

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7959/2020

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

Mian Shah Faisal, Sub-Inspector Police No. 129-MR, Police Lines,
Mardan. (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Mardan
4. District Police Officer, Mardan.

....(Respondents)

Mr. Amjid Ali
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....26.02.2020
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 order dated 29.01.2020 passed by respondent No.3 and order dated 10.12.2019 passed by respondent No.4 may please be



set-aside and appellant may please be exonerated of the charges leveled against him.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the respondent department and performed his duty with the entire satisfaction of his superiors. During service, complaint was lodged against the appellant on the basis of which he was issued charge sheet alongwith statement of allegation, which he properly replied. Thereafter, show cause notice was issued, after which minor punishment of stoppage of one increment with cumulative effect was imposed upon the him vide order dated 10.12.2019. Feeling aggrieved, he filed departmental appeal, which was dismissed; 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 the appellant has not been treated in accordance with law and rules. He further argued that impugned order is against the FR-29 as no time has been specified for stoppage of increment and is further passed with cumulative effect, which means that it has become a major penalty and not a minor one, therefore, impugned order is liable to be set aside. He further argued that appellant has neither been associated with the enquiry proceedings nor statement of any witnesses has been recorded which is against the law.


5. Conversely, learned Deputy District Attorney for the respondents contended that appellant has been treated in accordance with law and rules.



He further contended that appellant has committed gross misconduct which was established during inquiry proceedings and after fulfillment of all codal formalities he was awarded minor penalty of stoppage of one increment with cumulative effect.

6. Perusal of record reveals that appellant was posted as Sub-Inspector and posted at SHO Police Station Sheikh Maltoon Town Mardan. On 18.09.2019 disciplinary proceedings were initiated against him, on the allegation that one Adnan Khan reported snatching of his two mobile phones by some unknown culprits, which matter was not reported in the shape of proper FIR, rather appellant entered it into Roznamcha vide D.D No. 34 dated 16.06.2019, with no proper progress. Enquiry officer, after fulfillment of all codal formalities, submitted his report on 11.01.2019. Appellant was awarded minor punishment by stoppage of one increment, with cumulative effect, with immediate effect on 10.12.2019, by respondent No. 4. Departmental appeal filed by the appellant was vide order dated 29.01.2020. Appellant although was awarded with minor penalty but its cumulative effect in essence made it major penalty because in accordance with FR 29 time period for stoppage of increment will have to be specified which reads as follows:


“if government servant is, on account of misconduct or inefficiency rendered to a lower grade or post or to a lower stage in his time scale, the authority ordering such reduction shall state that period from which it shall be effective and where on restoration it shall operate to postpone further increment and if so, to what extent.”

 Although appellant being police employee will have to be dealt with

under police rules but they also take strength from FR 29 for specifying time period for lower grade/post, stage in his time scale or stoppage of increments. Generally, in almost all the orders of lower post/rank reduction, lower stage time or stoppage of increments, time period is specified but in the instant case time period is not mentioned, therefore, this order to this extent is in violation of FR 29 and principle of natural justice. Otherwise all the formalities were complied with by the respondents and penalty awarded i.e stoppage of one increment is in accordance with nature of gravity of misconduct committed by the appellant.

7. In view of above discussion, we partially allow the instant service appeal by modifying impugned order to the extent of stoppage of one increment for two years from passing of the date of impugned order. Cost shall follow the events. Consign.

8. *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)

5th July, 2023

1. Appellant in person present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Atta Ur Rehman, Inspector for the respondents present.
2. Appellant requested for adjournment as his counsel is not available today. Adjourned. To come up for arguments on 30.10.2023 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar
Adnan Shah


(Rashida Bano)
Member (J)


(Kalim Arshad Khan)
Chairman

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 partially allow the instant service appeal by modifying impugned order to the extent of stoppage of one increment for two years from passing of the date of impugned order. 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)

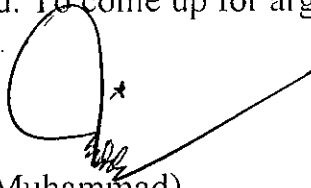

(RASHIDA BANO)
Member (J)

23.11.2022

Mr. Amjid Ali Khan, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant requested that as the brief of the appeal was misplaced, therefore, he could not made preparation.

Adjourned. To come up for arguments on 11.01.2023 before D.B.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

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11.01.2023

Appellant present in person.

Muhammad Adeel Butt learned Additional Advocate General for the respondents present.

Former made a request for adjournment on the ground that his counsel is busy in Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 24.04.2023 before D.B.



(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

SCANNED
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Peshawar

24th April, 2023

24th April has been declared as public holiday on account of Eid-Ul-Fitr, therefore, the case is adjourned. To come up for the same on 05.07.2023.



Reader