

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.378/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER(J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER(E)

**Bahar Ali S/O Gul Muhammad R/O Ghulam Sarwar Khan Kalay, Mangah, P.O  
Mangah, District Mardan Ex-Constable Police Department)**

... (Appellant)

**VERSUS**

1. The District Police Officer (D.P.O), Mardan.
  2. Regional Police Officer, Mardan.
  3. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- ... (Respondents)

Mr. Ibne Amin Khan  
Advocate ... For Appellant

Mr. Syed Asif Ali Shah  
Deputy District Attorney ... For Respondents

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Date of Institution.....24.02.2023  
Date of Hearing.....07.11.2023  
Date of Decision.....07.11.2023

**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 this appeal, the impugned order dated 09.02.2023 being against the law and rules thus may kindly be declared as illegal, unlawful, void ab initio, corum-non-judice and ineffective upon the rights of the appellant and may graciously be set aside, and the appellant be reinstated into service with all back benefits.”**

2. Brief facts of the case are that the appellant was enlisted as constable in police department on 09.05.2009. The appellant was performing his duty



upto to the entire satisfaction of his superiors. During service case FIR No. 481 U/S 279, 320 PPC in police station Sardheri, Charsadda was lodge in which the appellant was involved by complainant in a statement recorded u/s 164 Cr.PC . Disciplinary proceedings were initiated against the appellant and after fulfillment of codal formalities he was dismissed from service vide order dated 24.02.2021. Feeling aggrieved, he filed departmental appeal, which was dismissed on 22.04.2021, hence the instant service appeal.

2. 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 Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

3. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that impugned order passed by the respondent are illegal, unlawful, against the law and facts hence liable to be set aside. He contended that at involvement of appellant in a criminal case the respondents are bound to suspend the accused/appellant/civil servant till the outcome of trail/conclusion of trail but the act of the respondents is against the settled norms of justice. Lastly, he submitted the no opportunity of personal hearing was afforded to the appellant and he was condemned unheard, therefore, he requested that instant appeal might be accepted.

4. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant while posted at Swat Express Way was placed under suspension on account of of charging in a case vide FIR No.481 dated 24.10.2020 and on the basis of aforementioned allegations the appellant was entrusted to SDPO Katlang Mardan. The enquiry officer during the course of enquiry provided



full-fledge opportunity to the appellant to produce evidence in his defence, but he failed. However, after fulfillment of all legal and codal formalities, penalty of dismissal from service was awarded to the appellant.

6. Perusal of record reveals that appellant was serving in the police department as constable when disciplinary proceeding was initiated against him on 08.01.2021 by issuing charge sheet and statement of allegation on the ground of his involvement in criminal case vide FIR No. 481 datd 21.10.2020 under section 279/320 PPC of Police Station Charsadda. Mr. Riaz Khan SDPO Katlang was appointed as Enquiry Officer who after fulfillment of all codal formalities submitted his report on 08.02.2021 by holding appellant responsible for commission of offence. Authority after issuing of final show cause notice and hearing the appellant, issued impugn dismissal order of the appellant from service on 20.02.2021. The only allegation against the appellant is his involvement in a criminal case bearing FIR No. 481 dated 24.06.2020 under section 279/320 PPC of police station Sardheri in which appellant is acquitted vide order dated 30.06.2022 by the competent court of law. Attested copy of which is annexed with the appeal by the appellant .


7. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Conviction of the appellant in criminal case was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.



8. It is established from the record that charges of his involvement in criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

9. For what has been discussed above, the impugned order is set aside and the appellant is reinstated into service with all back benefits. Costs shall follow the event. Consign.


10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 7<sup>st</sup> day of November, 2023.*


  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**  
07.11.2023

1. Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney Mr. Arif Saleem, Stenographer for the respondents present.
2. Vide our detailed judgement of today placed on file, the impugned order is set aside and the appellant is reinstated into service with all back benefits. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 7<sup>st</sup> day of November, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)