

Date of Decision.....13.10.2023

Service Appeal No. 545/2023

Mohsin Khan, Head Constable No. 2853 PS Shah Qabool
Peshawar. **(Appellant)**

Versus

The Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar
and 01 other. **(Respondents)**

Present:

Syed Noman Ali Bukhari, Advocate ... for the Appellant.
Mr. Asad Ali Khan, Assistant Advocate General,
...For the Respondents.

Date of Institution.....13.03.2023

Date of Hearing.....11.10.2023

Date of Decision.....13.10.2023

Service Appeal No. 546/2023

Tahir Ali, Head Constable No. 911 ATS Squad CCP, Peshawar.
(Appellant)

Versus

The Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar
and 01 other. **(Respondents)**

Present:

Syed Noman Ali Bukhari, Advocate ... for the Appellant.
Mr. Asad Ali Khan, Assistant Advocate General,
...For the Respondents.

Date of Institution.....13.03.2023

Date of Hearing.....11.10.2023

Date of Decision.....13.10.2023

CONSOLIDATED JUDGMENT

SALAH-UD-DIN, MEMBER:- Through this single judgment we
intend to dispose of the above titled service appeals as common
questions of law and facts are involved therein.

2. Precise facts forming the back ground of the appeals are that
the appellants were proceeded against departmentally on the
allegations reproduced as below:-

*"i) It has allegedly been reported that you have been
indulged in illegal activities and misconduct as you have*



maintained links with notorious criminals as well as proclaimed offenders (POs) of case vide FIR No. 583 dated 03.06.2022 u/s 365/302/109/7-ATA PS Shahpur.

ii) It is further alleged that you have leaked secret information in arrest of P.Os in above mentioned FIR and allied with criminals.

iii) He has tarnished the image of police department in the eyes of general public.

iv) All this amounts to gross misconduct on your part and rendered you liable for punishment under Police (E&D) Rules, 1975.”

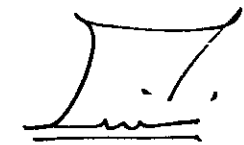
3. On conclusion of the inquiries against them, the appellant namely Misal Khan was awarded penalty of removal from service, while rest of the appellants were awarded the penalties of dismissal from service vide separate impugned orders dated 16.11.2022. The penalties so awarded to the appellants were challenged by them through filing of separate departmental appeals, which were rejected vide separate orders dated 27.02.2023, hence the instant appeals.

4. On receipt of the appeals and their admission to regular hearing, respondents were summoned, who put appearance through their representative and contested appeals by way of filing written replies raising therein numerous legal as well as factual objections.

5. Mr. Khalid Rahman, Advocate representing the appellants in Service Appeals No. 535/2023 and 536/2023 has argued that no incriminating material was brought on the record in the inquiry proceedings, which could support the allegations against the appellants. He next contended that statement of even a single witness had not been recorded in the inquiry proceedings and the same were conducted by way of questionnaire, which procedure has

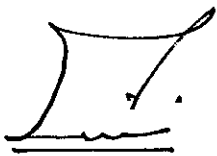
been deprecated time and again by the Supreme Court of Pakistan in its various judgments. He further argued that the appellants as well as accused and complainant party of case FIR No. 583 dated 03.06.2022 u/s 365/302/109/7-ATA PS Shahpur are co-villagers, therefore, in case of any telephonic contacts between them, it cannot be presumed that the appellants were leaking any information to them. He also argued that 22 Police Officials were proceeded against on the same allegations but some of them were exonerated, while the appellants were awarded major penalties by treating them with discrimination. He next argued that the departmental appeals of the appellants were decided in a cursory manner through un-speaking orders, which are not in accordance with the provision of Section 24-A of the General Clauses Act, 1897 read with Rule-5 of the Khyber Pakhtunkhwa (Appeals) Rules, 1986. He further contended that the rights of the appellants as guaranteed as under Article 4 & 25 of the Constitution of Islamic Republic of Pakistan were badly violated. In the last he requested that the impugned orders may be set-aside and the appellants may be reinstated in service with all back benefits. Reliance was placed on 1980 SCMR 850, 1982 SCMR 321, 1993 SCMR 1440, 2001 YLR 834, 2006 PLC (C.S.) 604, 2010 PLC (C.S.) 1299, 2010 PLC (C.S.) 1299, 2013 SCMR 741, 2015 PLC (C.S.) 501, 2015 PLC (C.S.) 537, PLD 2017 Supreme Court 173, 2018 PLC (C.S.) 997 and 2019 SCMR 640.

6. Syed Noman Ali Bukhari, Advocate representing the appellants in Service Appeals No. 544/2023, 545/2023 & 546/2023 adopted the arguments advanced by Mr. Khalid Rahman, Advocate



representing the appellants in Service Appeals No. 535 and 536 of the year 2023.

7. On the other hand, learned Assistant Advocate General for the respondents has argued that the appellants were having links with the accused of case FIR No. 583 dated 03.06.2022 under sections 365/302/109 PPC read with 7-ATA Police Station Shahpur, which fact stood proved in regular and proper inquiries conducted against the appellants. He next contended that the CDR of cell phones of the appellants as well as accused of the concerned criminal case would show that they were having telephonic contacts. He further argued that the appellants were well aware of the fact that the accused of the concerned criminal case were hardened and desperate criminals but despite that, the appellants maintained links with them and thus brought bad name to the whole police department. He next argued that the appellants were provided opportunities of personal hearing as well as self defence, however they failed to put forward any plausible evidence in rebuttal of the allegations leveled against them. In the last he requested that the impugned orders may be kept intact and the appeals in hand may be dismissed with costs.



8. Arguments have already been heard and record perused.

9. A perusal of the record would show that not a single witness has been examined in the inquiry proceedings in support of the allegations leveled against the appellants. The copy of the inquiry report as available on the record would show that the inquiry proceedings were carried out in shape of questionnaire. It has been mentioned in the inquiry report that the statements of the appellants

were recorded, however on our query and even granting of time to the respondents, their representative categorically stated before the court that the statements of the appellants allegedly recorded during the inquiry were not available in their record. Even the questionnaire as reproduced in the inquiry report could not be produced by the respondents. No incriminating evidence in support of the allegations was recorded during the inquiry. Mere reliance on CDR and that too without confronting the appellants with the same has no legal worth. No doubt the allegations against the appellants are grave in nature but the inquiry proceedings were conducted in a whimsical manner and no evidence in support of the allegations was brought on the record. In such view of the matter, the impugned orders are not sustainable in the eye of law and are liable to be set-aside.


10. Consequently, the appeals are allowed by setting-aside the impugned orders and all the appellants are reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

13.10.2023



(FAREEHA PAUL)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)


Naeem Amin


ORDER
13.10.2023

Appellant alongwith his counsel present. Mr. Zahoor Ahmed, Sub-Inspector (Legal) alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our detailed consolidated judgment of today, separately placed on file, the appeal in hand is allowed and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
13.10.2023


(Faheeha Paul)
Member (Executive)


(Saif-Ud-Din)
Member (Judicial)