

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWA**

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

***Service Appeal No. 1211/2018***

Mst. Silmat Ara, Ex-Family Welfare Worker, Family Welfare Center  
Sakhakot, District Malakand. (Appellant)

Versus

The Government of Khyber Pakhtunkhwa through Chief Secretary,  
Khyber Pakhtunkhwa, Peshawar and 02 others. (Respondents)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellant  
Mr. Asad Ali Khan, Assistant Advocate General .....For respondents

.....

Date of presentation of Appeal.....27.09.2018  
Date of Hearing.....04.12.2023  
Date of Decision.....05.12.2023

-----

**JUDGMENT**

**SALAH-UD-DIN, MEMBER:** Brief facts giving rise to filing of the instant appeal are that the appellant was appointed as Family Welfare Worker (BPS-08) vide order dated 21.02.2006. During her posting as Family Welfare Worker at Family Welfare Centre Sakhakot, DPW Office, Malakand, departmental action was initiated against the appellant on the allegations reproduced as below:-

*“That you have admitted in your complaint to have collected graft money of 20,50,000/- from different individuals in return for provision of jobs. The aforesaid admission for collection of graft amount proves your misconduct and involvement in corruption and malpractices.”*

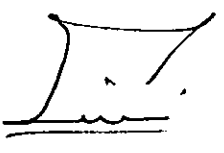
2. On conclusion of the inquiry, the appellant was awarded major penalty of removal from service vide order dated 08.05.2018. The

appellant challenged the said penalty through filing of departmental appeal on 21.05.2018, however the same was declined vide order dated 03.09.2018, hence the instant appeal.

3. 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.

4. Learned counsel for the appellant while criticizing the impugned orders has contended that the appellant was awarded major penalty of removal from service without conducting any regular inquiry in the matter. He next argued that no show-cause notice was issued to the appellant and she was also not provided any opportunity of personal hearing. He further argued that the rights of the appellant as guaranteed under Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973 were violated and she was condemned unheard. He also argued that in respect of the same allegations, case FIR No. 03 dated 16.10.2017 under sections 161/165 PPC read with section 5 (2) PC Act at PC at P.S ACE Malakand was registered against the appellant and as she has been acquitted in the said case, therefore, the impugned orders are liable to be set-aside and the appellant is entitled to be reinstated in service with all back benefits.

5. On the other hand, Assistant Advocate General for the respondents has contended that the appellant in her complaint as well as in her replies to the charge sheet and show-cause notice has



made clear admission that she had received graft money amounting to Rs. 20,50,000/- from various candidates on the commitment that they will be provided jobs. He next contended that in view of admission of the charge leveled against the appellant, there was no need of any regular inquiry in the matter but even then a regular inquiry was conducted by complying all legal and codal formalities as required under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He further argued that as criminal and departmental proceedings can run parallel, therefore, the appellant was proceeded against departmentally and as the allegations against her stood proved, therefore, she was awarded major penalty of removal from service. He also argued that acquittal of the appellant in the case registered against her vide FIR No. 03 dated 16.10.2017 under sections 161/165 PPC read with section 5 (2) PC Act registered at P.S ACE Malakand could not in any way entitle her to exoneration 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.

6. We have already heard the arguments of learned counsel for the parties and have perused the record.

7. The appellant at the relevant time was serving as Family Welfare Worker in Family Welfare Center Sakhakot, DPW Office, Malakand while her co-accused namely Ahmad Ali was serving as District Population Welfare Officer Malakand. In her reply to the charge sheet issued to her, the appellant has admitted



that she had collected an amount of Rs. 20,50,000/- from various candidates and had handed over the same to co-accused Ahmad Ali. The statement of the appellant recorded during the inquiry would also show that she has admitted therein that she had received an amount of Rs. 20,50,000/- from various candidates for providing them jobs and had handed over the said amount to District Population Welfare Officer namely Ahmad Ali. Similarly, in her reply to the show-cause notice too, the appellant has admitted receiving of graft amount of Rs. 20,50,000/- from various individuals. The appellant had though alleged that graft money was collected from various candidates upon the directions of co-accused Ahmad Ali, however her such stance in no way justifies the collecting of graft money from various candidates as she was not bound to obey illegal orders of co-accused Ahmad Ali. While going through the record, we are of the view that a regular inquiry was conducted in the matter and the allegations against the appellant stood proved.

8. In respect of the same allegations, the appellant was also charged in case FIR No. 03 dated 16.10.2017 under sections 161/165 PPC read with section 5 (2) PC Act at PC at P.S ACE Malakand. Vide judgment dated 05.10.2023 passed by Senior Special Judge, Anti-Corruption (Provincial) Khyber Pakhtunkhwa, (Camp Court Swat), the appellant has been acquitted in the afore-mentioned criminal case. Now the question for determination before us is that as to whether the penalty awarded to the appellant in the departmental proceedings could sustain despite acquittal of

the appellant in the criminal proceedings? Supreme Court of Pakistan in its judgment reported as 2022 SCMR 1796 has held as below:-

“12. The learned counsel for the respondent argued that the respondent was booked in the NAB reference as well, but he was acquitted by the Accountability Court. In response, the learned DAG argued that an acquittal appeal is pending in the Sindh High Court. The underlying principle of initiating disciplinary proceedings is to ascertain whether the charges of misconduct against the delinquent are proved or not, whereas prosecution under the penal statutes is altogether different where the prosecution has to prove the guilt of accused beyond any reasonable doubt. The common sense or realism of criminal trial is to mete out punishment of the offences committed by the accused while departmental inquiry is started off for making inquiry into the allegations of misconduct in order to maintain and uphold discipline and decorum in the institution and efficiency of the department to strengthen and preserve public confidence.

13. A civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge. While facing expulsive proceedings on departmental side on account of his indictment on criminal charge, he may not save his job in the event of acquittal as the department may still have reasons to conscionable consider his stay in the service as inexpedient. The department can assess the suitability of a civil servant, confronted with a charge through a fact finding method, which somewhat inquisitorial in nature, but without the heavier procedural riders otherwise required in criminal jurisdiction to eliminate any potential risk of error. Ref: Dr. Sohail Hassan and others v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708) and District Police Officer, Mianwali and 2 others v. Amir Abdul Majid (2021SCMR 420).”

9. Similarly, Supreme Court of Pakistan in its judgment reported as 2022 SCMR 1770 has held as below:-

“11. The rationale and astuteness of initiating disciplinary proceedings by the employer is to unmask whether the charges of misconduct leveled against the delinquent are proved or not and in case his guilt is proved, what action should be triggered against him under the applicable Service Laws, Rules and



Regulations, which may include the imposition of minor or major penalties in accordance with the fine sense of judgment of the competent Authority. Quite the reverse, the acuteness and *raison d'être* to set into motion the criminal prosecution is altogether different where the prosecution has to prove the guilt of accused beyond any reasonable doubt. Both have distinctive characteristics and attributes with regard to the standard of proof. It is well settled exposition of law that the prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently at both venues without having any overriding or overlapping effect. The object of criminal trial is to mete out punishment of the offences committed by the accused while departmental inquiry is inaugurated to enquire into the allegations of misconduct in order to keep up and maintain the discipline and decorum in the institution and efficiency of department to strengthen and preserve public confidence. In the departmental inquiry, the standard of proof is that of "balance of probabilities or preponderance of evidence" but not "proof beyond reasonable doubt", which strict proof is required in criminal trial because the potential penalties are severe. In the case of Dr. Sohail Hassan Khan and others vs. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), this Court held that a civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge arising out of the same impugned transaction; these two are entirely different jurisdictions with different standards of proof as well as procedures; criminal prosecution requires strict proof through a narrowly jacketed procedure and, thus, State's failure on criminal plane does not provide shield of double jeopardy to a delinquent officer. Whereas in the case of District Police Officer, Mianwali and 2 others vs. Amir Abdul Majid (2021 SCMR 420), this Court again held that a civil servant facing expulsive proceedings on departmental side on account of his indictment on criminal charge may not save his job in the event of acquittal as the department still may have reasons/material, to conscionably consider his stay in the service as inexpedient; there are additional reasons to disregard his acquittal inasmuch as criminal dispensation of justice involving corporeal consequences, comparatively, requires a higher standard of proof so as to drive home the charge beyond doubt, an exercise to be routed through a procedure stringently adversarial, therefore, factuality of the charge notwithstanding, procedural loopholes or absence of evidence, sufficient



enough to sustain the charge, at times occasion in failures essentially to maintain safe administration of criminal justice out of abundant caution. Departmental jurisdiction, on the other hand, can assess the suitability of a civil servant, confronted with a charge through a fact finding method, somewhat inquisitorial in nature without heavier procedural riders, otherwise required in criminal jurisdiction to eliminate any potential risk of error, therefore, the Tribunal has undoubtedly misdirected itself in reinstating the respondent, considering his acquittal as the sole criterion in isolation to the totality of circumstances where under he had succeeded to vindicate his position. Reference may be made to the cases of *Dr. Sohail Hassan Khan and others v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others* (2020 SCMR 1708), *Liaqat Ali v. Government of N.W.F.P. through Secretary Health, Peshawar and others* (2011 PLC (C.S) 990), *Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan* (PLD 2010 SC 695), *Government of Pakistan through Secretary Ministry of Finance and others v. Asif Ali and others* (2007 PLC (C.S.) 271), *Superintendent of Police, D.I.Khan and others v. Ihsanullah* (2007 SCMR 562), *Sami Ullah v. Inspector-General of Police and others* (2006 SCMR 554), *Ractor Comsats v. Ghulam Umar Kazi* (2006 SCMR 1894), *Executive Engineer and others v. Zahid Sharif* (2005 SCMR 824), *Khaliq Dad v. Inspector-General of Police and 2 others* (2004 SCMR 192), *Arif Ghafoor v. Managing Director, H.M.C, Texila and others* (PLD 2002 SC 13), *Mir Nawaz Khan v. Federal Government through Secretary, Ministry of Finance, Islamabad and 2 others* (1996 SCMR 315), *Talib Hussain v. Anar Gul Khan and 4 others* (1993 SCMR 2177), *Mud Izharul Ahsan Qureshi v. Messrs P.I.A.C.* (1994 SCMR 1608), *Muhammad Nazir v. The Superintendent of Police, Toba Tek Singh and others* (1990 SCMR 1556) *Muhammad Tufail v. Assistant Commissioner/Collector* (1989 SCMR 316), *Muhammad Saleem v. Superintendent of Police, Sialkot and another* (PLD 1992 SC 369), *Muhammad Ayub v. The Chairman, Electricity Board, WAPDA, Peshawar and another* (PLD 1987 SC 195), *The Deputy Inspector-General of Police, Lahore and others v. Anis-ur-Rehman Khan* (PLD 1985 SC 134) and *Begum Shams-un-Nisa v. Said Akbar Abbasi and another* (PLD 1982 SC 413).

10. Furthermore, Supreme Court of Pakistan in its judgment reported as 2023 PLC (C.S.) 884 has held as below:-

“5. It is well settled exposition of law that a civil servant cannot escape departmental proceedings or


*consequences thereof on account of his acquittal/exoneration on a criminal charge. While facing expulsive proceedings on departmental side on account of his indictment on criminal charge, he may not save his job in the event of acquittal as the department may still have reasons to conscionably consider his stay in the service as inexpedient. The department can assess the suitability of a civil servant, confronted with a charge through a fact finding method, which somewhat inquisitorial in nature, but without the heavier procedural riders otherwise required in criminal jurisdiction to eliminate any potential risk of error. Ref: Dr. Sohail Hassan Khan and others v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708) and District Police Officer, Mianwali and 02 others v. Amir Abdul Majid (2021 SCMR 420), Even otherwise, no substantial question of law of public importance in terms of Article 212 (3) of the Constitution of the Islamic Republic of Pakistan, 1973 is involved in the matter. The petition is thus dismissed and leave to appeal is refused.”*

11. The allegations against the appellant stood proved in a regular inquiry, therefore, mere her acquittal in the criminal case could not entitle her to exoneration in the departmental proceedings. It is a well settled principle of law that the order of removal can be passed even if the delinquent official had been acquitted of the criminal charge, provided his/her misconduct is proved in departmental proceedings.

12. In view of the above discussion, it is held that the appeal in hand is without merit, hence dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
05.12.2023

  
(FAREEHA PAUL)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)





ORDER  
05.12.2023

Learned counsel for the appellant present. Mr. Ahmad Yar, Assistant Director (Litigation) and Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, it is held that the appeal in hand is without merit, hence dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
05.12.2023

  
(Farzeha Paul)  
Member (Executive)

  
(Salah-Ud-Din)  
Member (Judicial)