

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 1418/2023

Ihsan Ullah S/O Fazal Rehman caste Khattak, R/O Village Kotka Sard
Ali Khan Tehsil Saray Naurang District Lakki Marwat.
Ex-Cook/Constable Belt No. 53 District Police Bannu. (*Appellant*)

Versus

Provincial Police Officer (IGP), Khyber Pakhtunkhwa, Peshawar and
03 others. (*Respondents*)

Present:

Mr. Sheikh Iftikhar-ul-Haq, Advocate.....For the appellant
Mr. Muhammad Jan, District AttorneyFor the respondents

Date of presentation of Appeal.....27.06.2023
Date of Hearing.....13.11.2023
Date of Decision.....13.11.2023

JUDGMENT


SALAH-UD-DIN, MEMBER: Precise facts giving rise to
filing of the instant appeal are that the appellant while posted as
Cook at Police Station Kaki District Bannu, was proceeded
against departmentally on the allegations that he had hired a
private person for performing his duty, while he himself was
running his private business. The appellant was awarded major
penalty of dismissal from service vide order bearing OB No. 73
dated 19.01.2023 passed by the District Police Officer Bannu.
The penalty so awarded to him, was challenged by the appellant



through filing of department appeal, however the same was rejected by Regional Police Officer Bannu Region, Bannu vide bearing OB No. 87 dated 20.04.2023, hence the instant service appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant argued that the appellant was awarded major penalty of dismissal from service without holding any regular inquiry. He next argued that the allegations against the appellant were of factual nature requiring conducting of regular inquiry for reaching a just and right conclusion but the competent Authority awarded major penalty to the appellant in a summary and illegal manner not warranted by law and the relevant rules. He further argued that no charge sheet or statement of allegations was issued to the appellant and he was not provided opportunity of self defence as well as personal hearing. He also argued that show-cause notice was issued to the appellant by Regional Police Officer Bannu Region, Bannu, who was not the Authority competent to issue show-cause notice to the appellant and the said fact has rendered the impugned orders as void ab-initio wrong and illegal. In the last he requested that



the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned District Attorney for the respondents contended that the appellant while serving as Cook at Police Station Kaki District Bannu, had hired a private person for performing his duty as cook, while he himself was running his private business, which amounted to gross misconduct. He next contended that the appellant was provided opportunity of personal hearing but he failed to rebut the allegations leveled against him. He further contended that the appellant was dealt with in summary police proceedings as provided in Khyber Pakhtunkhwa Police Rules, 1975 and as the allegations against him stood proved, therefore, he has rightly been dismissed from service. He also argued that all the legal and codal formalities were fulfilled before passing of the impugned orders, therefore, the appeal in hand may be dismissed with cost.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that disciplinary action was taken against the appellant on the allegations that he while posted as Cook at Police Station Kaki District Bannu, had hired a private person for his duty, while he was running his private business. According to the copy of service card of the appellant as available on the record, he was appointed as Constable on 15.05.2008, therefore, the District Police Officer Bannu was the



Authority competent to issue him show-cause notice. The appellant was, however issued show-cause notice by Regional Police Officer Bannu Region, Bannu on 12.01.2023, while the impugned order of dismissal from service of the appellant was passed by District Police Officer Bannu. The afore-mentioned fact has created material dent in the inquiry proceedings.

7. The appellant was posted as Cook at Police Station Kaki District Bannu and in case he had hired any private person for performing his duty, it was the SHO concerned, who was required to have submitted a report to his high-ups in this respect. Show-cause notice issued to the appellant would, however show that it has been mentioned therein that the alleged misconduct of the appellant came into the notice of the Regional Police Officer Bannu Region, Bannu through credible information, without mentioning anyone by name. Moreover, the allegations against the appellant were factual in nature requiring holding of regular inquiry, however the same has not been done. Supreme Court of Pakistan in its judgment reported as 2004 SCMR 616 has held that in case of imposing of major penalty, the principle of natural justice requires that a regular inquiry be conducted in the matter and opportunity of personal hearing and defense be provided to the civil servant proceeded against. The impugned orders are thus not sustainable in the eye of law and are liable to be set-aside.


8. Consequently, the appeal in hand is accepted by setting-aside the impugned orders and the appellant is reinstated




in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

13.11.2023


(FARZEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

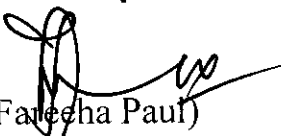
Naeem Amin


ORDER
13.11.2023

Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is accepted by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
13.11.2023


(Fateeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)