

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.7618/2021

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mr. Rasheed Khan, Ex. IHC No. 1667, Police Line, District Mardan.
... (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Mardan Region at Mardan.
3. District Police Office, Mardan.
... (Respondents)

Mr. Noor Muhammad Khattak
Advocate ... For Appellant

Mr. Muhammad Jan
District Attorney ... For Respondents

Date of Institution.....07.10.2021
Date of Hearing.....11.10.2023
Date of Decision.....11.10.2023

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 this appeal, the impugned order dated 28.05.2021 and subsequent appellate order dated 02.08.2021 may very kindly be set aside and the appellant may kindly be reinstated into service with all consequential back benefits.”

2. Brief facts of the case are that appellant was appointed as Constable in the respondent department and was serving quite efficiently and to the entire satisfaction of his high ups and was lastly posted as IHC Muharrir at Police Station Toru Mardan. Appellant while performing his duty as Muharrir PS Toru

R. Mardan disciplinary proceedings were initiated against the him. Charge sheet

alongwith statement of allegation was served upon the appellant. Fact finding inquiry was conducted, without fulfilling other codal formalities and major penalty of dismissal from service was imposed upon the appellant. Feeling aggrieved, appellant filed departmental appeal, which was regretted vide order dated 02.08.2021, 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 for the respondents and perused the case file with connected documents in detail.

4. Learned counsel appearing on behalf of appellant argued that the appellant has not been treated in accordance with law and rules and respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further contended impugned dismissal and appellate orders issued by the respondents are void in nature, against the law, facts and norms of natural justice hence not tenable and is liable to be set aside. He further argued that no regular inquiry has been carried out by the respondent department and no opportunity of self defence was afforded to the appellant and the he was condemned.

5. Conversely, learned District Attorney argued that appellant has been treated in accordance with law and rules. He contended that appellant being member of discipline force involved himself in criminal case and earned bad name to the department. He submitted that charge sheet alongwith statement of allegation was served upon the appellant to which he replied but his reply was found unsatisfactory and after fulfillment of all codal formalities respondent awarded major punishment for his misconduct.

6. Perusal of record would reveals that appellant was serving the respondent department as IHC and was posted as Moharrir at P.S Toru Mardna. On



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12.03.2021 Sub-Inspector Niaz Ali the then SHO PS Toru being a complainant reported the case FIR No. 148 U/S 9-D KPCNSA, 11-A KPCNSA and arrested one Mr. Shad Ali by effecting recovery of contraband from his possession which was sealed into parcels. Niaz Ali complainant upon his arrival brought accuse and case property (contraband) to police station and handed it over to the Moharrir of the police station. When on next day 13.03.2021 investigation officer produced accused alongwith parcels of recovered contraband to the Judicial Magistrate, who upon the request of accuse ordered de-sealment of case property and after desealment "it was observed that the alleged contraband was covered in a yellow tap tightly which was uncovered. After uncovering the same another parcel No.2 duly sealed in case FIR No. 78 dated 07.02.2021 U/S 9-CKCNSA in PS Toru Mardan and the signature and stamp of the undersigned Court was also marked over the back side of the said sealed parcel. Meaning there by that the instant alleged recovery from the possession of the present accused is actually the case property of another case. In these circumstances, this court while invoking the provisions of section 63 Cr.PC read with Section 167 Cr.PC discharge the accused from custody with no order as to sureties. He be immediately released. May this order shall have no effect over the powers of investigation of the local police."

7. Respondent upon receipt of copy of order sheet dated 13.03.2021 of learned Judicial Magistrate initiated disciplinary proceeding against appellant as well as complainant Niaz Ali the then SHO of Police Station Turo appellant in service appeal No. 7375/21 by issuing charge sheet and statement of allegations and appointing Mr. Sadat Khan DSP/Security as Enquiry Officer. Enquiry officer submit his report dated 12.04.2021 by holding responsible appellant for misconduct and giving case property of

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another case FIR No. 75 dated 06.02.2021 u/s 9-D KP CNSA which was lying in his safe custody at Malkhana at PS Toru and join hands with complainant Niaz Ali the then SHO in registration of fake criminal case against Shad Ali and recommended the appellant for suitable punishment after receipt of enquiry report and hearing in orderly room vide impugned order dated 28.05.2021 awarded major punishment of dismissal from service to the appellant as well as Niaz Ali, ASI. Departmental appeal filed by the both appellants were rejected by the Regional Police Officer Mardan vide order dated 02.08.2021 vide two separate orders of even date.


8. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of audi alteram partem was always deemed to be imbedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.



9. In view of the above discussion, the impugned orders are set aside, appellant is reinstated into service for the purpose of denovo inquiry with direction to provide proper opportunity of hearing, self defence and specially cross-examination which are pre requisite of a fair trial, with further direction to conclude it within a period of 90 days after receipt of copy of this judgment. Costs shall follow the events. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 11th day of October, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

ORDER

11th Oct, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Atta Ur Rehman, Inspector (Legal) for the respondents present.
2. Vide our detailed judgement of today placed on file, the impugned orders are set aside, appellant is reinstated into service for the purpose of denovo inquiry with direction to provide proper opportunity of hearing, self defence and specially cross-examination which are pre requisite of a fair trial, with further direction to conclude it within a period of 90 days after receipt of copy of this judgment. 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 11th day of October, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)