

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1468/2022

Date of Institution ... 12.10.2022

Date of Decision... 14.09.2023

Ex-Head Constable, Khanwada No.550, Police Force, Kohat
... (Appellant)

VERSUS

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

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

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

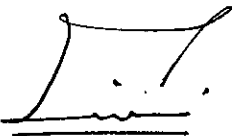
SALAH-UD-DIN --- MEMBER (JUDICIAL)
FAREEHA PAUL --- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts giving rise to filing
of the instant appeal are that departmental action was taken against the
appellant on the allegations reproduced as below:-

*"i. That it has been reported vide daily diary report
No. 08 dated 16.05.2022, Police station Jarma, that
you were in possession of a case property motor car
No. LXJ 417/ Lahore seized in case FIR No. 454
dated 29.09.2021 u/ss 419, 420, 471 PPC PS Jarma
parked in Police station.*


*ii. That you illegally used the above vehicle for
your personal use, while W/IGP Khyber Pakhtunkhwa
had already taken a serious notice of case property*



vehicles /seized vehicles in illegal usage, which was circulated to all concerned. Thus you willfully violated the lawful orders, misused your authority.

iii. That as per daily diary mentioned above you have further handed over the vehicle to one HC Musharaf of FRP (who changed number plate as LED No. 2056) and while trafficking narcotics in the said case property vehicle is arrested by Excise, control of narcotics department at Peshawar vide FIR No. 87 dated 14.05.2022 u/s 9 D-KP CNSA PS Excise district Peshawar."

2. On conclusion of the inquiry, the appellant was awarded major punishment of compulsory retirement from service vide order bearing O.B No. 221 dated 27.07.2022. The departmental appeal of the appellant was rejected by Regional Police Officer Kohat Region vide order dated 13.09.2022, 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 contended that the appellant was on Elite Tactical Course at Elite Police Training Centre, Nowshera with effect from 14-03-2022 to 22-05-2022 and was neither in possession of the concerned motorcar nor had he handed over the same to Musharaf, who was arrested in case FIR No. 87 dated 14.05.2022 u/s 9 D-KP CNSA PS Excise District Peshawar; that Dildar IHC was serving as Muharar in Police Station Jarma during the relevant

days, while the appellant was on training, therefore, he could not be saddled with responsibility of misusing of the concerned motorcar; that the inquiry proceedings were conducted in a slipshod manner and the appellant was not provided any opportunity of personal hearing or self defence; that no one was examined as witness during the inquiry in support of the allegations leveled against the appellant but even then the inquiry officer had wrongly and illegal given findings that the allegations against the appellant were proved; that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

5. On the other hand, learned Deputy District Attorney for the respondents had contended that the motorcar in question was taken into possession as case property in case FIR No. 454 dated 29.09.2021 u/s 419,420,471 PPC PS but the same was handed over by the appellant to one Musharaf, who was arrested for smuggling of Narcotics in the same; that a regular inquiry was conducted in the matter by providing opportunity of personal hearing as well as self defence to the appellant; that the allegations against the appellant were stood proved in a proper inquiry, therefore, he has rightly been awarded the punishment of compulsory retirement from service.

6. Arguments have already been heard and record perused.

7. The motorcar bearing registration No. LXJ 417 Lahore was case property of case FIR No. 454 dated 29.09.2021 under sections 419/420/471 PPC registered in Police Station Jarma. It was on 14.05.2022 that the said motorcar was intercepted by officials of Police

Station Excise District Peshawar and Charas weighing 12000/- gram was recovered from the same. The motorcar was allegedly being driven by one Musharaf Khan S/O Azad Gul resident of Said Ali Banda Karak, who was arrested. On receipt of information regarding taking into possession of the motorcar bearing registration No.LXJ 417 Lahore, by officials of Police Station Excise District Peshawar, Dildar IHC Police Station Jarra entered the same in daily diary No. 08 dated 16.05.2022, wherein it was mentioned that the motorcar in question was handed over to the appellant. In view of contents of Daily Diary No. 08 dated 16.05.2022 of Police Station Jarra, disciplinary action was taken against the appellant, which concluded into compulsory retirement of the appellant from service.




8. It is evident from the record that during the relevant days, the appellant was not serving as Muharrar in Police Station Jarra rather he was admittedly on training in Elite Police Training Centre Nowshera with effect from 14.03.2022 till 22.05.2022. Dildar IHC was serving as Muharrar in Police Station Jarra during the relevant days and it was he, who recorded in daily diary No. 08 dated 16.05.2022 that he had handed over the motorcar in question to the appellant. Except bare entry in daily diary regarding handing over the motorcar in question to the appellant, no oral or documentary evidence was procured by the inquiry officer in support of the allegations of handing over the motorcar in question to the appellant. The inquiry officer even did not bother to examine Dildar IHC, whose status was that of a complainant in the matter in question. Even otherwise too, Dildar IHC was not

clothed with any legal Authority for handing over the motorcar in question to the appellant and for the sake of arguments, if his assertion is admitted as correct then he was also liable to have been proceeded against for unlawfully handing over the motorcar in question to the appellant. While scanning the record, we have observed that the motorcar in question was case property but the same was not dealt with in accordance with the rules prescribed in Police Rules, 1934. The concerned SHO, who was Incharge of Police Station had also not bothered to observe the relevant rules of Police Rules, 1934 regarding the motorcar in question, which was a case property. The inquiry officer had conducted the inquiry in a slipshod manner and had not even afforded an opportunity to the appellant to record statement in his self defense.

9. In view of the above discussion, the impugned orders are set-aside and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
14.09.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)

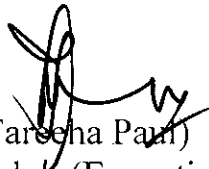

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
14.09.2023

Appellant in person present. Mr. Arif Saleem, Steno alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the impugned orders are set-aside and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
14.09.2023



(Fareeha Pariz)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)