



ORDER
05.09.2023

Appellant alongwith his counsel present. Mr. Asif Masood
Ali Shah, Deputy 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 and the appellant stands reinstated
in service with all back benefits, however the period with effect
from 01.06.2019 to 27.06.2019 may be treated as medical leave.
Parties are left to bear their own costs. File be consigned to the
record room. .

ANNOUNCED
05.09.2023


(Fareeha Paul)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)

could not be considered as absent from duty during the said period. So far as absence of the appellant from duty with effect from 01.06.2023 to 27.06.2023 is concerned, the appellant had produced medical certificates regarding his illness during the said period. Vide letter No. 308/PA dated 16.07.2019, the medical certificates of the appellant were sent by Superintendent of Police FRP Peshawar Range, Peshawar to Medical Officer THQ Hospital Tangi for its verification. The medical certificates of the appellant were found genuine by the Medical Superintendent Category-C Hospital Tangi and in this respect, letter No. 1142/MS Cat-C Hospital Tangi dated 19.07.2019 was sent by the Medical Superintendent Category-C Hospital Tangi to the Superintendent of Police FRP Peshawar Range.

9. In view of the above discussion, the appeal in hand is allowed and the appellant stands reinstated in service with all back benefits, however the period with effect from 01.06.2019 to 27.06.2019 may be treated as medical leave. 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)

through any evidence in the shape of recording statement of any witness. Moreover, according to copy of Daily Diary No. 07 dated 03.02.2019, the appellant was arrested on 03.02.2019, while the appellant in his statement recorded by the inquiry officer has stated that he was arrested on 01.02.2019 and his arrest was kept secret for two days. The stance of the appellant regarding his arrest on 01.02.2019 has been admitted by the respondents in para-G of their comments. The inquiry officer did not even bother to thrash out the stance of the appellant regarding his arrest on 01.02.2019 and keeping him in illegal custody by the local police.

7. Admittedly, the appellant has now been acquitted by the trial court vide order dated 20.01.2022. In view of acquittal of the appellant, the very charge, on the basis of which the appellant was dismissed from service, 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. The arrest of the appellant on 01.02.2019 and his release from jail on 01.06.2019 has been categorically admitted by the respondents in para-G of their comments. The appellant was thus under arrest on 01.02.2019 and it is not understandable as to how he was proceeded against on the allegations of absence from duty with effect from 02.02.2019. The appellant was already in custody at the time of initiation of disciplinary action against him and had remained in custody till his release from jail on 01.06.2019. The appellant thus


statements of witnesses were also recorded, who supported the allegations leveled against the appellant and his guilt stood proved; that the appellant was afforded opportunity of personal hearing as well as self defence but he failed to substantiate his plea of innocence through any cogent evidence, therefore, the appeal in hand is liable to be dismissed with cost.

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 in case FIR No. 822 dated 03.11.2018 under sections 392/171/419/420 PPC read with section 15AA as well as his absence from duty with effect from 02.02.2019. The complainant as well as investigating officer of the concerned criminal case were most material witnesses, however the inquiry officer did not bother to examine them as witnesses during the inquiry for reasons best known to him. While going through inquiry report, it has been observed that the inquiry officer has not recorded statement of even a single witness, which could support the allegations leveled against the appellant. The inquiry officer had only recorded statement of the appellant and on the basis of the same, he concluded that the allegations against the appellant were proved. The appellant has categorically denied in his statement that he was having no nexus with the alleged crime but the statement of the appellant was considered as proof of the allegations against him. The inquiry officer has dealt with the inquiry in a whimsical manner and his findings are not supported



illegally opined in his inquiry report that the allegations against the appellant were proved; that the appellant was in custody at the time of inquiry and he was not provided opportunity to defend himself; that the appellant was admittedly taken into custody by the local police on 01.02.2019, which fact was well within the knowledge of the competent Authority but even then the charge of absence from duty with effect from 02.02.2019 was leveled against him; that the appellant after his release on bail on 01.06.2019 fell ill and was hospitalized, which fact has been affirmed by the competent Authority. In the last, he requested that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.



4. On the other hand, learned Deputy District Attorney for the respondents contended that the appellant was involved in a case of moral turpitude, which fact 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 charges in the departmental proceedings; that the appellant was not acquitted on merit, rather he was acquitted on the basis of compromise, therefore, his acquittal would not make him entitled to exoneration in the departmental proceedings; that the appellant had also remained absent from duty with effect from 02.02.2019 to 27.06.2019 without any leave or permission of the competent Authority; that a regular inquiry was conducted in the matter in which

through filing of departmental appeal, however the same was rejected by Commandant Frontier Reserve Police Khyber Pakhtunkhwa, Peshawar vide order dated 12.09.2019. The revision petition of the appellant was also declined vide order dated 04.11.2022, the appellant then approached this Tribunal by way of filing instant appeal for redressal of his grievance.

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 innocent and was wrongly charged in the concerned criminal case; that the appellant has already been acquitted by the competent court of law in the concerned criminal case and his acquittal is proof of the fact that he was falsely charged in the alleged crime; that the inquiry officer had categorically mentioned in his report that the inquiry may be kept pending till outcome of the criminal case, however the competent Authority ignored the same and dismissed the appellant in a hasty manner; that the appellant was actually arrested on 01.02.2019 and after keeping him in illegal custody for two days his arrest was shown on 03.02.2019 as it evident from the contents of the Daily Diary No. 07 dated 03.02.2019 of Police Station Daudzai; that the statement of not a single witness has been recorded in the inquiry in support of the allegations leveled against the appellant but even then the inquiry officer wrongly and



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1744/2022

Date of Institution ... 23.11.2022

Date of Decision... 05.09.2023

Naveed Ali Shah, Ex-Constable No. 2700 FRP, Peshawar, Range Peshawar.

... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 02 others.

... (Respondents)

MR. TAIMUR ALI KHAN.

Advocate

For appellant.

MR. ASIF MASOOD ALI SHAH,

Deputy District Attorney

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 departmental action was taken against the

appellant on the allegations of his involvement in case FIR No. 822

dated 03.11.2018 under sections 392/171/419/420 PPC read with

section 15AA as well as absence from duty with effect from

02.02.2019 till the date of issuance of charge sheet as well as

statement of allegations to the appellant on 14.02.2019. On conclusion

of the inquiry, he was awarded major punishment of dismissal from

service vide order bearing OB No. 459 dated 08.08.2019 passed by

Superintendent of Police FRP Peshawar Range, Peshawar. The

punishment so awarded to the appellant was challenged by him

