

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWA AT CAMP COURT SWAT

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 12783/2020

Khalid Khan, Ex-Head Constable (Now Constable) Police Station
Warai, Police Post Akhagram Dir Upper. *(Appellant)*

Versus

The Inspector General of Police Khyber Pakhtunkhwa, Peshawar and
02 others. *(Respondents)*

Present:

Mr. Kamran Khan, Advocate.....For the appellant
Mr. Muhammad Jan, District AttorneyFor the respondents

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Date of presentation of Appeal.....23.10.2020
Date of Hearing.....08.11.2023
Date of Decision.....08.11.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: Brief facts giving rise to filing of the instant appeal are that the appellant while posted as Head Constable in Police Post Akhagram District Dir Upper, was proceeded against departmentally on the allegations that he was having links with timber Mafia due to which they succeeded in smuggling of timber on 04.05.2020, which was loaded in four vehicles. Consequent upon conclusion of the inquiry, he was awarded major punishment of reversion to the substantive rank of Constable vide order bearing OB No. 633 dated 06.08.2020. The departmental appeal of the



appellant was also rejected vide order dated 07.10.2020, 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 argued that none of the witness examined during the inquiry had stated that the appellant were having any links with timber mafia. He next contended that no incriminating material whatsoever was brought on record during the inquiry but the inquiry officer had wrongly and illegally concluded that the allegations against the appellant were proved. He further contended that the appellant was not provided any opportunity of cross-examination of the witnesses examined during the inquiry. He also argued that no final show-cause notice alongwith inquiry report was handed over to the appellant and he was thus deprived of making proper defence in the inquiry proceedings. In the last he contended that the impugned orders are wrong and illegal, therefore, the same may be set-aside and the appeal of the appellant may be allowed as prayed for.

4. On the other hand, learned District Attorney for the respondents argued that the appellant was having links with timber mafia, which made it possible for them to smuggle timber in four vehicles during duty time of the appellant on 04.05.2020. He next contended that the CDR of cell phone of the appellant had confirmed that he was



having links with smugglers of timber, which amounted to gross misconduct, therefore, departmental action was taken against him. He further argued that the allegations against the appellant stood proved in a regular inquiry, therefore, he had rightly been awarded the impugned penalty.

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 none of the witnesses examined during the inquiry had deposed anything adverse against the appellant in support of the allegations leveled against him. Statement of the appellant was also recorded during the inquiry and he was thoroughly cross-examined by the inquiry officer but nothing in support of the allegations was spelt out of his mouth. The appellant had though contacted one Sherzada through his cell phone on 04.05.2020 but he had clarified the same and had alleged in his statement that the contact was made for the reason that said Sherzada had submitted an application to the Incharge Police Post Akhagram, which was marked to the appellant for legal action on 02.05.2020. Moreover, it has not been opined by the inquiry officer in his report that the said Sherzada was a timber smuggler. Nothing in support of the allegations against the appellant was brought on record during the inquiry, however it is astonishing that the inquiry officer had concluded that the allegations against the appellant were proved. The findings of the inquiry officer were not based on any cogent material in support of the allegations against the



appellant, therefore, the competent Authority was not justified in awarding major punishment to the appellant on the basis of same.

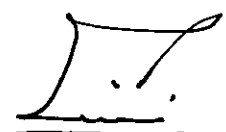
7. Moreover, vide the impugned order dated 06.08.2020 the appellant was reverted from the rank of Head Constable to substantive rank of Constable without mentioning the period for which the same shall remain effective, which is violation of FR-29. The same is reproduced for ready reference as below:-

“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.”

8. In view of the above discussion, the appeal in hand is accepted by setting-aside the impugned orders and the appellant stands restored on his original post of Head Constable with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
08.11.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)
CAMP COURT SWAT


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT SWAT

Naeem Amin

ORDER
08.11.2023

Appellant alongwith his counsel present. Mr. Gul Zameen, Inspector (legal) alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is accepted by setting-aside the impugned orders and the appellant stands restored on his original post of Head Constable with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
08.11.2023



(Farzeha Paul)
Member (Executive)
Camp Court Swat



(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat