

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7953/2021

Date of Institution ... 30.12.2021

Date of Decision... 10.10.2023

Saeed-Ur-Rehman Constable No. 1246 S/o Gul Sharaf, R/o Akbar Pura Tehsil
& District Nowshera.

... (Appellant)

VERSUS

Regional Police Office Mardan and 02 others.

... (Respondents)

MS. ROEEDA KHAN,
Advocate

--- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

--- For respondents.

SALAH-UD-DIN
FAREEHA PAUL

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts giving rise to filing of the instant appeal are that during posting of the appellant in District Nowshera, departmental action was taken against him on the allegations of absence from special duty and he was awarded minor penalty of stoppage of one year increment with cumulative effect vide order bearing OB No. 810 dated 23.07.2010. The same was challenged by the appellant through filing of departmental appeal, which was rejected vide order dated 12.07.2019 passed by Regional Police Officer Mardan. The appellant then preferred revision petition before the Inspector General of Police Khyber

Pakhtunkhwa Peshawar, which was also declined vide order dated 06.08.2021, hence the instant appeal.

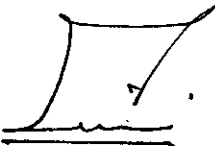
2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant argued that no charge sheet, statement of allegations as well as show-cause notice were issued to the appellant and whole of the proceedings were carried out at his back without providing him any opportunity of self defence as well as personal hearing. He further argued that the appellant had never remained absent from duty and that the allegations of absence from duty were never proved against him through any regular inquiry proceedings. He next contended that the penalty in question was though imposed upon the appellant in the year 2010 but the same was not communicated to him and he got knowledge of the same in the month of May 2019 and thus challenged the same by way of filing departmental appeal. He further argued that the issue in question is one of financial nature, therefore, the same was not hit by bar of limitation. In the last he requested that the impugned orders are not sustainable in the eye of law, therefore, the same may be set-aside and the appeal in hand may be accepted as prayed for.

4. On the other hand, learned Assistant Advocate General for the respondents contended that the allegations of absence from special

duty stood proved against the appellant in a proper inquiry, however record of the same was destroyed in the devastating flood of 2010 and is thus not available. He next contended that inquiry against the appellant was conducted by complying all legal and codal formalities and the appellant was provided opportunity of personal hearing as well as self defence. He further argued that the departmental appeal of the appellant was badly barred by time, therefore, the appeal in hand is not competent. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with costs.

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

 6. The alleged absence of the appellant from special duty was a factual controversy requiring conducting of regular inquiry, however respondents have failed to prove that any inquiry was conducted against the appellant regarding his alleged absence from special duty.

The available record does not show that the appellant was provided any opportunity of personal hearing as well as self defence. The principle of natural justice enshrined in the maxim "*audi alteram partem*" is one of the most important principle and its violation is always considered enough to vitiate even most solemn proceedings.

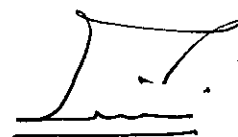
Supreme Court of Pakistan in its judgment reported as 2008 SCMR 934 has held that where adverse action is contemplated to be taken against the person/persons, he/they has/have a right to defend such action, notwithstanding the fact that the statute governing their rights does not contain provision of the principle of natural justice and even

in absence thereof it is to be read/considered as part of such statute in the interest of justice.

7. The appellant was awarded the impugned penalty vide impugned order bearing OB No. 810 dated 23.07.2010, however the same was admittedly not implemented till the year 2018. The respondents have though raised an excuse that the punishment could not be implemented as official record was destroyed due to devastating flood in the year 2010, however the afore-mentioned plea of the respondents holds no force for the reason that they have failed to produce any documentary proof, which could show that any official correspondence was made for reconstructing of official record allegedly destroyed in the year 2010. Moreover, the issue is one of financial nature and would not be hit by bar of limitation.

8. Consequently, the appeal in hand is allowed by setting-aside the impugned orders and one annual increment stands restored to the appellant with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
10.10.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(FAREEHA PAUL)
MEMBER (EXECUTIVE)


ORDER
10.10.2023

Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General 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 by setting-aside the impugned orders and one annual increment stands restored to the appellant with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
10.10.2023

(Fareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)