

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7023/2021

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

Ibrar Ahmad S/O Said Ahmad Khan, Ex-Constable Belt No. 2051, Operation Staff Kohat Police R/O Dara Adam Khel Kohat. ... (Appellant)

VERSUS

1. Deputy Inspector General of Police, District Kohat.
2. District Police Office, Kohat.
3. Regional Police Officer, Kohat Region. ... (Respondents)

Mr. Tariq Altaf Advocate ... For Appellant

Mr. Muhammad Jan District Attorney ... For Respondents

Date of Institution..... 12.07.2021
Date of Hearing.....09.10.2023
Date of Decision.....09.10.2023

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 order dated 16.06.2021 passed by the respondent No.3 and the impugned dismissal order dated 29.12.2020 may kindly be set aside, declared illegal, without lawful authority and in consequence whereof the appellant may graciously be reinstated in his service from the date of infliction of punishment with all back benefits.”

2. Brief facts of the case are that appellant was serving the respondent department upto the entire satisfaction of his superiors. The appellant

alongwith elders of his family was implicated in case FIR No. 104 dated 04.10.2020 U/S 506 (ii), 452, 427/148-149 PPC Police Station Darra Adam Khel by the complainant party. As there was a property dispute between the elders of the appellant and complainant party of the above mentioned FIR No. 104 in which temporary injunction were granted to the elders of the appellant. In this respect initially a show cause notice was issued to the appellant by the respondent of which the appellant submitted written reply, moreover on 21.12.2020 a final show cause notice was issued to the appellant which was duly replied by the appellant. Thereafter, appellant was dismissed from service vide order dated 29.12.2020. Feeling aggrieved he preferred departmental appeal before respondent No.1 on 06.01.2021 which was marked to respondent No. 3 and penalty of dismissal from service was converted into removal from service vide order dated 16.06.2021, hence 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 for the respondents and perused the case file with connected documents in detail.

4. Learned counsel appearing on behalf of appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that no regular inquiry has been carried out by the respondent department and no opportunity of self defence was afforded to the appellant and the appellant was condemned. He contended that appellant was falsely been implicated in case FIR. He further submitted that respondents are bound under the law firstly suspend the appellant till the outcome of decision of Trial Court in a criminal case.

5. Conversely, learned District Attorney argued that appellant has been treated in accordance with law and rules. He contended that appellant being member of discipline force involved himself in criminal case and earned bad name to the department. He submitted that charge sheet along with statement of allegation was served upon the appellant but his reply was found unsatisfactory and after fulfillment of all codal formalities respondent awarded major punishment for his misconduct.

6. Perusal of record would reveals that appellant in reply to charge sheet categorically mentioned that he was not present at the time of occurrence reported vide FIR No. 104 dated 04.01.2021 but same was not considered by the respondents. In accordance with CSR, 194-A respondents will have to place the appellant under suspension but they straight away dismissed him from service which is not the mandate of law and rules. The only reason for dismissal is involvement of appellant in a criminal case who now acquitted by the court of learned Judicial Magistrate II, Kohat vide order dated 31.01.2023.


7. It has been held by the Apex Court that all acquittals are certainly honorable. There can be no acquittal, which may be said to be dishonorable. Implication of the appellant in the criminal case of narcotics was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service.


8. It is established from the record that charges of involvement in the criminal case ultimately culminated in honorable acquittal of appellant by the competent Court of Law in the above-mentioned criminal case. In this respect, we have sought guidance from 1988 P.L.C (C.S) 179; 2003 S.C.M.R 215 and P.L.D 2010 Supreme Court 695.



9. In view of the foregoing, the impugned orders are set aside, instant appeal is accepted and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. Consign.

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


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER

09th Oct, 2023


1. Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney Mr. Arif Saleem, Stenographer for the respondents present.

2. Vide our detailed judgement of today placed on file, the impugned orders are set aside, instant appeal is accepted and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. Consign.

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


(MUHAMMAD AKBAR KHAN)
Member (E)

*Kaleemullah


(RASHIDA BANO)
Member (J)