

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1315/2023

Date of Institution ... 09.06.2023

Date of Decision... 02.11.2023

Muhammad Tajdar Ex-Constable No. 1788, FRP HQrs: Peshawar.

... (Appellant)

VERSUS

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

... (Respondents)

MR. TAIMUR ALI KHAN,
Advocate

For appellant.

MR. HABIB ANWAR,
Additional Advocate General

For respondents.

SALAH-UD-DIN
FAREEHA PAUL

MEMBER (JUDICIAL)

MEMBER (EXECUTIVE)

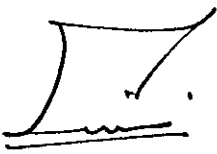
JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts forming the background of the instant service appeal are that departmental action was taken against the appellant on the allegations of his involvement in case FIR No. 451 dated 21.06.2022 under sections 9C-CNSA Police Station Garhi Kapoora District Mardan. On conclusion of the inquiry, the appellant was awarded major penalty of removal from service vide order dated 27.07.2022 passed by Deputy Commandant, Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar. The penalty so awarded to the appellant was challenged by him through filing of departmental appeal before Commandant FRP Khyber Pakhtunkhwa Peshawar, which was rejected vide order dated 23.08.2023. The appellant then preferred

revision petition before the Inspector General of Police Khyber Pakhtunkhwa Peshawar, which remained un-responded, hence the instant appeal.

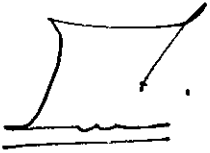
2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant contended that the appellant was not at all associated with the inquiry proceedings and he was not even provided any opportunity of personal hearing as well as self defence. He next contended that a proper regular inquiry into the matter was required to be conducted before awarding major penalty of removal from service to the appellant but the same has not been conducted, which is a clear violation of numerous dictums of august Supreme Court of Pakistan. He further contended that the impugned order of removal from service of the appellant was passed prior to outcome of the trial of narcotics case registered against the appellant, which fact has rendered the impugned orders as nullity in the eye of law. He also contended that as the appellant has already been acquitted in the narcotics case registered against him, therefore, the penalty awarded to the appellant is liable to be set-aside. He also contended that there is though some delay in filing of the service appeal, however the same is condonable for the reason that the appellant was diagnosed as suffering from cancer and had



remained under treatment, which fact has not been denied by the respondents through filing of counter affidavit.

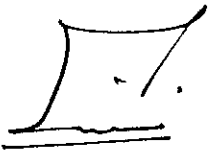
4. On the other hand, learned Additional Advocate General for the respondents contended that the appellant was member of a disciplined force but he remained indulged in smuggling of narcotics and in this respect case FIR No. 451 dated 21.06.2022 under sections 9C-CNSA was registered against him in Police Station Garhi Kapoora District Mardan. He next contended that the appellant was provided opportunity of personal hearing as well as self defence but he failed to put forward any plausible reason in his defense. He further contended that criminal and departmental proceedings can run parallel and mere acquittal of the appellant in the criminal case would not entitle him to his exoneration in the departmental proceedings. He also argued that a regular inquiry was conducted in the matter and all the legal and codal formalities were complied with. He next contended that the appeal in hand is barred by time and is liable to be dismissed on this score alone.



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

6. The appellant was charged in case FIR No. 451 dated 21.06.2022 under sections 9C-CNSA registered at Police Station Garhi Kapoora District Mardan, who was suspended on the following day i.e 22.06.2022 and disciplinary action was initiated against him. The inquiry in the matter was entrusted to R.I Frontier Reserve Police

HQrs Peshawar. We have gone through the inquiry report submitted by the inquiry officer and have found that the inquiry officer has not examined any witness in support of the allegations leveled against the appellant. Mere charging of the appellant in the case of narcotics was not sufficient to prove him a culprit unless some tangible evidence as proof of his involvement was brought on record during the inquiry. In absence of any evidence being recorded in the inquiry proceeding regarding involvement of the appellant in the case of narcotics, it is not understandable as to how the Deputy Commandant Frontier Reserve Police Khyber Pakhtunkhwa, Peshawar has concluded in the impugned removal order of the appellant dated 27.07.2022 that the appellant was involved in the case of narcotics.



7. The appellant has been acquitted vide order dated 25.09.2023 passed by competent court of law, copy of which is available on the record. The same would show that the prosecution itself had submitted an application in the trial court, seeking withdrawal of the case under Section 494 Cr.P.C read with Section 4 (C) II and Section 5 of Prosecution Act, 2005. It is thus clear that the allegations against the appellant were not proved through recording of any evidence in the inquiry proceedings and he has also been acquitted by the competent court of law.

8. So far as the delay in filing of the appeal in hand is concerned, the appellant has sought its condonation on the ground that he was suffering from Hodgkin's Lymphoma, which a kind of cancer. The said contention of the appellant is supported through duly sworn

affidavit and has not been rebutted by the respondents by way of submitting any counter affidavit. The delay in filing of the appeal is, therefore, condonable. Even otherwise too, keeping in view the facts and circumstances of the case, the appellant could not be deprived of his right merely on the technical ground of limitation.


9. Consequently, the appeal in hand is allowed by setting-aside the impugned orders 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

02.11.2023



(FAREEHA PAUL)
MEMBER (EXECUTIVE)



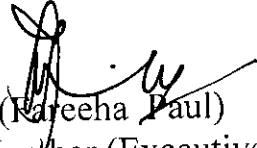
(SALAH-UD-DIN)
MEMBER (JUDICIAL)


ORDER
02.11.2023

Appellant alongwith his counsel present. Mr. Habib Anwar, Additional Advocate General for the respondents present. The appeal in hand was fixed for arguments on 11.01.2024, however the application submitted by the appellant for early hearing was allowed on 23.10.2023 and the appeal in hand was fixed for today. The appellant also submitted an application for placing on file the attested copy of acquittal of the appellant, 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 reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.11.2023


(Kareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)