

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1907/2022

Date of Institution ... 23.12.2022

Date of Decision... 25.10.2023

Sibghatullah, Junior Clerk (Ex-Senior Clerk), DPO Bannu.

... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 02 others.

... (Respondents)

SYED NOMAN ALI BUKHARI,

Advocate

For appellant.

MR. MUHAMMAD JAN,

District Attorney

For respondents.

MR. SALAH-UD-DIN

MR. MUHAMMAD AKBAR KHAN

MEMBER (JUDICIAL)

MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

The brief facts giving rise to

filing of the instant appeal are that the appellant was serving as Senior

Clerk in Police Department. The appellant alongwith Inspector

(Legal) Muhammad Farooq were proceeded against departmentally on

the allegations that while working as Pay Officer in the office of

District Police Officer Bannu, he alongwith Inspector Legal

Muhammad Farooq had illegally get started the salary of one

Sher Akbar and had illegally favoured him in receiving his arrears of

salary unlawfully; that they were involved in unlawful entry of

Sher Akbar in Police Department, who was a contractual employee

and his contract has already expired in the year 2017. On conclusion

of the inquiry, he was awarded major punishment of reversion from

the post of Senior Clerk to the post of Junior Clerk vide order bearing

OB No. 150 dated 16.05.2022. The appellant challenged his penalty

by way of filing departmental appeal before the Inspector General of Police Khyber Pakhtunkhwa Peshawar, which was rejected vide order dated 25.11.2022, 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 it is an admitted fact that the concerned person namely Sher Akbar was actively performing duty in Sub-Division Bannu and the Inspector Legal had also submitted opinion that he was entitled to get his salaries as per rules. He next contended that in light of the opinion of Inspector (Legal) namely Muhammad Farooq Khan, the competent Authority had allowed the application filed by Sher Akbar for release of his salary and the appellant then prepared his salary bills with bonafide intention. He further argued that the appellant was not in any way in connivance with Sher Akbar and had prepared the bills in light of the opinion of Inspector Legal and allowing of the application of Sher Akbar by District Police Officer, Bannu. He further contended that the appellant has been discriminated as the departmental appeal of the co-accused namely Muhammad Farooq Khan Inspector Legal was allowed by setting-aside the punishment of reversion awarded to him, while the departmental appeal of the appellant was rejected without assigning any cogent reasons. He also argued that nothing was brought on record during the inquiry, which could prove that the



appellant was having any connivance with Sher Akbar in the release of his salaries.

4. On the other hand, learned District Attorney for the respondents contended that the legal opinion sent by Inspector Legal was twisted by the appellant and he illegally processed pay bill of Sher Akhbar by making possible his entry in Police Department through illegal way. He next contended that the appellant was provided opportunity of personal hearing as well as self defence, however he failed to submit any plausible reason in rebuttal of the charges leveled against him. He next argued that a regular inquiry was conducted in the matter by complying all legal and codal formalities. 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 one Sher Akbar Khan was performing his duty as SDPO Sub-Division Wazir Bannu and had submitted an application to the DPO Bannu for release of his pay. The same was entrusted to Inspector Legal Bannu namely Muhammad Farooq, who submitted his opinion, which is available on the record. The Inspector Legal Bannu had mentioned in his report that Sher Akbar Khan was entitled to get salaries as per rules/policy. In light of the report so submitted by the Inspector Legal Bannu, the application of Sher Akbar Khan was also allowed by the then District Police Officer Bannu. The appellant in his reply to the

charge sheet as well as in his statement recorded during the inquiry had taken specific plea that he had prepared the pay bill of Sher Akbar in light of the opinion of Inspector Legal Bannu as well as allowing of the application of Sher Akbar by the then District Police Officer Bannu. The inquiry officer in para-1 of the conclusion of the inquiry report has affirmed the afore-mentioned stance of the appellant, which is reproduced as below:-

“1. That accused Senior Clerk Sibghat Ullah had prepared the in-questioned bill for Sher Akbar in light of legal opinion of Inspector Legal and after recording the remarks of the competent Authority, thereupon.”

7. In view of the findings of the inquiry officer rendered in para-1 of the conclusion of his inquiry report, the appellant could not be held responsible for any lapse on his part entailing taking of disciplinary action against him. Furthermore, the concerned Inspector Legal Bannu was also awarded the punishment of reversion from the rank of Inspector Legal Bannu to the rank of Sub-Inspector Legal vide OB No. 151 dated 16.05.2021, however his departmental appeal was then allowed by setting-aside the punishment so awarded to him. According to the available record, Sher Akbar Khan was posted as SDPO Sub-Division Wazir Bannu during the relevant days and was actively performing duty. This fact was not dug out during the inquiry as to who were the helping hands in making possible the very posting of Sher Akbar Khan on the said post through illegal way.

8. Moreover, the impugned order dated 16.05.2022 passed by the Regional Police Officer Bannu Region, Bannu does not mention the period for which the punishment of reversion awarded to the appellant

would remain effective. The competent Authority has thus not followed the mandatory provisions of FR-29, which is reproduced as below:-

“F. R. 29. If a Government servant is, on account of misconduct or inefficiency, reduced to a lower grade or post, or to a lower stage in his time -scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, it shall operate to postpone future increments and if so, to what extent.”

9. Consequently, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is restored to his original post of Senior Clerk with all back and consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

25.10.2023



(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)




(SALAH-UD-DIN)
MEMBER (JUDICIAL)


ORDER
25.10.2023

Appellant alongwith his counsel present. Mr. Sajjad Ahmed, Inspector (Legal) alongwith Mr. Muhammad Jan, District Attorney for the respondents present. The appeal in hand was fixed for 21.12.2023, however the application submitted by the appellant for early hearing was allowed and the appeal in hand was fixed for today. The appellant has also submitted an application for placing on file certain documents annexed with the application, which is allowed subject to all legal and valid objections. 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 the appellant is restored to his original post of Senior Clerk with all back and consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.10.2023


(Muhammad Akbar Khan)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)

Naeem Amin