BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT, ABBOTTABAD

Service Appeal No. 1099/2022

BEFORE: **MR. KALIM ARSHAD KHAN** ... **CHAIRMAN**
MISS FAREEHA PAUL ... **MEMBER (E)**

Touseef Shah S/O Syed Hanif Shah, Ex-Special Police Force No. 64/5, R/O Village Andar Wali Sarri, Tehsil and District Haripur. ..... (*Appellant*)

Versus

1. **Police Department through its IGP, Khyber Pakhtunkhwa, Peshawar.**
2. **D.I.G Hazara Division, Abbottabad.**
3. **DPO Haripur, Khyber Pakhtunkhwa.**
4. **Registrar to the office of IGP, Peshawar.** .....**(Respondents)**

Mr. Athar Abbas, Advocate ... For appellant

Mr. Asif Masood Ali Shah, Deputy District Attorney ... For respondents

Date of Institution..... 04.07.2022
Date of Hearing..... 23.10.2023
Date of Decision..... 23.10.2023

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 05.09.2019, whereby the appellant was discharged from service and against the order dated 16.02.2021, whereby his departmental appeal was filed without any intimation to him. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant might be reinstated in service with all back 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 as Constable under Special Police Force No. 64/5. He was charged in a criminal case registered vide FIR No. 605 dated 07.06.2019 U/S 377 PPC at Police Station City, Haripur. Respondent No. 3, without waiting for the fate of the trial, discharged the appellant from service through the impugned office order dated 05.09.2019. After the bail, the appellant submitted his departmental appeal to the respondent No. 2, which was filed on 05.09.2019, through a non-speaking order. He then submitted another departmental appeal to respondent No. 1 on 16.03.2021, which was not responded; hence the instant service appeal.

3. Respondents were put on notice. They submitted their joint written reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy 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 appellant was neither served with any charge sheet, summary of allegations nor any show cause notice, as required under the law/rules. He further argued that the appellant was deprived of his right of hearing in person and confrontation with the allegations and that an executive order was passed in a hasty manner which was in utter disregard to the principles of natural justice. He further argued that the respondents were aware of the fact that the appellant's case was sub-judice before the competent court of law but without waiting for the fate of the trial, they discharged him from service. He further argued that the Disciplinary Rules applicable to the appellant were the Khyber

Pakhtunkhwa Police Rules, 1975 wherein the words "discharged from service" was not provided in Rule 4 and that discharge of the appellant under Rule 12.21 of Police Rules 1934 was against the law. He requested that the appeal might be accepted as prayed.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was enlisted as constable in Special Police Force on contract basis on 02.09.2016 on fixed pay of Rs. 15000/- per month. His service was purely on temporary basis and liable to be terminated at any time by the competent authority. The learned DDA informed that the appellant, while posted as guard at District Secretariat Haripur, committed sexual assault against a minor namely Zawaiyar Musafa and a case was registered vide FIR No. 605 dated 07.06.2019 u/s 377 PPC at Police Station City, Haripur. The allegations were thoroughly probed in the departmental inquiry, in which he was held guilty. He was issued final show cause notice vide Endorsement dated 18.09.2019 and was discharged from service by the District Police Officer, Haripur. He requested that the appeal might be dismissed.

6. From the record presented before us, it appears that the appellant was appointed in the Special Police Force on contract basis on fixed pay of Rs. 15000/- w.e.f. 21.06.2018 to 30.06.2019. The Enlistment Order dated 02.06.2018 does not provide the nomenclature of the post against which the appellant was appointed. The order further shows that the appointment was made purely on temporary basis. This bench is of the view that he was a temporarily appointed employee on fixed pay, whose nomenclature was also

not reflected in his enlistment order, therefore, he does not come under the category of civil servant. Under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, this Tribunal is empowered to hear the service appeals of civil servants only. The appellant does not fall under the definition of civil servant as defined in Section 2 sub-section 1(b) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, as he was on fixed pay and such employees are paid out of contingencies, therefore, this Tribunal is not the right forum for presenting his service appeal.

7. In view of above, the appeal is dismissed. No order as to cost. Consign.

8. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal this 23rd day of October, 2023.*

(FAREEHA PAUL)
Member (E)
Camp Court, Abbottabad

(KALIM ARSHAD KHAN)
Chairman
Camp Court, Abbottabad

Fazle Subhan P.S

S.A No. 1099/2022

ORDER

23rd Oct. 2023 01. Mr. Athar Abbas, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of consisting of 04 pages, the appeal is dismissed. No order as to cost. Consign.

03. ***Pronounced in open Court at camp court, Abbottabad and given under our hands and the seal of the Tribunal on this 23rd day of October, 2023.***

(Fareeha Paul)
Member (E)
Camp Court, A/Abad

(Kalim Arshad Khan)
Chairman
Camp Court, A/Abad

Fazle Subhan, P.S