

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1113/2022

BEFORE: **MRS RASHIDA BANO** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Muhammad Arshad LHC No. 17, Police Lines, Kohat..... (*Appellant*)
Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
2. The Regional Police Officer, Kohat Region, Kohat.
3. The District Police Officer, Kohat..... (*Respondents*)

Mr. Taimur Ali Khan,
Advocate ... For appellant

Mr. Muhammad Jan ... For respondents
District Attorney

Date of Institution..... 29.06.2022
Date of Hearing..... 17.10.2023
Date of Decision..... 17.10.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 09.02.2021, whereby the punishment of stoppage of two annual increments with cumulative effect was imposed upon the appellant, against the order dated 21.06.2021 whereby departmental appeal of the appellant was rejected and against the order dated 02.06.2022, whereby the revision petition of the appellant was also rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the stopped increments of the appellant might be restored with all back and consequential benefits alongwith any other remedy which the Tribunal deemed fit and appropriate.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed in the respondent department in the year 2003. He was assigned the duty in Driving License Branch Kohat and while performing his duty, charge sheet alongwith statement of allegations was issued to him. He submitted his detailed reply and denied the allegations. An inquiry was conducted which was not according to the prescribed procedure as neither statements were recorded in the presence of the appellant nor he was given any opportunity of cross-examination. The Inquiry Officer did not conduct the inquiry in order to dig out the reality about the issue. Show cause notice was issued to the appellant which was replied. Finally vide order dated 09.02.2021, the punishment of stoppage of two annual increments with cumulative effect was imposed upon the appellant. Feeling aggrieved, he filed departmental appeal on 05.03.2021 which was rejected vide order dated 21.06.2021. He then filed revision petition on 12.07.2021, which was also rejected vide order dated 02.06.2022; hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/ comments on the appeal. We 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.

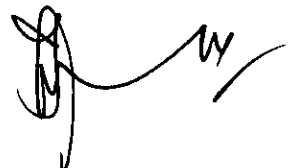
4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders were against the law, facts and norms of justice. He argued that the inquiry conducted against the appellant was not according to the prescribed procedure as neither statements were recorded in



his presence nor any opportunity of cross-examination was given to him, which was violation of law and rules. He further argued that no opportunity of defence was provided to the appellant which was violation of Article 10A of the Constitution of Islamic Republic of Pakistan. According to him, the Inquiry Officer mentioned in his inquiry report that secret probe was also carried out and the appellant was found involved with the agents from whom he collected driving learning chits of people and processed those through License Clerk for gaining financial benefits for himself, but the inquiry officer did not record the statements of any person in that respect. The learned counsel argued that no one could be punished on secret inquiry as the said practice had been discouraged by the Apex Court of Pakistan. He requested that the appeal might be accepted.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant, while posted in Traffic/Driving License Branch, Kohat, committed professional misconduct for his person gain. All codal formalities were fulfilled and the allegations leveled against him were established during the inquiry proceedings. He further argued that there was reliable source of respondent No. 3 regarding involvement of the appellant in malpractices and illegal activities regarding issuance/dealing with Driving Licenses and they were proved. He requested that the appeal might be dismissed.

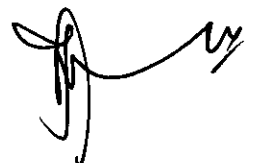
6. The appellant has been awarded penalty of stoppage of two annual increments with cumulative effect on the basis of an inquiry conducted



against him. According to the charge sheet, the appellant while posted at the Driving License Branch, Kohat committed certain omissions as follows:-

- “i. That you have indulged yourself in mal-practices in issuing of driving licenses.*
- ii. That it has been noticed from secret/reliable source that you have issued a number of driving licenses without observing the legal requirements for personal gain.*
- iii. That you have willfully violated the relevant rules in issuance of driving licenses.*
- iv. That reportedly, you, in-conivance with the Senior/Traffic Clerk Shahid Mehmood, issued driving licenses with scanned signature of MLA”*

According to the findings of the Inquiry Officer, charges number at serial (i), (ii) and (iii) were proved and he was recommended for appropriate punishment. The charge sheet served to the appellant mentions a charge at Sr. No. (ii) that he issued a number of driving licenses without observing the legal requirements for personal gain and that the same was brought to the notice by a secret/reliable source. The Inquiry Officer, in his report also states of a DSB report and secret probe carried out by him. The order of punishment dated 09.02.2021 issued by DPO Kohat also mentions the secret probe carried out by the Inquiry Officer. The reply of respondents also mentions about the reliable source of respondent No. 3. Inquiry report further mentions statements of certain witnesses. The entire record produced before us is silent on an important point of providing the opportunity of cross examination to the appellant during the inquiry in order to provide him a fair opportunity to defend himself. The entire procedure looks like a one-

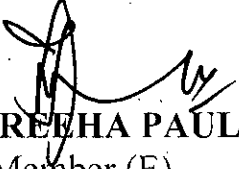


sided affair in which principles of fair trial have not been given any heed.

When an officer or official is under inquiry on the basis of some secret source, he has to be given an opportunity of cross-examination which in this case has not been provided. Moreover neither malpractices and rules violated by the appellant were identified in the charge sheet, nor they have been identified and then proved by the Inquiry Officer in his report.

7. In view of the above, we are in unison that the charges leveled against the appellant were never proved in the Inquiry Report and hence he could not be punished for any wrong that he had not done. The appeal in hand is, therefore, allowed as prayed for. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of October, 2023.*


(FAREEHA PAUL)
Member (E)

Fazle Subhan, P.S


(RASHIDA BANO)
Member (J)

SA 1113/2022


17th Oct. 2023

01. Mr. Taimur Ali Khan, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, we are unison that the charges leveled against the appellant were never proved in the Inquiry Report and hence he could not be punished for any wrong that he had not done. The appeal in hand is, therefore, allowed as prayed for. Costs shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of October, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO),
Member (J)

Fazal Subhan PS