

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.217/2022**

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

**Mati Ullah, IHC No. 255, Reader to DSP, Police Training College, Hangu.**

... (Appellant)

**VERSUS**

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Kohat Region.
3. The Commandant Police Training College, Hangu
4. The District Police Officer, District Hangu.

... (Respondents)

Mr. Mir Zaman Safi  
Advocate

... For Appellant

Mr. Syed Asif Ali Shah  
District Attorney

... For Respondents

----

Date of Institution.....23.02.2022  
Date of Hearing.....06.11.2023  
Date of Decision.....06.11.2023

**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 orders dated 12.11.2021 and 08.02.2022 may very kindly be set aside and the appellant be reinstated into service with all back benefits.”**

2. Brief facts of the case are that appellant was serving the respondent department upto the entire satisfaction of his superiors. That while performing his duty as Reader to DSP Security, in Police Training College Hangu, an allegation of missing 87369 SMG round from the ammunition Kotwas leveled against the appellant, on the basis of which disciplinary



proceedings were taken against the appellant and two others and were dismissed from service vide order dated 15.03.2019. Feeling aggrieved, appellant filed service appeal which was remanded back to department for denovo inquiry vide order dated 23.06.2021. Respondent department conducted denovo inquiry and issued charge sheet and statement of allegations to appellant who submitted reply. Final show cause notice was issued thereafter vide impugned order 12.11.2021 whereby major penalty of removal from service was again imposed upon the appellant. Feeling aggrieved, he filed departmental appeal, which was rejected; 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 and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973. He further argued that impugned orders are against the law, facts, norms of natural justice and materials on record, hence not tenable and liable to be set aside. He contended that no statement of witnesses have been recorded by the respondents nor chance of cross examination has been provided to the appellant. He further contended that no denovo inquiry has been conducted by the respondents. Reliance is placed on 1984 PLC (C.S) 379, 2011 PLC (C.S) 1111 and 1989 PLC (C.S) 336.

4. Conversely, learned Deputy District Attorney argued that appellant was found involved in mis-appropriation of huge quantity of ammunition, therefore, disciplinary action was taken against the appellant and was rightly



dismissed from service. He also argued that the inquiry was conducted in a legal manner by providing opportunity of hearing to the appellant. He further contended that after conducting of proper inquiry against the appellant, the inquiry committee came to the conclusion that the charges against the appellant were proved, therefore, competent authority has rightly dismissed from service.

6. Perusal of record reveals that appellant served as IHC respondent/department for more than 18 years. When appellant was posted as Reader to DSP security in Police Training College Hangu, on allegation of missing 78369/- SMG rounds from the ammunition kot was leveled against the appellant, who alongwith two others were proceeded against by the department. Appellant alongwith two official were dismissed from service vide impugned order dated 15.03.2019. Appellant filed service appeal bearing No 745/2019 wherein impugned order was set aside by reinstating appellant into service vide judgment & order dated 23.06.2021. Respondent after receipt of judgment of this Tribunal again Commandant Police Training College Hangu appoint Mr. Arshad Mehmood SP/Investigation as Enquiry Officer despite the fact that this Tribunal holds that competent authority for giving punishment to IHC is SSP/DPO/SP and not below of the rank of DIG. So again inquiry was initiated by an incompetent authority in accordance with schedule-1 of Police Rules, 1975. Moreover, it is mentioned in inquiry report dated 27.08.202

*“In the light of denovo enquiry the accused officials/witnesses were summoned by the undersigned through the Admin PTC Hangu in order to join the enquiry proceedings. It has come to the notice of undersigned*



*that all the witnesses/complainant and enquiry committee officer are not proper employee of PTC strength, they have been transferred to their parent District after completion of their tenure, some of them are engaged in Special duties of Muharram-ul-Haram 2021 and due to short time in enquiry they could be approached to appear before enquiry officer in these days but the defaulters officials have attended this office on 09.08.2021 and submitted their replies. Their replies were perused by the undersigned which were found unsatisfied. During previous enquiry the defaulter officials have given chance for their self defence, they were examined but they failed to do so. Similarly, witnesses of the case/enquiry were also examined and recorded the statements about the case.”*

So, from it is clear that no opportunity of cross examination and self defense was provided to the appellant despite direction by this tribunal.

7. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of *audi alteram partem* was always deemed to be imbedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the




statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

8. For what has been discussed above, we are unison to set aside the impugned orders dated 12.11.2021 & 08.08.2022 and reinstate the appellant for the purpose of denovo inquiry with direction to respondents to provide proper chance of self-defense, personal hearing and cross examination to the appellant to fulfill requirement of a fair trial. Respondents are further directed to conclude inquiry within 90 days, after receipt of copy of this judgment. Costs shall follow the event. Consign.


9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this ~~12~~ day of November, 2023.*


  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**  
06.11.2023

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, we are unison to set aside the impugned orders dated 12.11.2021 & 08.08.2022 and reinstate the appellant for the purpose of denovo inquiry with direction to respondents to provide proper chance of self-defense, personal hearing and cross examination to the appellant to fulfill requirement of a fair trial. Respondents are further directed to conclude inquiry within 90 days, after receipt of copy of this judgment. 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 6<sup>th</sup> day of November, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)