

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 7815/2020

BEFORE: KALIM ARSHAD KHAN --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Mr. Hussain Ghulam (RI) PTC Hangu Now DSP, PTC
Hangu.....(*Appellant*)

VERSUS

1. The Commandant Police Training College Hangu.
2. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. The Addl: Inspector General of Police, Khyber Pakhtunkhwa
Peshawar.....(*Respondents*)

Present:-

SYED NOMAN ALI BUKHARI,
Advocate --- For Appellant

FAZAL SHAH MOHIMAND,
Additional Advocate General --- For respondents.

Date of Institution.....14.07.2020

Date of Hearing.....14.09.2023

Date of Decision..... 14.09.2023

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of this appeal, the order dated 20.04.2020 and 15.06.2020 may please be set aside and the respondents may be directed to restore the annual increment from due date with all back and consequential benefits. Any other remedy which this Tribunal fit and proper may also be awarded in the favour of appellant.”

02. Brief facts of the case are that appellant is presently serving as DSP PTC Hangu in the Police department. During his earlier posting as Inspector PTC Hangu, he was awarded minor punishment of "withholding of annual increment for two (02) years with cumulative effect" on the allegations of negligence towards his duty vide order dated 24.04.2020. Feeling aggrieved, the appellant filed departmental appeal which was rejected vide order dated 15.06.2020, hence preferred the instant service appeal on 14.07.2020.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Additional Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned orders dated 20.04.2020 and 15.06.2020 are against the law, rules and material on record. No opportunity of defense was afforded to the appellant as neither statement of witnesses were recorded in his presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses, which is violation of law and rule; that no report of the inquiry was provided to the appellant with the show cause notice which is also violation of law and rules. As per job description the appellant had no role/responsibility what has been stated in the charge sheet/statement of allegations. He further contended that charge sheet as well as statement of allegations were issued against the appellant with the signature of Inspector General of Police Khyber Pakhtunkhwa while on the other hand, the impugned order dated 20.04.2020 was passed by Addl. IGP/H.Qrs Peshawar who was not

competent for the purpose. Similarly, the departmental appeal of the appellant was decided by the same Addl. I.G H.Qrs. In the last, learned counsel for the appellant argued that the penalty imposed upon the appellant was passed by an incompetent officer which tantamount to void decision.

05. Learned Additional Advocate General, on the other hand contended that the order of respondents are based on facts, justice and in accordance with law/rules; that preliminary enquiry followed by regular enquiry were conducted against the appellant wherein, all the opportunities of self defence, cross examination and hearing were provided; that enquiry proceedings were carried out in accordance with the Khyber Pakhtunkhwa, Police Rules, 1975 wherein, all the codal formalities were observed and appellant was awarded minor punishment on the charges of gross misconduct; that the Inspector General of Police, Khyber Pakhtunkhwa has delegated powers to the Additional Inspector General of Police, HQrs for disposal of departmental appeal of junior ranks officers so the order of the appellate authority is legal and justified under the rules.

06. Legal scrutiny of the case record reveals that the appellant, while posted as Reserve Inspector (R.I) Police Training College (RTC) Hangu, was proceeded against under Police Rules 1975, on the following charges/allegations;

(i) That a preliminary enquiry was conducted in which ASI Bashir Muhammad, IIC Matiullah, IIC Akram and FC/DI Sohail No. 44 for embezzlement of huge quantity of SMG rounds from PTC, Hangu SMG kot with facilitation of corruption.

(ii) That proper departmental enquiry was conducted against ASI Bashir Muhammad, IIC Matiullah, IIC Ikram and FC Sohail for embezzlement of 76285 rounds of SMG

(iii) That the enquiry committee submitted report to the Commandant, PTC Hangu on 1203.2019 with the recommendation of embezzlement by the above officers/officials and reportedly he facilitated them being supervisory officer.

(iv) That he being a member of discipline force have a very loose and un-professional attitude and negligence in his supervision and lack of interest the official duties.

(v) That his act has degraded the image of police in the eyes of Police force and amongst general public.


The gist of above narrated allegations against the appellant is that (i) he allegedly facilitated his subordinates in embezzling 76285 rounds of SMG (ii) he showed negligence in proper supervision of subordinate staff. The inquiry report has exonerated the appellant from the first charge, however, he was found weak/negligent in supervision by the inquiry officer. The inquiry report speaks in general terms regarding responsibilities of (RI) not specific to the responsibility of the appellant viz-a-vis counting/up-keeping ammunition in the Kot. As per job description clearly enunciated in the standing order No. 3 of 2013, the only responsibility assigned to the RI is to provide appropriate space in the building of PTC for the purpose of keeping weapons and ammunition which the appellant appears to have fulfilled. Rest of task of up-keeping of weapons and ammunition is the responsibility of Inspector weapons and ammunition, therefore, we believe that in presence of clear demarcation of job description and responsibilities holding the appellant responsible in the sphere of others domain is not fair and just.


07. The order of inquiry and charge sheet were issued under the signature of Inspector General of Police Khyber Pakhtunkhwa as per requirement of Police Rules, 1975 amended in 2014. However, final show cause notice indicating tentative penalty of "Dismissal from service" and final order

imposing minor penalty of “withholding annual increments for two years with cumulative effect” were awarded/issued under the signature of Additional Inspector General of Police Khyber Pakhtunkhwa. As per Police Rules, 1974 the competent authority in case of the appellant was the Inspector General of Police Khyber Pakhtunkhwa who in that capacity issue the order of inquiry and charge sheet and as such was required to issue final show cause notice and pass final order on the disciplinary proceedings as per law. Ironically the departmental appeal of the appellant preferred against the penalty was also decided at the level of Additional Inspector General of Police HQrs who passed order of penalty which is not only against the Rules but the universal principle of natural justice.

08. In view of the foregoing discussion we are constrained to set aside the orders dated 20.04.2020 and 15.06.2021 and allow the appeal as prayed for. Costs shall follow the events. Consign.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 14th day of September, 2023.*


(Kalim Arshad Khan)
Chairman


(Muhammad Akbar Khan)
Member (E)