



ORDER
08.09.2023

Appellant alongwith his counsel present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Asad Ali Khan, Assistant Advocate General 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 as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
08.09.2023


(Fareeha Paul)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)

appellant could not be held responsible of any inefficiency or misconduct on his part.

7. In view of the above, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

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(FAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

absence of any incriminating material against the appellant, he was awarded penalty in a mechanical way, therefore, the impugned orders are liable to be set-aside.

4. On the other hand, learned Assistant Advocate General for the respondents contended that the appellant while serving as acting SHO on 27.03.2019 had failed to take immediate preventive measures, which resulted in murder of the complainant Mst. Rukhsana wife of Aqil Shah; that a regular inquiry was conducted regarding the matter and the inquiry officer held the appellant guilty of the charges leveled against him; that the appellant was provided ample opportunity of self defence as well as personal hearing but he failed to rebut the allegations leveled against him, therefore, he has rightly been awarded the impugned penalty.

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

6. A perusal of the record would show that on 27.03.2019 Mst. Rukhsana wife of Aqil Shah had allegedly reported in Police Station Katlang that some unknown persons had entered her house and had stolen certain articles. No one was nominated by Mst. Rukhsana as an accused for the alleged crime. Even the available record does not show that Mst. Rukhsana had later on charged someone by name for commission of the offence. In such a situation, when no one was specifically charged for the alleged crime, the appellant could not be held responsible for not taking any preventive measures in the matter. In the given circumstances, the

case FIR No. 222 dated 28.03.2019 under sections 302/324/449/114/34 PPC was registered at Police Station Katlang. Departmental action was taken against the appellant that he being acting SHO was required to have taken immediate preventive measures but he did not bother to do so, which resulted in murder of the complainant Mst. Rukhsana. On conclusion of the inquiry, the appellant was awarded minor punishment of stoppage of two increments with cumulative effect vide order bearing OB No. 1370 dated 26.06.2019. The departmental appeal of the appellant was rejected vide order dated 30.08.2019, there-after he filed revision petition, however the same was also rejected vide order dated 17.11.2020, hence the instant service appeal.

2. On receipt of the appeal and its admission to full 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 in view of FR-29, the competent Authority was required to have specified the period for which such penalty was to remain effective, however no time period has been provided in the impugned orders, therefore, the same are not sustainable in the eye of law; that neither the appellant was associated in the inquiry proceedings nor he was provided opportunity of cross-examination to the witnesses; that whole of the proceedings were carried out by the inquiry officer unilaterally and the appellant was not associated in the inquiry proceedings; that in

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 691/2021

Date of Institution... 15.12.2020

Date of Decision... 08.09.2023

Sultan Bahadur, Sub-Inspector Police No. 256, MR Police Lines Mardan.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar and 03 others.

... (Respondents)

MR. MUHAMMAD RIAZ KHAN,
Advocate

--- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

--- For respondents.

SALAH-UD-DIN
FAREEHA PAUL

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts giving rise to filing

of the instant appeal are that the appellant while posted at Police

Station Katlang, was serving as acting SHO on 27.03.2019, one

Mst. Rukhsana wife of Aqil Shah resident of Palo Banda Dheri made

a report to the appellant, complaining therein that her husband was a

proclaimed offender in a murder case and was in Turkey; that she

alongwith her sons left for the house of their relatives situated at

Islamabad, however on returning back, they found that internal door

of their house was demolished and some articles were found missing.

The complainant charged unknown culprits for commission of the

offence. On the following day, the complainant was murdered and

