

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 461/2018

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E) ...

Niaz Ali S/O Zar Wali, R/O Village Shah Mansoor, Tehsil & District Swabi.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Civil Secretariat, Peshawar.
2. Deputy Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
3. Additional Inspector General of Police (Establishment), Central Police Office, Peshawar.
4. District Police Officer Swabi.
5. Deputy Superintendent of Police, Tehsil Swabi.

.... (Respondents)

Mr. Mehtab Sikandar
Advocate

... For appellant

Mr. Fazal Shah Mohmand
Additional Advocate General

... For respondents

Date of Institution.....03.04.2018
Date of Hearing.....09.08.2023
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 appeal, the impugned order of dismissal dated 14.11.2017 passed by DPO Swabi and order on departmental appeal dated 05.12.2017 passed by RPO Mardan and IGP rejecting both the appeals may

graciously be set aside and appellant 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 vide order dated 28.07.2011. From the initial appointment he was posted as cook with number of officers and lastly in the house of DSP Swabi where an unfortunate incident took place which culminated into registration of criminal case i.e FIR and subsequently in the shape of dismissal from service of the appellant. The criminal case is pending adjudication and is yet to be decided, but departmental disciplinary proceedings were concluded and as a consequence appellant was dismissed from service. He filed departmental appeal which was rejected. He filed revision petition to Inspector General of Police which was also rejected vide order 06.03.2018, 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 orders passed by the respondents are illegal, against law and facts, hence liable to be set aside. He contended that no proper inquiry was conducted while case FIR has initially been registered against unknown person, but appellant was made scapegoat and later on dismissed from service. He further contended that no opportunity of personal hearing was afforded nor he was treated in accordance with law. He, therefore, requested for acceptance of instant service appeal.

5. The learned Additional Advocate General contended that the appellant had been treated in accordance with law and rules. He further contended that



the appellant was while posted as Cook with DSP Swabi, involved himself in case FIR No. 30 dated 12.06.2017, on account of which he was proceeded departmentally. He was issued charge sheet alongwith statement of allegation and DSP Lahor conducted enquiry and after fulfillment of all codal formalities, the competent authority, after issuing final show cause notice, and hearing him in person, dismissed the appellant from service.

6. Perusal of record reveals that appellant, while working as Cook in the hose of DSP Swabi, was nominated in criminal case bearing FIR No.30 dated 12.06.2017 under Section 34 Exp:427 PPC/7ATA of PS CTD Mardan. Respondent on the other hand initiated disciplinary proceedings against the appellant on ground of his involvement in criminal case i.e FIR No. 30 dated 12.06.2017 by issuing charge sheet and statement of allegation on 29.08.2016. Mr. Iftikhar Khan SDPO Lahor was appointed inquiry officer who submitted his inquiry report on 20.10.2017 to competent authority. When inquiry was initiated on the basis of involvement in the criminal case then it is the demand of fair trial and principle of natural justice that proceedings in disciplinary matters be kept pending till the decision of criminal case by the court of law. Respondents are required to place appellant under suspension till final decision of court of law in which criminal case was pending. But respondents carried out proceedings by issuing final show cause notice dated 14.10.2017 and dismissed the appellant vide order dated 14.11.2017 from the date of his suspension i.e 13.10.2017. Allegation against the appellant was that he while posted as cook with SDPO Swabi picked an official grenade from the official vehicle of DSP and caused explosion in order to deter guests of the DSP. This allegation was not believed by the court of law and appellant was acquitted from charges vide order dated 24.05.2022 by Additional & Sessions Judge-1 Swabi.

7. It has been held by the Apex Court that all acquittals are certainly honorable. There can be no acquittal, which may be said to be dishonorable. Implication of the appellant in the case of explosive substances 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 with his service.

8. It is established from the record that charges of involvement in the criminal case ultimately culminated in honorable acquittal of appellant by the competent Court of Law in the above-mentioned criminal case. In this respect, we have sought guidance from 1988 P.L.C (C.S) 179; 2003 S.C.M.R 215 and P.L.D 2010 Supreme Court 695.

9. As a sequel to above discussion, appeal of the appellant is accepted and the impugned orders are set aside and the appellant is reinstated in service with all back benefits. Costs shall follow the event. Consign.

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


(FAREEHA PAUL)
Member (E)

*Kaleemullah


(RASHIDA BANO)
Member (J)