

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

**Service Appeal No. 3844/2020**

**BEFORE:** RASHIDA BANO --- MEMBER (J)  
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Wajid Ali, Sub Inspector No. 228/MR, Elite Force Khyber  
Pakhtunkhwa, Peshawar.....(*Appellant*)

**VERSUS**

1. Regional Police Officer, Mardan Region Mardan.
2. District Police Officer Mardan.
3. Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar.
4. Provincial Police Officer, Khyber Pakhtunkhwa  
Peshawar.....(*Respondents*)

**Present:-**

FAZAL SHAH MOHMAND,  
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,  
Deputy District Attorney --- For respondents.

Date of Institution.....24.04.2020  
Date of Hearing..... 07.11.2023  
Date of Decision..... 07.11.2023

**JUDGMENT.**

**MUHAMMAD AKBAR KHAN, MEMBER(E):-** The instant service  
appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa  
Service Tribunal, Act 1974 with the prayer copied as under;

*“That on acceptance of this appeal the impugned order dated  
03.03.2020 of respondent No. 1 and order dated 15.07.2019 may  
kindly be set aside and the one stopped increment may kindly be  
restored to the appellant with all back benefits.”*

02. Brief facts of the case are that, the appellant joined the respondent department as Constable and after getting promotion to higher scales he reached to the rank of Sub Inspector. During his posting as SHO Police Station Toru Mardan the DPO Mardan paid surprise visit to Police Station Toru Mardan on 24.04.2018 and received complaints from the locals including Nazim of the Union Council against the appellant. The DPO Mardan nominated SP Investigation Mardan to conduct preliminary inquiry which was submitted to respondent No. 2 on 02.05.2018; that the appellant was issued show cause notice on 12.03.2019 which was replied; that on 11.04.2019 charge sheet was issued to the appellant and SDPO Mardan City was nominated as Inquiry Officer who conducted inquiry and no witnesses was examined during inquiry, thereafter final show cause notice was issued to the appellant which was also replied by the appellant and ultimately the appellant was awarded minor penalty of stoppage of one increment with cumulative effect vide order dated 15.07.2019. In the meanwhile, the appellant was transferred to Elite Force so he filed departmental appeal before respondent No. 3 on 09.08.2019 which was returned to respondent No. 1 and was rejected on 03.03.2020, hence preferred the instant service appeal on 24.04.2020.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned orders are illegal, unlawful and void ab-initio; that the mandatory provisions of law and rules have been badly violated by the respondents and the appellant has not been treated according to law and rules; that in fact the Nazims and other political persons of the area wanted to influence the appellant for their vested interests which the appellant refused so they planted various persons for filling false and frivolous complaints and also produced them during the visits of the then DPO Mardan who ordered inquiry against the appellant; that no proper inquiry has been conducted nor witnesses were examined in presence of the appellant nor the appellant was ever confronted with any compliant during departmental inquiry; that opportunity of personal hearing was not provided to the appellant; that the charges was never established nor was any material collected against the appellant warranting imposition of penalty; that the appellant was subjected to three inquiries and he has nothing to do with most of the allegations while others were false besides malafide as the appellant never raided the house as alleged. That the impugned order is in violation of Fundamental Rule 29 and as such liable to be struck down on this score alone. Learned counsel for the appellant relied on 2004 SCMR 316, 2008 SCMR 1165, 2016 SCMR 108 & 2021 SCMR 153.

05. Learned Deputy District Attorney for the respondents controverted the assertions made in the service appeal as well as arguments of the learned counsel for appellant and contended that the appellant was treated in accordance with law, rules, policy & norms of natural justice; that the appellant being a responsible Police Officer as SHO Police Station was


supposed to discharge his legal duties in a professional manner but he badly failed to do so; that the allegations leveled against the appellant were initially inquired through Superintendent of Police Investigation Mardan who held the appellant responsible. He further argued that proper charge sheet and summary of allegations were issued to the appellant and proper inquiry was conducted into the allegations against the appellant. He was also provided opportunity of self defense but he failed to prove his innocence. Since all the codal formalities were fulfilled before passing the impugned order, the appeal in hand may therefore, be dismissed.

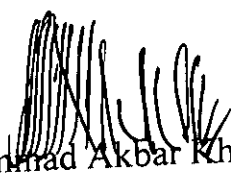
06. Legal scrutiny of the available record reveals that during posting of the appellant as SHO Police Station Toru, some locals submitted written complaints against him during visit of DPO Mardan to the Police Station Toru, Mardan on 24.04.2018. The DPO Mardan nominated SP Investigation Mardan to conduct a preliminary inquiry into the six different nature of complaints submitted by the local persons including Nazim of the Union Council against the appellant. The SP investigation after conducting inquiry into the complaints one by one submitted his report. Findings of this inquiry reveal that not a single complaint was proved against the appellant. The inquiry findings also reveal that Nazims of the village Councils had personal animosity with the appellant for their personal gains which substantiate that the complaints were basically crooked and baseless. The inquiry officer, however, concluded his inquiry by stating that the appellant had poor relations with the general public and failed to satisfy the general public of the area. Based on this preliminary inquiry report a show cause notice was served on the appellant and upon receipt of the reply to the show cause

notice a formal inquiry was ordered by appointing SDPO Mardan as inquiry officer. The charge sheet and statement of allegations served upon the appellant contained the same six complaints which all stood disproved in the fact finding inquiry earlier conducted the SP investigation. The formal inquiry has relied on the findings of the preliminary inquiry in which all the complaints were disproved. However, conclusion of the inquiry officer states that six various complaints although disproved, reveal the inefficiency and negligence of the appellant towards his official duty. We observe that when the complaints stand disproved how can the same be attributed towards inefficiency and misconduct of the appellant. Moreover, complaints of six persons which stood disproved cannot be termed as non satisfaction of the general public within the jurisdiction of the police station which has been made a ground for inefficiency on part of the appellant and award of punishment.

07. In view of the above discussion, we are constrained to accept the instant appeal as prayed for and set aside the impugned orders dated 03.03.2020 & 15.07.2019. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 07<sup>th</sup> day of November, 2023.*

  
(Rashida Bano)  
Member (J)


  
(Muhammad Akbar Khan)  
Member (E)


ORDER

07.11.2023 01. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (05) pages, we are constrained to accept the instant appeal as prayed for and set aside the impugned orders dated 03.03.2020 & 15.07.2019. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 07<sup>th</sup> day of November, 2023.*

  
(Rashida Bano)  
Member (J)

  
(Muhammad Akbar Khan)  
Member (E)