

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7391/2021

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Sohail Ahmad S/O Abdul Qayum, R/O Mohallah Ghari Dodaiwal,
Kohat City. (Appellant)

Versus

1. Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer Kohat Region, Kohat.
3. District Police Officer, Kohat
4. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar..... (Respondents)

Mr. Shahid Qayum Khattak
Advocate ... For appellant

Mr. Asif Masood Ali Shah ... For respondents
Deputy District Attorney

Date of Institution..... 10.09.2021
Date of Hearing..... 10.10.2023
Date of Decision..... 10.10.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 10.09.2020 passed by respondent No. 3, whereby the appellant was awarded major penalty of reduction in rank of constable with immediate effect, and against the order dated 23.12.2020 passed by respondent No. 2 vide which the departmental representation/appeal filed by the appellant was rejected and the punishment was enhanced to dismissal from service as well as against the order of



respondent No.1 dated 18.06.2021, whereby the revision petition filed by the appellant was partially accepted and he was re-instated in service, but the order dated 10.09.2020 of respondent No.3 remained upheld. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant might be re-instated in service with all back benefits of pay and service.

2. Brief facts of the case, as given in the memorandum of appeal, are that respondent No.3 initiated disciplinary proceedings against the appellant and issued charge sheet and statement of allegations to him which were properly replied. Thereafter show cause notice was issued, which was also replied by him. Respondent No. 3 passed an order dated 10.09.2020 vide which major punishment of reduction in rank from D-List Head Constable to the rank of Constable, with immediate effect, was awarded to him. Feeling aggrieved, appellant filed departmental appeal/representation which was rejected without fulfilling codal formalities and the punishment was enhanced to dismissal from service /vide order dated 23.12.2020. Feeling aggrieved from that order, the appellant filed revision petition to the respondent No. 1, which was partially allowed on 18.06.2021 and the appellant was re-instated in service, but the order of respondent No. 2 remained upheld. In the meanwhile the appellant filed appeal before the Service Tribunal but after passing of order dated 18.06.2021, he submitted an application for withdrawal of the appeal with permission to file a fresh one which was allowed vide order dated 22.06.2021; hence the instant appeal.



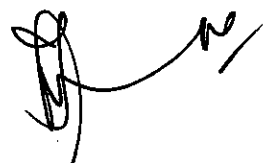
3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders passed by respondents were harsh. He further argued that during enquiry proceedings no one was examined in support of the charges leveled against the appellant nor proper opportunity of hearing was provided to him. None of the allegations were proved against him through any cogent reason or evidence. He further argued that the respondents had not properly evaluated the facts and evidence on record before passing the impugned orders. He contended that there was nothing on record which could connect the appellant with the allegations nor any cell phone data was available on record which could prove the allegations against him. According to him, being a junior officer and under the control of SHO of the concerned Police Station, he was bound to obey all the lawful orders of his seniors. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney while rebutting the arguments of learned counsel for the appellant, argued that various complaints against one Amir Hussain son of Ihsan Ali r/o Kurram, residing in KDA Kohat, regarding fraud, cheating and false persuasion were sent to the appellant for necessary legal action, but he turned all of them down and willfully kept mum over it in connivance with the then SHO. The learned DDA further




stated that he had made relation with people involved in narcotics and having bad character and that was the reason that he was served with charge sheet alongwith statement of allegations. Furthermore, he illegally facilitated the accused for his personal gain and was constantly in contact with him via his cell number and asked him to escape. The learned DDA informed that ASP/HQrs Kohat, was appointed as Inquiry Officer to scrutinize the conduct of the appellant and vide his report the I.O established the charges leveled against the appellant. Final Show Cause notice was issued to him but his reply was found unsatisfactory, therefore, he was called in orderly room on 10.09.2020 and was heard in person but he badly failed to submit any plausible explanation in rebuttal of charges leveled against him. All the charges/allegations were proved against the appellant beyond any shadow of doubt and he was awarded major punishment of reduction from the rank of D-List Head Constable to the rank of Constable with immediate effect vide District Police Officer, Kohat office order dated 10.09.2020. He further argued that the appellant filed the departmental appeal before the Regional Police Officer, Kohat against the order dated 10.09.2020 and was given an opportunity of person hearing but he badly failed to advance any plausible explanation in his defense, therefore, the punishment was enhanced into dismissal from Service vide order dated 23.12.2020. Feeling aggrieved, the appellant filed a revision petition before the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and vide order dated 18.06.2021, he was reinstated into service and order of District Police Officer, Kohat was upheld vide Order dated 18.06.2021. The learned DDA requested that the appeal might be dismissed.



6. Arguments and record presented before us show that the appellant was proceeded against departmentally by issuing a charge sheet and statement of allegations. An inquiry was conducted and as a result of its findings, he was awarded major punishment of reduction from the rank of D-List Head Constable to the rank of Constable by the District Police Officer Kohat vide order dated 10.09.2020. On his departmental appeal, the Regional Police Officer; vide his order dated 23.12.2020, enhanced the punishment to dismissal from service. Revision petition of the appellant before the Inspector General of Police, Khyber Pakhtunkhwa was considered in the meeting of Appellate Board and he was reinstated in service and the punishment of reduction from the rank of D-List Head Constable to the rank of Constable was upheld vide order dated 18.06.2021. All the three orders have been impugned before us.

7. During the course of arguments, representative of respondents provided the enquiry report according to which the charges against the appellant stood proved. Perusal of that report revealed that none of the allegations were properly taken up by the enquiry officer and proved with complete evidence, giving full opportunity to the appellant to present his case and cross-examine the witnesses, if any. The enquiry officer based his enquiry on some secret report of the DSB, which is not acceptable unless confronted by the official under enquiry. Record is silent on this aspect. It is beyond understanding that how the enquiry officer found the appellant guilty when none of the allegations was proved in the enquiry proceedings.



8. In view of the above discussion, the service appeal in hand is allowed 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 this 10th day of October 2023.*



(FAREEHA PAUL)
Member (E)

Fazle Subhan, P.S



(SALAH-UD-DIN)
Member (J)

S.A 7391/2021

10th Oct. 2023 01. Mr. Shahid Qayum Khattak, for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand is allowed as prayed for. Costs shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 10th day of October, 2023.*



(FAREEHA PAUL)
Member (E)



(SALAH-UD-DIN)
Member (J)

Fuzle Subhan, P.S