

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.199/2022

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

Dildar Hussain S/O Zaman Ali, Head Constable/Hawaldar District Police Officer Kurram. ... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Kohat Region.
3. District Police Officer, District Kuram.

... (Respondents)

Syed Noman Ali Bukhari
Advocate

... For Appellant

Syed Asif Ali Shah
Deputy District Attorney

... For Respondents

Date of Institution.....17.02.2022
Date of Hearing.....14.11.2023
Date of Decision.....14.11.2023

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, both the impugned orders of the respondents may graciously be set aside and the appellant may kindly be reinstated in service with all back benefits alongwith grant of any other remedy deemed fit by this Hon’ble Bench.”

2. Brief facts of the case are that the appellant was appointed as Sepoy in kurram Levy Force on 03.06.1996 and on merger of FATA was designated as Head Constable/Hawaldar in Khyber Pakhtunkhwa Police. During service



criminal case was registered under section 302 PPC on 28.01.2015 on 28.01.2015 and he surrendered before the law on 08.02.2015. He was convicted and sentenced under section 302 PPC to 14 years R.I by worthy Additional Sessions Judge Kurram vide judgment dated 23.09.2020. The appellant assailed the above referred conviction before the august High Court which was allowed vide order dated 11.11.2021 and the appellant was acquitted from the entire charges of the prosecution. During conviction respondent imposed major penalty of dismissal from service vide order dated 08.07.2021. Feeling aggrieved, he filed departmental appeal, which was dismissed, 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 Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the impugned orders passed by respondents are illegal, without justification, without law authority and in utter violation of law and rules, hence liable to be set aside. He further argued that no charge sheet and statement of allegations were served upon the appellant and the appellant was condemned unheard. He contended that no show cause notice was issued to appellant before imposition of major penalty therefore, the impugned order is not tenable in the eyes of law. Lastly, he submitted that despite having the knowledge of detention of the appellant in judicial lockup, neither he apprised of the impugned action/order nor he was given opportunity of personal hearing and he was condemned unheard, therefore, he requested that instant appeal might be accepted.



5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that proper inquiry was conducted and after fulfillment of all codal formalities he was awarded major penalty of dismissal from service vide order dated 08.07.2021. He further argued that criminal case proceedings and departmental proceedings are distinct in nature and both can run side by side. He further contended that the appellant has been provided with ample opportunity of self defense but he badly failed to advance plausible reason.

6. Perusal of record reveals that appellant while serving as constable in respondent department involved in criminal case under section 302 PPC on 2011.2015 who was convicted by the learned Additional Sessions Judgment Kuram to undergo 14 years rigorous punishment on two counts. Respondent competent authority initiate disciplinary proceedings against the appellant and vide impugned order dated 08.07.2021 dismissed him from service, against which appellant filed departmental appeal after released from jail which too was dismissed vide order dated 18.01.2022. It is pertinent to mention here that appellant was acquitted by the Worthy Peshawar High Court from the charges by setting aside conviction on 11.11.2022. It merit to mention here that when appellant was in custody and upon appellant's conviction enquiry officer recommended him for major penalty. The very reason of recommendation of the enquiry officer i.e conviction of the appellant came to an end when appellant was acquitted by the worthy Peshawar High Court, Peshawar vide order dated 11.11.2021 in criminal appeal bearing No. 811-P/2020. Moreover, appellant was condemned unheard as record is silent about proof of receiving charge sheet and statement of allegation by the appellant and opportunity of self-defence provided by officer to 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. In view of above discussion, we are unison to set aside the impugned orders and reinstate the appellant 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 14th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER14th Nov, 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, we are unison to set aside the impugned orders and reinstate the appellant 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 14th day of November, 2023.*



(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)