

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2957/2021

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Shams Ur Rehman S/O Gul Rehman R/O Singoor, District Chitral.  
.... (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Malakand Division. Saidu Shareef Swat.
3. District Police Officer, District Lower Chitral.
4. Inquiry Officer Mr. Zafar Ahmad SDPO Chitral.

.... (Respondents)

Mr. Shakir Ud Din  
Advocate ... For appellant

Mr. Fazal Shah Mohmand  
Additional Advocate General ... For respondents

Date of Institution.....12.02.2021  
Date of Hearing.....31.07.2023  
Date of Decision.....09.08.2023

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 this service appeal, the impugned orders may kindly be set aside and appellant may kindly be reinstated in service with all back benefits.”**

2. Brief facts of the case, as given in the memorandum of appeal are, that appellant was appointed as constable in police department. He was implicated in a case under Section 9D CNSA Police Station Hayat Abad, while travelling a passenger vehicle from Hospital. He applied for his release on bail to the court of Additional Sessions Judge Peshawar, which

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was granted. An inquiry was initiated against the appellant and he was issued charge sheet where after he joined inquiry and produced his evidence/statement before the inquiry officer. After the conclusion of inquiry proceedings, inquiry officer submitted his report wherein he recommended for major penalty of dismissal from service. Thereafter, final show cause notice was issued, which was replied by the appellant and was dismissed from service vide order dated 22.04.2020. Feeling aggrieved he submitted departmental appeal to the RPO which was dismissed. He file revision petition against the order dated 22.07.2020 to Inspector General of Police Khyber Pakhtunkhwa which was not responded within statutory period of 90 days, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that that the appellant had not been treated in accordance with law and rules. He contended that inaction of the respondent is against the law, rules and principle of natural justice hence void ab-initio and not sustainable in the eyes of law. He further contended that the allegations levelled in the charge sheet and the in the show cause notice are totally baseless and without any substance as he has not been convicted of the offence with which he has been charged and unless and until one is convicted he will be considered innocent and cannot be dismissed from service.

5. The learned Additional Advocate General contended that the appellant was treated in accordance with law and rules. He further contended that he was charged in case FIR No. 380 under Section 9D

CNSA dated 21.02.2020 P.S Hayatabad Peshawar and contraband from his possession was recovered by police. Appellant was charge sheeted and inquiry was initiated and after conclusion of departmental enquiry he was rightly dismissed from service.

6. Record transpires that appellant was charge sheeted on 17.03.2020 upon allegation of involvement in criminal case registered under Section 9D at police Station Hayatabad Peshawar beside leaving for Peshawar without prior permission of authority. Appellant submitted his reply which was found unsatisfactory. Inquiry officer after fulfillment of all codal formalities submit his inquiry report on 08.04.2020. Appellant was issued final show cause notice by the authority and who after hearing him awarded major punishment of dismissal from service vide impugned order dated 22.04.2020.


7. Appellant was issued with show cause notice and statement of allegations on basis of that he was implicated in a criminal case at Peshawar. It is demand of law and principle of natural justice, that when respondents are in knowledge of appellant's implication in a criminal case than they must placed him under suspension till final decision of the court of that very case in which appellant/civil servant was charged. But in the instant case respondent without waiting for decision of competent court of law in hurry decided fate of the appellant by awarding major penalty of dismissal from service which is not in accordance with settled norms of justice. Appellant was acquitted from the charges leveled against him in case FIR No. 380 dated 21.02.2020 under Section 9D of P.S Hayatabad Peshawar vide order dated 08.02.2022 by Additional District & Sessions Judge-X Peshawar.



8. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. The charging ~~of~~ of the appellant in criminal case was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service. It is established from the record that charges of his involvement in criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

9. As regard the charge of leaving place of duty for Peshawar without prior permission by the appellant, the appellant in his reply to show cause and final show cause categorically stated that he performed his polio duties for three days and after completion of his Polio duty on forth day he went to DHQ Hospital Chitral for check~~up~~ up of his leg of which surgery was done earlier. He was referred to Hayatabad Medical Complex Peshawar by DHQ Chitral's Doctors due to severe pain in that leg, he also annexed hospital prescription and referring sheet of DHQ Chitral to HMC Peshawar but inquiry officer did not bother to verify the same. Appellant also mentioned that factum of performance of his duties during Polio can be ascertained from Lady Health Worker (LHW) with whom he was deputed on polio duty but inquiry officer also had not associated the LHW with inquiry proceedings which means proper chance of self defense was not provided to him which is against the spirit of Rule 5 & 6 of Police Rules, 1975.


10. For what has been discussed above, we allow the appeal and impugned orders passed by respondents are set aside and appellant is




reinstated in service with all back benefits. Cost shall follow the event.

Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 9<sup>th</sup> day of August, 2023.*

  
(Muhammad Akbar Khan)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

Kaleemullah