

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 979/2023

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Sair Ullah Constable No. 566/Cook, Police Post Mazanga, District Bannu. (Appellant)

Versus

1. Province of Khyber Pakhtunkhwa through Inspector General of Police/Provincial Police Officer, Peshawar.
2. Regional Police Officer, Bannu Region, Bannu.
3. District Police Officer, Bannu. (Respondents)

Shahzada Irfan Zia,
Advocate ... For appellants

Mr. Muhammad Jan, ... For respondents
District Attorney

Date of Institution..... 03.05.2023
Date of Hearing..... 21.11.2023
Date of Decision..... 21.11.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant appeal as well as connected Service Appeal No. 980/2023 titled “Nayab Khan Versus Province of Khyber Pakhtunkhwa through Inspector General of Police, Peshawar and others”, as in both the appeals common questions of law and facts are involved.

2 The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 18.01.2023, passed by respondent No.3, whereby the appellant was awarded the major penalty of dismissal from service and his departmental



appeal was rejected by respondent No. 2 vide impugned final order dated 20.04.2023 in disregard of the rules and principles of natural justice, with the prayer to set aside both the impugned orders and reinstate the appellant into service with all back benefits, alongwith any other relief which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the Police Force as Constable on 01.01.2015. On 18.01.2023, the respondent No.3 passed the impugned order and imposed the major penalty of dismissal from service upon the appellant on the pretext of absence from duty. Feeling aggrieved, the appellant filed his departmental appeal before the respondent No. 2 but the appellate authority rejected his departmental appeal vide impugned final order dated 20.04.2023. After the impugned order of dismissal from service dated 18.01.2023 a show cause notice dated 19.01.2023 was served upon the appellant, which was illegal and a blatant violation of the law, procedure and rules; hence the instant service appeal.

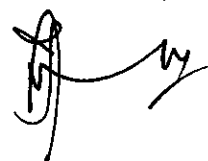
3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that impugned orders were passed without due process of law and hence they were illegal and void. He further argued that the impugned order was passed on 18.01.2023 while the show cause notice was served



upon the appellant on 19.01.2023, after issuance of the impugned order, thus making the entire proceedings illegal, void and unsustainable under the law. He further argued that before passing the impugned order, no proper inquiry was conducted to dig out the truth and that the order was passed in a haphazard manner. No chance of personal hearing was afforded to him and he was condemned unheard. According to him, the impugned order was in violation of Article 10-A of the Constitution of Islamic Republic of Pakistan. He requested that the appeal might be accepted as prayed for.

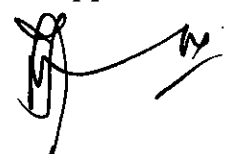
5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was appointed as a Cook Constable but he did not perform his duty regularly and was a habitual absentee. According to him on 13.01.2023, SDPO Rural-I found him absent from the official duty and it was found that he had hired a private person for cooking, in his place. He further argued that punishment was imposed after observing all the codal formalities and his departmental appeal was rejected being devoid of merit. He referred to Section 5, sub section (3) of the Khyber Pakhtunkhwa Police Rules, 1975 and stated that as per the said rule, the punishment proceedings would be of two kinds, (a) Summary Police Proceedings and (b) General Police Proceedings. He read out sub-section 3 that if the authority decided that the misconduct or act of omission or commission should be dealt with in general police proceedings, it should determine if in the light of facts of the case or in the interest of justice, a departmental enquiry, through an enquiry officer was necessary. He further stated that if the authority decided that it was not necessary then he should,



by order in writing, inform the accused of the action proposed to be taken and give him a reasonable opportunity of showing cause against that action. He requested that the appeal might be dismissed.


6. Arguments and record presented before us shows that the appellant was appointed as cook constable in provincial police in 2015. Through the impugned order dated 18.01.2023, he, alongwith five other constables, was dismissed from service on the charge of absence from duty by the District Police Officer, Banuu. Later on, a show cause notice was issued to him, alongwith four other constables, under rules 5(3) of Police Rules 1975, on 19.01.2023 and he was directed to submit reply within seven days of the receipt of that notice, failing which ex-parte action would be taken against him. It has been noted that the DPO Banuu did not bother to give any heed to the rules under which he had to proceed against the appellant. He issued the order of dismissal first and later on, as an afterthought, issued a show cause notice on the next day. The rule to which he was referring in the show cause notice, i.e Rule 5(3) of the Khyber Pakhtunkhwa Police Rules 1975, clearly mentions that a reasonable opportunity of showing cause had to be given to the appellant before passing any order of punishment, which was not done in this case. It has been further noted that the charge of absence is also not specified in the dismissal order.

7. From the above discussion, it transpires that the appellant had been dismissed from service without following the due process. He had been awarded a major punishment without giving him any opportunity of defence, which is highly against the spirit of fair trial. The service appeal in




hand, as well as connected service appeal No. 980/2023, is allowed as prayed for. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 21st day of November, 2023.*


(FAREEHA PAUL)
Member (E)

Fazle Subhan, P.S


(SALAH-UD-DIN)
Member (J)

S.A 979/2023

21st Nov. 2023 01. Shahzada Irfan Zia, Advocate for the appellant present. Mr.

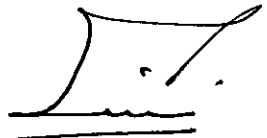
Muhammad Jan, District Attorney for the respondents present.

Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 21st day of November, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S