

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT DERA ISMAIL KHAN

Service Appeal No. 3912/2021

Date of Institution ... 18.03.2021

Date of Decision... 19.10.2023

Najeeb Ullah S/O Mateeullah Caste Baloch, R/O Village Gul Imam Tehsil &
District Tank. Ex-Constable No. 626 District Police Tank

... (Appellant)

VERSUS

Provincial Police Officer/IGP, Khyber Pakhtunkhwa Peshawar and 02 others.

... (Respondents)

MR. MUHAMMAD WAQAS,
Advocate

--- For appellant.

MR. FARHAJ SIKANDAR,
District Attorney


--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts giving rise to filing
of the instant appeal are that disciplinary action was taken against the
appellant on the allegations that he was charged in case FIR No. 354
dated 25.04.2019 under Section 9C CNSA Police Station SMA Tank.


On conclusion of the inquiry proceedings, he was awarded major
punishment of dismissal from service vide order bearing OB No. 560
dated 29.07.2019. The punishment so awarded to the appellant was
challenged by him through filing of departmental appeal, however the
same was dismissed vide order dated 23.12.2019. The appellant then
filed revision petition, which was also rejected vide order dated

04.03.2021 passed by Inspector General of Police Khyber Pakhtunkhwa Peshawar, 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 contended that the case of smuggling of narcotics against the appellant was false and fabricated, which fact has been proved through acquittal of the appellant by competent court law vide order dated 12.12.2020. He next contended that the inquiry officer had recorded the statements of the witnesses in absence of the appellant and he was not provided any opportunity of their cross-examination. He further contended that the inquiry proceedings were not conducted in accordance with law and the appellant was not provided opportunity of self defence, therefore, the impugned are liable to be set-aside. In the last he requested that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned District Attorney for the respondents argued that the appellant was arrested red handed and contraband Charas weighing 3000 grams were recovered from his personal possession. He next argued that a regular inquiry was conducted in the matter and the appellant was provided opportunity of personal hearing as well as self defence, however he was unable to rebut the allegations

leveled against him. He further contended that the appellant was a Police employee but he himself remained indulgent in smuggling of narcotics, which act of the appellant had brought bad name to the Police Department. He also argued that the acquittal of the appellant was on technical grounds and as the charges against him stood proved in the departmental proceedings, therefore, mere acquittal of the appellant would not entitle him to exoneration in the departmental proceedings. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with cost.

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



6. A perusal of the record would show that the appellant was arrested on 25.04.2019 being charged in case FIR No. 354 dated 25.04.2019 under Section 9C CNSA Police Station SMA Tank. Charge sheet as well as statement of allegations were issued to the appellant on 09.05.2019 and the same were served upon him on 13.05.2019 while he was in custody in jail. It is thus clear that disciplinary action was initiated against the appellant while he was in custody. The available record does not show as to whether the witnesses were examined in the inquiry proceedings in presence of the appellant or otherwise. Copies of the statements of witnesses examined during the inquiry would, however show that the appellant was not provided any opportunity to cross-examine them, which fact has created material dent in the inquiry proceedings. We are of the view that the appellant was not provided due opportunity to properly

defend himself during the inquiry proceedings and in such view of the matter the impugned orders are not sustainable in the eye of law.

7. Consequently, the impugned orders are set-aside and the matter is remitted back to the competent Authority for de-novo inquiry strictly in accordance with the relevant rules by associating the appellant with the inquiry proceedings and also to provide him opportunity of cross-examination of the witnesses. The exercise of de-novo inquiry shall be completed within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
19.10.2023



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT D.I.KHAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN

ORDER
19.10.2023

Appellant alongwith his counsel present. Mr. Farhaj Sikandar,
District Attorney for the respondents present. Arguments heard and
record perused.

Vide our detailed judgment of today, separately placed on
file, the impugned orders are set-aside and the matter is remitted
back to the competent Authority for de-novo inquiry strictly in
accordance with the relevant rules by associating the appellant with
the inquiry proceedings and also to provide him opportunity of
cross-examination of the witnesses. The exercise of de-novo inquiry
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ANNOUNCED
19.10.2023



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan



(Salah-Ud-Din)
Member (Judicial)
Camp Court D.I.Khan