

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 752/Neem/2012

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Rafi Ullah Ex-Police Constable No. 847, District Karak.
.... (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer Kohat Region Kohat.
3. District Police Officer District Kohat.

.... (Respondents)

Mr. Nasir Mehmood
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....05.07.2012
Date of Hearing.....27.09.2023
Date of Decision.....27.09.2023

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 orders dated 15.05.2012 and 10.09.201 passed by respondent No. 2 and 3 respectively may be set aside and the appellant may please be reinstated into service with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal are, that appellant joined police department as foot Constable in the year 2007 and was performing duties upto the entire satisfaction of his superiors. In

September 2011 the appellant was posted as gunman of Deputy Superintendent of Police Karak. On 09.09.2011 appellant took his television set for repair in office uniform to a workshop where one Fazal Hanif Sub-Inspector Incharge DSB, Karak came there and altercation took place among them upon which false charge of placing unattended weapon by the appellant was levelled against the appellant vide daily dairy No. 10 dated 09.09.2011. Appellant was dismissed from service vide order dated 10.09.2011 which was challenged by the appellant in his departmental appeal which was dismissed vide order dated 15.05.2012, 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that appellant has been proceeded against without affording him an opportunity of personal hearing which is violation of principle of natural justice. He submitted that no enquiry was conducted in accordance with Section 3(2) of RSO and the impugned order was passed at the back of appellant, therefore, he requested for acceptance of instant service appeal.

5. The learned District Attorney contended that the appellant was treated in accordance with law and rules. He further contended that appellant was allotted official weapon for official duty but he misused it and Mr. Fazal Hanif Incharge DSB Karak found unattended weapon on the cot of the TV mechanic Shop. On query the mechanic informed him that the weapon was put by one uniformed person. The rifle was taken into possession by him and


handed over to Reader to DPO Karak. Report to this effect was entered DD No. 10 dated 09.09.2011. He argued that appellant was provided opportunity of personal hearing and called in order room but he did not turn up. Moreover he was also charged in criminal case vide FIR No. 453 dated 28.10.2011 and after completing codal formalities he rightly dismissed from service.

6. Perusal of record reveals that appellant is serving in police department as constable and was posted as guard of Deputy Superintendent of Police Head Quarters Karak in September 2011. It was on 09.09.2011 when appellant took his television set for repair in office uniform to the workshop where one Fazal Hanif Sub-Inspector Incharge DSP Karak came there and altercation took place among them upon which false charge of placing unattended weapon by the appellant was levelled against the appellant by said Fazal Hanif DSP Karak vide daily diary NO. 10 dated 09.09.2011. Appellant was dismissed from service by disposing with the enquiry vide order dated 10.09.2011 which was challenged by the appellant in his departmental appeal which was dismissed vide order dated 15.05.2012. Denovo inquiry reinstated for enquiry to enquiry by providing proper opportunity of self defence and cross examination upon Fazal Hanif DSP. Appellant filed instant appeal on 05.07.2012 but he was behind the bar at the time of decision by the appellate authority on 15.05.2012 which is evident from said order wherein it is mentioned that appellant is involved in case FIR NO. 453 dated 28.10.2011 under Section 324 PPC of police station Yaqoob Khan Shaheed. Appellant was granted bail in said FIR NO. 453 by the learned Additional Sessions Judge Karak on 29.06.2012 and after release he filed instant appeal which is within time because no proof of communication of the appellate order to appellant is available on record.

7. It is well settled legal proposition duly supported by numerous judgments of apex court that for imposition of major penalty, regular inquiry is must by providing opportunity of self-defence and cross examination is must. Reliance is placed on 2022 PLC (CS) and 2019 PLC (CS) 224. Moreover no opportunity of cross examination was provided to the appellant upon the witness who deposed inquiry against him which is very essential element of regular inquiry. But in the instant case even inquiry was dispensed with without showing any cause which is mandatory to show in accordance with section 5(4) of RSO 2000. Appellant must be provided an opportunity for cross examination upon Fazal Hanif who reported daily diary No. 10 about leaving official weapon unattended which resulted into dismissal of the appellant.

8. As a sequel to above discussion, appeal in hand is partially allowed. Impugned orders are set aside and appellant is reinstated into service for the purpose of denovo inquiry, respondents are directed to conduct denovo inquiry within 90 days of the receipt of copy of this judgment. The issue of back benefits shall be subject to the outcome of denovo inquiry. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of September, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)

*Kaleemullah


(RASHIDA BANO)
Member (J)


ORDER

27th Sep, 2023


1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for respondents present.

2. Vide our detailed judgement of today placed on file, the appeal in hand is partially allowed. Impugned orders are set aside and appellant is reinstated into service for the purpose of denovo inquiry. Respondents are directed to conduct denovo inquiry within 90 days of the receipt of copy of this judgment. The issue of back benefits shall be subject to the outcome of denovo inquiry. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of September, 2023.*


(Muhammad Akbar Khan)
Member (E)

*Kaleemullah


(Rashida Bano)
Member (J)