

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 2564/2021

Date of Institution ... 28.01.2021

Date of Decision... 19.09.2023

Ex-Constable Irfan S/O Nasarullah Khan, Belt No. 670, Kohat Police.
... (Appellant)

VERSUS

The Regional Police Officer, Kohat Region, Kohat and 01 other.
... (Respondents)

MR. ASHRAF ALI KHATTAK,
Advocate --- For appellant.

MR. MUHAMMAD JAN,
District Attorney --- For respondents.

SALAH-UD-DIN --- MEMBER (JUDICIAL)
FAREEHA PAUL --- MEMBER (EXECUTIVE)


JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant appeal are that the appellant was proceeded against departmentally on the allegations reproduced as below:-

"i. You constable Irfan No. 670, was posted at Highway Check post was previously proceeded with departmentally on the charges of in-league with NCP smugglers, facilitators for personal gain and awarded a punishment.

ii. During proceedings you were posted at Lachi Toll Plaza with the directions to seize the NCP vehicles but despite compliance of lawful orders you again facilitated the NCP smugglers and left to move the vehicles.

iii. You were under observations and your contact with NCP smugglers was recorded and preserved in a device.




iv. Your this act shows in-efficiency, malafide and gross misconduct on your part."

2. On conclusion of the appellant, he was awarded major punishment of dismissal from service vide order bearing OB No. 788 dated 10.11.2020 passed by District Police Officer Kohat. The punishment so awarded to the appellant was challenged by him through filing of departmental appeal, however the same was also rejected vide order dated 23.12.2020, hence the 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 has addressed his arguments supporting the grounds agitated by the appellant in his service appeal.

 On the other hand, learned District Attorney for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

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

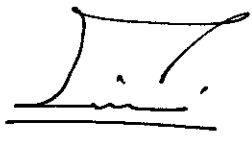
6. According to the inquiry report, the only witness examined by the inquiry officer was Said Ghulam LHC No. 517, the then Incharge Toll Plaza Lachi. While going through the statement of the afore-mentioned witness, it is evident that he has not stated anything in support of the allegations leveled against the appellant. The inquiry officer had even did not bother to record statement of the appellant during the inquiry. While going through the allegations leveled against the appellant in

charge sheet as well as statement of allegations, it can be observed that the same are vague in nature as no specific particulars of involvement of the appellant in smuggling of NCP vehicles or providing assistance to smugglers of NCP vehicles have been mentioned therein. Even the name of any NCP smuggler assisted by the appellant in smuggling of NCP vehicles has not been mentioned in the charge sheet or statement of allegations. While going through the findings of the inquiry officer, it can be observed that he has mainly relied on CDR and has mentioned certain cell numbers which were allegedly in use of smugglers of NCP vehicles. The available record does not show that the appellant was confronted with the CDR as no one was examined as witness by the inquiry officer to prove the CDR relied upon by the inquiry officer in support of proof of the allegations against the appellant. The inquiry officer did not even bother to mention the names of the alleged smugglers of NCP vehicles, who were in contact with the appellant. In absence of any proof that the numbers mentioned in the CDR were being used by smugglers of NCP vehicles, the inquiry officer was not justified in placing reliance on the evidence in the shape of CDR.

7. In view of the above discussion, 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
19.09.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
19.09.2023

Appellant alongwith his counsel present. Mr. Arif Saleem, Steno 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 as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
19.09.2023



(Farzeha Paul)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)