

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5192/2021

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

Tahir Nawaz Sub-Inspector Police Lines Kohat.

.... (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa Police Head Quarters/Combined Police Officer Peshawar.
2. Additional Inspector General of Police Khyber Pakhtunkhwa Police Head Quarters.
3. Deputy Inspector General of Police Kohat Region Kohat.
4. Regional Police Officer Kohat Region Kohat.
5. District Police Officer District Kohat.

.... (Respondents)

Mr. Abdullah Qazi
Advocate

...

For appellant

Mr. Muhammad Jan
District Attorney

...

For respondents

Date of Institution.....20.04.2021
Date of Hearing.....26.09.2023
Date of Decision.....26.09.2023

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, both the impugned orders dated 29.11.2019 and 22.03.2021 may kindly be set aside.”

2. Brief facts of the case, as given in the memorandum of appeal are, that appellant was posted at Police Station Gumbat, Kohat as Sub-Inspector. An encounter was took place between Police and dacoit in the jurisdiction of PS Gumbat and a dacoit namely Niaz Ali got hit and died. A case FIR No. 201 dated

10.05.2016 U/S 324/353/399/402/148/149 PPC 15-AA was registered at PS Gumbat Kohat against Niaz Ali and three others. Appellant conducted the investigation and after completion of investigation complete challan was submitted by the SHO concerned to the prosecution for its onward submission to the Court for trial. All the accused were acquitted by declaring the encounter fake vide judgment dated 03.08.2019. In compliance of judgment a preliminary inquiry was conducted and as per directions of trial court's judgment, instead of fixing responsibility for a fake encounter, the appellant was held guilty of sub-standard investigations and in pursuance of inquiry the appellant was held responsible for the charges of sub-standard investigation and awarded a punishment of stoppage of annual increment for two years with cumulative effect with immediate effect vide order dated 19.11.2019. Appellant filed departmental appeal which was rejected vide order dated 06.07.2020. Then appellant filed review petition before Additional Inspector General of Police HQrs, which was also rejected vide order dated 22.03.2021, 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 the impugned orders passed by the respondents are against law and facts, hence, not tenable and liable to be set aside. He further argued that instead of enquiring about the fake encounter as per direction of learned Sessions Judge Kohat, the inquiry officer has wrongly held the appellant responsible for the substandard investigation. He submitted that alleged inquiries have not been conducted in accordance with law and the appellant was condemned unheard. He, therefore, 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 order passed by the respondents are in compliance with the judgment of learned Sessions Judge, Kohat. He submitted that encounter was genuine and in departmental inquiry it proved that the appellant badly failed to conduct fair and transparent investigation upon which court took serious notice of the laxity. He argued that appellant was heard in person in orderly room and he badly failed to submit any plausible explanation in rebuttal of charges, therefore, he requested for dismissal of instant service appeal.


6. Perusal of record reveals that appellant was serving in the respondent department as investigation officer in police station Gumbat Kohat when an occurrence took place between local police and dacoits where in police allegedly in their self defense started firing upon the dacoits as a result one namely Niaz Ali got hit and died. This occurrence was reported vide FIR No. 201 under section 324/353/399/402/148/149 PPC read with 15-AA dated 10.05.2016. Investigation of the criminal case FIR No. 201 was marked to the appellant who after completion of investigation submitted complete challan to SHO of police station Gumbat Kohat and that complete challan was put in court. At the conclusion of trial learned Sessions Judge Kohat vide judgment dated 03.08.2019 declared occurrence as fake encounter and recommended both department as well as penal proceeding against the officials involved in alleged fake encounter. It therefore, directed that by highlighting concluding part of judgment its copy be sent to the District Police Officer, Kohat for necessary legal proceedings/inquiry, fixation of liability for single shot murder of accused Niaz Ali Shah and thereafter taking the responsible to task both departmentally as well as under the police law and general law of land under intimation to the Court. Respondent department as a result of recommendations of learned Sessions Judge, Kohat initiated inquiry and during


inquiry appellant being investigation officer was held responsible. Allegation against the appellant was that due to his weak and poor investigation learned court came to the conclusion of fake encounter reported vide FIR No. 201. It is very strange to note that learned Session Judge Kohat declare encounter fake but respondent again declared occurrence genuine and held responsible appellant who as per opinion of inquiry officer had not properly investigated the case, not collected empties and prepared site plan but in our humble view these were not the only grounds before learned Sessions Judge to declare occurrence as fake encounter which is evident from the judgment dated 03.08.2019. The most important factor is the single fire arm injury at the back of the deceased Niaz Ali.

7. It is astonishing to note that learned Sessions Judge Kohat recommended penal as well as departmental proceedings against the official who were involved in fake encounter but instead of proceeding against the police official who were involved i.e complainant and eye witness only the appellant was made escape goat just for an eye wash. Although penalty awarded to the appellant is minor but in essence penalty imposed upon appellant is major due to giving it accumulative effect.

8. In view of the above discussion, the impugned orders dated 29.11.2019 and 22.03.2021 are set aside and instant appeal is accepted as prayed for. 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 26th day of September, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER

26th 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 impugned orders dated 29.11.2019 and 22.03.2021 are set aside and instant appeal is accepted as prayed for. 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 26th day of September, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

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