


ORDER
29.08.2023

Appellant alongwith his counsel present. Mr. Sajjad Ahmad, Inspector (Legal) alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits, leaving the competent Authority at liberty to conduct de-novo inquiry against the appellant, however strictly in accordance with relevant law and rules within a period of 90 days of receipt of copy of this judgment. In case of de-novo inquiry, the issue of back benefits shall be subject to outcome of de-novo inquiry. In case the de-novo inquiry is not concluded within the period of 90 days of receipt of copy of this judgment, the appellant shall be considered to have been reinstated with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.08.2023


(Kalim Arshad Khan)
Chairman



(Salah-Ud-Din)
Member (Judicial)

appellant has caused miscarriage of justice as in such a situation, the appellant was not in a position to properly defend himself regarding the allegations leveled against him.

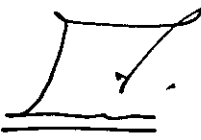
9. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits, leaving the competent Authority at liberty to conduct de-novo inquiry against the appellant, however strictly in accordance with relevant law and rules within a period of 90 days of receipt of copy of this judgment. In case of de-novo inquiry, the issue of back benefits shall be subject to outcome of de-novo inquiry. In case the de-novo inquiry is not concluded within the period of 90 days of receipt of copy of this judgment, the appellant shall be considered to have been reinstated with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

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(SALAH-UD-DIN)
MEMBER (JUDICIAL)

and he was thus the most material witness to be examined by the inquiry officer. The inquiry officer, however did not bother to record testimony of the afore-mentioned Rizwanullah Khan SDPO Rural for reasons best known to the inquiry officer. The inquiry officer has not even put forward any justifiable reason in his report as to why Rizwanullah Khan SDPO Rural was not examined during the inquiry. While going through the inquiry report, we have observed that the inquiry officer has just recorded the statement of Umer Niaz the then MHC Police Station Kakki District Bannu. The inquiry officer has given findings only on going through Daily Diary No. 10 dated 19.09.2021 and CDR of cell phone of the appellant without recording evidence of any witness regarding the same.

 8. The appellant was not provided any opportunity to cross-examine Umer Niaz MHC, who was examined as witness during the inquiry. Similarly, the appellant was not provided any opportunity to adduce evidence in his defence. Moreover, neither opportunity of personal hearing was afforded to the appellant nor was he issued any final show-cause notice. This Tribunal has already held in numerous judgments that issuing of final show-cause notice as well as providing of copy of the inquiry report to the delinquent official/officer is must. Reliance is also placed on judgment of august Supreme Court of Pakistan reported as PLD 1981 Supreme Court 176, wherein it has been held that rules devoid of provision of final show cause notice alongwith inquiry report were not valid rules. Non issuance of final show cause notice and non-supply of copy of the inquiry report to the

opportunity of cross-examination was provided to the appellant; that the appellant was not even provided any opportunity of adducing evidence in his defence; that the appellant was not provided any opportunity of personal hearing and even final show-cause notice was not issued to him and he was thus condemned unheard; that the appeal of the appellant may be allowed and he may be reinstated in service with all back benefits.

5. On the other hand, learned District Attorney for the respondents contended that that the appellant while serving as Maddad Moharrar in Police Station Kakki District Bannu had indulged himself in illegal activities and was having links with criminals; that the allegations against the appellant stood proved in the shape of CDR record; that the appellant was provided opportunity of self defense as well as personal hearing, however he was unable to produce any cogent evidence in his defense; that all legal and codal formalities were fulfilled before passing of the impugned orders and the appellant has rightly been awarded the penalty of dismissal from service.

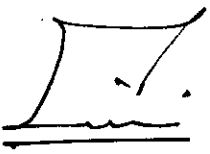
6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. A perusal of the record would show that departmental action was taken against the appellant on the basis of report recorded by Rizwanullah Khan SDPO Rural Bannu vide Daily Diary No. 10 dated 19.09.2021 Police Station Kakki. The episode triggering initiation of disciplinary action against the appellant is recorded in Daily Diary No. 10 dated 19.09.2021 recorded by Rizwanullah Khan SDPO Rural

➤ *Such an act on your part is against service discipline and amounts to gross misconduct."*

2. On conclusion of the inquiry, the appellant was awarded major punishment of dismissal from service vide order bearing O.B No. 1376 dated 01.12.2021. The punishment so awarded to the appellant was challenged by him through filing of departmental appeal before Regional Police Officer Bannu Region, Bannu, however the same was also filed vide order dated 22.12.2021, constraining the appellant to file instant service appeal.

3. 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.

 4. Learned counsel for the appellant contended that the allegations against the appellant were totally wrong and baseless and he had not in any way informed the accused Naseeb Ullah about the proposed police raid on residence of the said accused; that the appellant was having no knowledge of involvement of accused Naseeb Ullah in any case registered against him in District D.I.Khan, therefore, there existed no possibility of forwarding any information to Naseeb Ullah about the police raid; that no evidence was recorded by the inquiry officer in support of the allegations against the appellant but even then he had wrongly and illegally opined that the allegations against the appellant were proved; that only Umer Niaz Khan MHC was examined by the inquiry officer during inquiry, however no

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 68/2022

Date of Institution ... 20.01.2022

Date of Decision... 29.08.2023

Ikram Ullah, Ex LHC No. 1312, District Police Bannu.

... (Appellant)

VERSUS

Regional Police Officer, Bannu Region, Bannu.

... (Respondents)

MS. HIRA BABAR.

Advocate

For appellant.

MR. MUHAMMAD JAN,

District Attorney

For respondents.

MR. KALIM ARSHAD KHAN

CHAIRMAN

MR. SALAH-UD-DIN

MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts giving rise to filing of the instant appeal are that the appellant while posted as Madad Moharrar in Police Station Kakki District Bannu, was proceeded against departmentally on the allegations reproduced as below:-

- *That as reported vide DD No. 10, dated 19.09.2021 PS Kakki, you LHC Ikram Ullah No. 1312 while posted as MM PS Kakki informed the accused namely Naseeb Ullah@ Malak s/o Hameed Ullah r/o Bagh Khujari wanted in case FIR No. 431, dated 12.08.2021 u/s 457/382 PPC PS Saddar D.I.Khan about the Police Raid which led to the accused fleeing before the Police Raid and the Police Party failed to arrest the said accused.*
- *That in today's era of terrorism, your act can be very dangerous for Police and also carry bad name to the Police department.*

