

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 661/2022

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

Syed Qasim Shah, Ex-Constable Now. 153, S/O Zahiroon Shah R/O
Kund Tili, Hasanzai, Tehsil Kandar Hasanzai, District Torghar.
.... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Divisional Inspector General of Police, Hazara Division
Abbottabad.
3. The District Police Officer, District Torghar.

....(Respondents)

Syed Asif Shah
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....29.04.2022
Date of Hearing.....30.10.2023
Date of Decision.....30.10.2023

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 instant appeal, the impugned
orders dated 04.02.2021, passed by respondent No. 3**

and order dated 06.05.2021 passed by respondent No.



2 and order dated 14.04.2022 passed by respondent No. 1 may kindly be set aside declaring them illegal, wrong, unlawful, without lawful authority, void and against the law on the subject and appellant be reinstated into service with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was enlisted as constable in police department vide order dated 26.12.2019. During service FIR was registered under section 489-F PPC at Police Station City Karachi against the appellant. Departmental proceedings were initiated against him, thereafter appellant was dismissed from service vide order dated 04.02.2021. On the basis of compromise he was acquitted from the charge in the competent court of law vide order dated 15.02.2021. Feeling aggrieved, appellant filed departmental appeal, which was rejected vide order dated 06.05.2021; hence the 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 and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that orders passed by the respondents are illegal, unlawful, without lawful authority and having no legal effect hence liable to be set aside. He contended that no opportunity of personal hearing was afforded and he was condemned unheard. He further contended that as per the service rules and judgments of

the superior courts if an employee is acquitted on the basis of compromise, he must be reinstated in service for the reason that acquittal on the basis of compromise is to be considered as honorable acquittal, therefore, he requested for acceptance of instant appeal.

5. Conversely, learned Deputy District Attorney for the respondents contended that appellant while posted at Police Line Judbah Torghar has involved himself in case FIR No. 293/19 Under Section 420/489-F PPC PS Resala District Karachi South Sindh. He further contended that proper charge sheet along with statement of allegation was issued to him, thereafter, final show cause notice was also served upon the appellant but he failed to submit reply and after fulfillment of all codal formalities, major penalty was imposed upon the appellant.

6. Perusal of record reveals that charge sheet alongwith statement of allegations was issued to appellant on the charges of issuing cheque amounting to Rs. 1,120,000/- which was dishonored and case FIR No. 293/2019 U/S 420/489/34 PPC was registered in PS Risala Karachi. Disciplinary proceedings were initiated upon allegation of involvement in criminal case which ended into appellant's dismissal from service vide impugned order dated 04.02.2021. Departmental appeal of the appellant was also dismissed. Appellant was acquitted from the charges leveled against him in FIR 293/2019 by the competent court of law on 15.02.2021. 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 his service.

7. 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.

8. For what has been discussed above, we allow the appeal in hand as prayed for. Costs shall follow the events. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30th day of October, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

27.06.2023

SCANNED
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PESHAWAR

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Written reply on behalf of respondents submitted which is placed on file. Copy of the same is handed over to the learned counsel for the appellant. Adjourned. To up for rejoinder, if any, and arguments on 30.10.2023 before D.B. P.P given to the parties.



(Rashida Bano)
Member (J)

Kaleemullah

ORDER

30th Oct, 2023

1. Appellant alongwith his counsel present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we allow the appeal in hand as prayed for. Costs shall follow the events. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30th day of October, 2023.*



(FAREEHA PAUL)
Member (E)

*Kaleemullah



(RASHIDA BANO)
Member (J)