

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWA

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

Service Appeal No. 252/2018

Ex-Constable Qaiser Abbas S/O Zahir Ali, R/O Sheikhan Kohat.
(Appellant)

Versus

Inspector General of Khyber Pakhtunkhwa Police Peshawar and 02
others. (Respondents)

Present:

Syed Mudasir Pirzada, Advocate.....For the appellant
Mr. Muhammad Jan, District AttorneyFor respondents

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Date of presentation of Appeal.....12.02.2018
Date of Hearing.....24.11.2023
Date of Decision.....24.11.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: Precise facts giving rise to filing of the instant appeal are that the appellant, while posted at Patrolling post Abdul Ali District Hangu, was deputed for special duty at District Karak in connection with Census of the year 2017. He was charged and arrested in case FIR No. 256 dated 05.05.2017 under section 324 PPC Police Station City District Kohat, which resulted in taking of departmental action against him. On conclusion of the inquiry, the appellant was awarded major punishment of dismissal from service vide order bearing OB No. 518 dated 14.06.2017. The same was challenged by the appellant through filing of departmental appeal, which was also rejected vide order dated 26.09.2017. The appellant then preferred revision petition before the Inspector General of Police Khyber

Pakhtunkhwa, Peshawar, which too was rejected vide order dated 15.01.2018, hence the instant 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 contended that the appellant was falsely roped in a concocted case and has been acquitted vide order dated 15.07.2017 passed by competent court of law. He next contended that the only allegations against the appellant was his involvement in the criminal case and as he has been acquitted by competent court of law, therefore, he was entitled to have been reinstated in service. He further contended that the complainant of the concerned criminal case has not been examined in the inquiry proceedings and no evidence connecting the appellant with the alleged crime was recorded by the inquiry officer. He next argued that neither charge sheet nor statement of allegations was issued to the appellant and he was not provided any opportunity of cross examination of the witnesses examined during the inquiry. He further argued that there are material dents in the inquiry proceedings but the same were ignored by the competent Authority as well as the appellate Authority at the time of passing of the impugned orders. He also argued that the impugned orders are bereft of any legal sanctity, therefore, the same 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 had made firing at an eunuch namely

Hamdullah and case FIR No. 256 dated 05.05.2017 under section 324 PPC Police Station City District Kohat was thus registered against him. He next contended that a regular inquiry was conducted against the appellant and he was provided opportunity of personal hearing as well as self defence. He further contended that the allegations against the appellant stood proved in a regular inquiry, therefore, he was rightly dismissed from service. He next argued that acquittal of the appellant was not on merits rather the same was on the basis of compromise, therefore, the acquittal of the appellant could not be considered as a ground for his exoneration in the departmental proceedings. He further argued that criminal as well as departmental proceedings can run parallel and the acquittal of the appellant in the criminal proceedings is of no benefit to him in the departmental proceedings. In the last he requested that the impugned orders may be kept intact and 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 departmental action was taken against the appellant on the allegations of his involvement in case FIR No. 256 dated 05.05.2017 under section 324 PPC Police Station City District Kohat. According to the available record, the inquiry officer had recorded the statements of one Faiz-ul-Haq as well as investigation officer of the case namely Manzoor-ur-Rehman ASI and Rizwanullah S.I, who had recorded the report of the complainant in shape of Murasila. It is an admitted fact that the appellant was not provided an opportunity of cross-examination of the said witnesses examined during the

inquiry, therefore, their statements could not be taken into consideration for awarding punishment to the appellant. Moreover, the complainant Hamdullah Jan and alleged eye witness namely Hamad S/O Muhammad Nabi were required to have been examined during the inquiry in support of the allegations leveled against the appellant, however the same has not been done. In view of non recording of statement of the very complainant during the inquiry, it could not be concluded that the allegations against the appellant were proved.

7. Departmental action was taken against the appellant on the basis of criminal case registered against him, however the appellant has already been acquitted by competent court of law. The appellant was though acquitted on the basis of compromise, however it is by now well settled that all acquittals are honourable and there could be no acquittal which could be termed as dishonourable.

8. In view of the above discussion, the appeal in hand is allowed 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
24.11.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



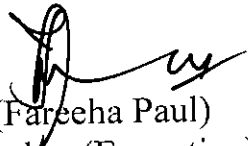
(FAREEHA PAUL)
MEMBER (EXECUTIVE)


ORDER
24.11.2023

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Haseeb Ullah, Head Constable and Mr. Aziz Ullah, Head Constable for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed 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
24.11.2023


(Fareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)