Rescue 15
Kohat, was charged in case FIR No. 02/2015 dated 21.01.2015 under section
09 CNSA registered at Police Station Anti-Narcotics, Kohat. On conclusion
of the departmental inquiry, the appellant was awarded major
punishment of dismissal from service vide order bearing O.B No. 294
dated 09.04.2015. The appellant preferred departmental appeal on
21.04.2016, which was rejected vide order bearing Endst: No. 2262-63/PA
dated 25.05.2016, however the same was communicated to the appellant on
02.06.2016. The appellant then filed instant service appeal on
28.06.2016, however during the pendency of the same, that the appellante

the same has brought bad name to the Police Force; that criminal as well as departmental proceedings can run parallel and mere acquittal of the appellant in the criminal case could not be considered as a ground for his exoneration from the charge in the departmental proceedings; that the appellant was not acquitted on merit, rather he was acquitted by extending him the benefit of doubt/technicality, therefore, his acquittal would not make him entitled to exoneration in the departmental proceedings; that all legal and codal formalities were complied with in the departmental inquiry proceedings and the appellant was provided opportunity of self defense as well as personal hearing; that the impugned order of dismissal from service of the appellant was passed on 09.04.2015, therefore, the appellant was required to have filed departmental appeal within next 30 days, however the he has filed the departmental appeal on 21.04.2016, which is badly time barred; that the impugned orders have been passed in accordance with law, therefore, the same may be kept intact and the appeal in hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6 The appellant was proceeded against departmentally on the allegations of his involvement and arrest in case FIR No. 02 dated 21.01.2015 under section 09 (c) CNSA registered at Police Station Anti-Narcotics Force, Kohat. Copy of the inquiry report as available on the record would show that the appellant was in jail at the time of inquiry proceedings as well as at the time of passing of the impugned order bearing O.B No. 294 dated 09.04.2015, whereby he was dismissed from service. The available record does not show that any evidence whatsoever was recorded by the inquiry

officer in support of the allegations leveled against the appellant. Similarly, the appellant was also not provided any opportunity to defend himself during the inquiry proceedings. In absence of any incriminating evidence being collected during the inquiry proceedings, it is surprising as to how the inquiry officer came to the conclusion that the appellant was guilty of the charge leveled against him.

7. The appellant was proceeded against departmentally on the charge of his involvement in case FIR No. 02/2015 dated 21.01.2015 under section 09 CNSA registered at Police Station Anti-Narcotics Force, Kohat. The appellant has already been acquitted in the aforementioned criminal case vide judgment dated 04.04.2016 passed by the competent court of law. In view of acquittal of the appellant, the very charge, on the basis of which the appellant was proceeded against, has vanished away. Nothing is available on the record, which could show that the acquittal order of the appellant has been challenged by the department through filing of appeal before the higher forum and the same has thus attained finality.

8. It is an undeniable fact that the appellant was arrested on 21.01.2015 and remained in custody till his acquittal by the Trial Court vide judgment dated 04.04.2016. The appellant after his acquittal on 04.04.2016 had filed departmental appeal on 21.04.2016, which could not be considered as barred by limitation. Even otherwise too, his departmental appeal was rejected vide order dated 25.05.2016 on merit and not on the ground of limitation.

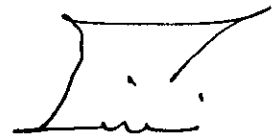
9. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service

with all back benefits. Parties are left to bear their own costs. File be
consigned to the record room.

ANNOUNCED
21.08.2023



(KALIM ARSHAD KHAN)
CHAIRMAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

board rejected the revision petition of the appellant vide order dated 18.11.2016, constraining the appellant to file amended appeal, wherein the order dated 18.11.2016 regarding rejection of revision petition of the appellant was also challenged.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal and factual objections.

3. Learned counsel for the appellant contended that the appellant was falsely implicated in case FIR No. 02/2015 dated 21.01.2015 under section 09 CNSA registered at Police Station Anti-Narcotics, Kohat and has already been acquitted by competent court of law in the said case vide judgment dated 04.04.2016; that upon acquittal of the appellant in the concerned criminal case, the very ground on the basis of which he was proceeded against departmentally has vanished away, therefore, appellant is legally entitled to reinstatement in service with all back benefits; that the alleged departmental inquiry proceedings were conducted at the back of the appellant as he was behind the bar; that the appellant was not provided any opportunity of personal hearing as well as self defence and that the principle of *Audi-altram-partem* was violated; that instead of waiting for outcome of the criminal case, the appellant was wrongly and illegal dismissed by the competent Authority, therefore, the impugned orders are liable to be set-aside by reinstating the appellant with all back benefits.

4. On the other hand, learned Assistant Advocate General for the respondents contended that the appellant was arrested in Narcotics case and