

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7738/2021

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

Asif Ayaz, No. 483/MR Assistant Sub-Inspector (Law Instructor)
posted at Recruitment Centre P.T.S Swabi.

.... (Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan.
3. District Police Officer, Mardan.

.... (Respondents)

Mr. Javid Iqbal
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....09.10.2021
Date of Hearing.....19.10.2023
Date of Decision.....19.10.2023

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 orders dated 17.03.2021 and 20.09.2021 may kindly be set aside and the appellant may kindly be reinstated on his own previous scale and pay of ASI with all back benefits.”



2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was serving the respondent department as ASI and was performing his duties up to the entire satisfaction of his superiors. While posting at Police Station Saddar Mardan, complaint was lodged against the appellant upon which, he was proceeded departmentally and was served with charge sheet alongwith statement of allegations. Departmental inquiry was initiated and thereafter, appellant was awarded major penalty of reduction in pay by one stage. Feeling aggrieved, appellant filed departmental appeal, which was rejected; 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 appellant has not been treated in accordance with law and rules. He further argued that impugned orders passed by the respondents are void, irregular and unlawful therefore, liable to be set aside. He contended that no opportunity of cross examination was afforded to the appellant and the he was condemned unheard. He submitted that enquiry were proceedings conducted in a haphazard manner which is violation of Rule 6 & 7 of Police Rules, 1975. Lastly he submitted that while conducting denovo inquiry no show cause notice, charge sheet and final show cause notice were issued which is against law and natural justice, therefore, he requested for acceptance of instant service appeal.

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

He further contended he was issued charge sheet alongwith statement of allegation and enquiry was conducted by ASP Muhammad Qais Khan who during enquiry provided opportunity of self-defence but he failed. After fulfillment of all legal and codal formalities he was recommended for major punishment of reduction in pay scale.

6. Perusal of record reveals that appellant is serving respondent department as ASI and was posted at police station Saddar Mardan. Appellant was issued charge sheet and statement of allegation by the respondent on 07.05.2021 by appointing Mr. Muhammad Qais Khan SDPO Takt-e-Bhai as enquiry officer. Allegation against the appellant as per statement of allegation was that, one Wazir Rehman S/O Noor Rehman filed written application on 28.12.2020 to respondent by mentioning therein that on 23.12.2020 at 15:20 hours, the appellant arrested one Abdul Hamed S/O Abdul Wadood with ice and later on released him without any legal action/FIR upon taking illegal gratification of Rs. 12000/- from complainant, adding that on next day, appellant reached his home and shifted him to Police Station Saddar, where besides torturing, using abusive language, also threatened him for registration of FIR in narcotics against him on the eve of complaint to the seniors officers against him. Enquiry officer although recorded statements of complainant Wazir Rehman, Abdul Hameed and two constables besides appellant but perusal of entire proceeding reveals that no chance of cross examination was provided to the appellant, which is one of most important factors of inquiry and as per verdict of superior courts, before imposing penalty to a civil servant, proper inquiry must be conducted. Reliance is placed on 2008 SCMR 1369. In the



instant case, complainant Wazir Rehman who filed complaint against the appellant and Abdul Hameed who was stopped by the appellant on suspicion are the star witnesses and right/opportunity of cross examination upon them must have been provided to appellant for fulfilling norms of justice. Moreover, appellate authority ordered *donove* inquiry but said inquiry officer had also not provided any opportunity to the appellant to cross examine the complainant and Abdul Hamid. So in our view, proper inquiry was not conducted in accordance with the settled rules and norms of justice, which requires interference by this Tribunal.

7. As a sequel to above discussion, we set aside the impugned orders and send the case back to the department to conduct *denovo* inquiry strictly in accordance with law/rules. The *denovo* inquiry proceeding shall be completed within sixty days from the date of receipt of copy of this judgment. Costs shall follow the events. *Consign.*

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19th day of October, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)