

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No. 7278/2021

Abdul Majeed S/O Akhtar Gul, R/O Caste Bosti Khel, P.O Darra Bazar, Nasir Villa Tehsil & District Kohat (Ex-Constable Incharge, Bosti Khel Check Post, Dara). *(Appellant)*

Versus

District Police Officer DPO, Kohat and 02 others. *(Respondents)*

Present:

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

Date of presentation of Appeal.....26.07.2021
Date of Hearing.....14.11.2023
Date of Decision.....14.11.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: Brief facts forming background of the instant appeal are that the appellant while posted as Incharge Bosti Khel Check Post, was proceeded against departmentally on the allegations copied as below:-

"i. It has been reported by SHO PS Dara vide DD dated 03.03.2020, that you bring bad character women with the help of a civil person namely Arshad Khan for immoral activities to the Post Bosti Khel, which was already vacated and the strength was closed by you on your own authority.

ii. On this information, Muqarab Khan Naib Incharge Khasadar verified the facts and found two

ladies namely Nusrat Bibi & Salma r/o Masho Khel Peshawar present.

iii. Your · this act shows professional gross misconduct on your part.

2. On conclusion of the inquiry, the appellant was awarded major punishment of dismissal from service vide order bearing OB No. 254 dated 27.04.2020 passed by Commandant, Darra Sub-Division/DPO Kohat. The departmental appeal of the appellant was rejected by Regional Police Officer Kohat Region vide order dated .06.07.2020. The appellant then preferred revision petition before the Inspector General of Police Khyber Pakhtunkhwa, Peshawar, which was also rejected vide order dated 21.06.2021, hence the instant service appeal.

3. 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.

4. Learned counsel for the appellant argued that none of the witnesses examined during the inquiry had uttered a single word in support of the allegations leveled against the appellant but even then the inquiry officer had held that the allegations against the appellant were proved. He next argued that the allegations against the appellant were false and baseless, therefore, none came forward as witness during the inquiry in support of the same. He also argued that the appellant was not provided proper opportunity of personal hearing as well as self defence and the proceedings were conducted in

mechanical way without complying the legal and codal formalities prescribed under Khyber Pakhtunkhwa Police Rules, 1975. He next contended that final show-cause notice alongwith copy of inquiry report was not handed over to the appellant, which is violation of law and principle of natural justice. In the last he contended that the impugned orders are wrong and illegal, therefore, the same may be set-aside and the appellant may be reinstated in service with all back benefits.

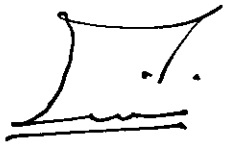
5. On the other hand, learned District Attorney for the respondents contended that the appellant remained indulged in immoral activities as he used to bring bad character women to the Police Post for immoral activities. He next contended that upon the direction of SHO Police Station, Dara Adam Khel, Muqarab Khan Naib Incharge Khasadar/Levy force raided Police Post Bosti Khel and found that the appellant alongwith two women namely Nusrat Bibi Wife of Said Hussain and Mst. Salma wife of Sameen as well as one Arshad Khan son of Iqbal were present there and the matter was thus recorded in Daily Diary dated 03.03.2020 of the Police Station. He further contended that a proper regular inquiry was conducted in the matter and as the allegations against the appellant stood proved, therefore, he was rightly dismissed from service.

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

7. A perusal of the record would show that Superintendent of Police, Operations, Kohat has conducted inquiry in the matter. Copy

of the inquiry report submitted by him to the competent Authority is available on the record, which would show that he had recorded statements of Constable Sultan No. 2006, Constable Murad Ali No. 2027 and Constable Umar Khan No. 2014 during the inquiry proceedings. Copies of statements of the afore-mentioned witnesses are also available on the record which would show that none of them had stated anything in support of the allegations leveled against the appellant but it is astonishing that the inquiry officer has concluded that the allegations against the appellant were proved beyond any shadow of doubt.

8. The departmental action was taken against the appellant on the report recorded by Mr. Waqar Ahmad, the then SHO Police Station Dara Adam Khel in Daily Diary No. 16 dated 03.03.2020 Police Station Darra Adam Khel. According to the said report, Muqarab Khan Naib Incharge Khasadar/Levy Force alongwith other police officials had raided Police Post Bosti Khel upon the direction of Waqar Ahmad, the then SHO Police Station Dara Adam Khel on 03.03.2020. In such a scenario, Waqar Ahmad SHO and Muqarab Khan Naib Incharge/Levy Fore as well as the police officials, who had accompanied him at the relevant time were the material witnesses regarding the allegations leveled against the appellant. However, the inquiry officer in his own wisdom and for reasons best known to him, did not bother to examine anyone of them as witness during the inquiry proceedings. The findings of the inquiry officer were based on surmises and conjectures but the competent Authority endorsed the





same in a mechanical manner. The discharge of official duty in such a capricious and whimsical manner is highly deplorable. The allegations against the appellant are though of moral turpitude but the same are not supported through any evidence recorded during the inquiry proceedings.

9. In view of the above discussion, 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
14.11.2023


(FARBEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
14.11.2023

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Vide order dated 02.11.2023, the application of the appellant for submission of amended appeal was allowed and he had submitted the same on 07.11.2023. Learned District Attorney stated at the bar that he relies on the comments already submitted by the respondents. 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
14.11.2023



(Fareeha Paul)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)