

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 266/2022

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

Zishan Qadir S/O Abdul Qadir Ex-Constable No. 264 R/O Shekhan Banda  
District Orakzai. ... (Appellant)

**VERSUS**

1. District Police Office, Orakzai.
2. Regional Police Officer, Kohat.
3. Inspector General of Police, Khyber Pakhtunkhwa Peshawar.  
... (Respondents)

Miss Roeda Khan  
Advocate ... For Appellant

Mr. Muhammad Jan  
District Attorney ... For Respondents

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Date of Institution.....24.02.2022  
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, the impugned orders dated 02.04.2021, may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits.”**

2. Brief facts of the case are that appellant was appointed as constable in police department vide order dated 25.12.2014 and was performing his duty upto the entire satisfaction of his superiors. Show cause notice was issued to the appellant on basis of absence, which was replied by the appellant. Thereafter, appellant was dismissed from service as well as recovery of absence period vide order dated 02.04.2021. Feeling aggrieved, he filed

departmental appeal on 03.04.2021 which was not responded to, 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 District Attorney for the respondents and perused the case file with connected documents in detail.
4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that no charge sheet and statement of allegation has been served upon the appellant, which is violation of Rule-6 (A)(B) of Police Rules 1975. He contended that neither show cause notice nor regular inquiry has been carried out by the respondent department and no opportunity of self-defence was afforded to the appellant and the appellant was condemned.
5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He contended that applicant has admitted his absence from his lawful duty and has also admitted willful delay in filing departmental appeal. He further contended that the appeal is badly time barred therefore, he requested for dismissal of the instant service appeal.
6. Perusal of record reveals that the appellant was serving as constable in respondent department. Departmental proceedings were initiated against the appellant by issuing show cause notice which was duly replied by the appellant but respondent awarded major penalty of dismissal from service as well as recovery of salary vide impugned order dated 02.04.2021 on the ground of absence from duty. Appellant being member of police uniform force will have to dealt with under Section 5 & 6 of the Police Rules, 1975 but show cause notice was issued to the appellant under 5 (b) of the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline ) Rules 2011 by applying



wrong law which alone make the impugn order void-ab-initio. Moreover, appellant explain reason of his absence, which was study and getting higher education. Respondent will have to proceed appellant under rule 5 & 6 of Police Rules, 1975 by adopting proper procedure provided under which issuing of charge sheet, statement of allegation by appointing inquiry officer who will have to conduct impartial inquiry by providing proper chance of personal hearing, self-defence and specially cross examination and conduct regular inquiry. Authority dispense with inquiry without giving any plausible reason in a arbitrary manner which is against the law on the subject. It is also pertinent to mention here that appellant filed reply of show cause notice which means his absence was not willful as he explain it in his reply. Respondents instead of inquiry into the fact of study of appellant straight away dismissed him from service without conducting proper inquiry.

7. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of dismissal from service, 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. Appellant also filed application for one year leave without pay to respondents and intimate his reason of absence which is study and absence is not willful or due to compelling circumstances. As appellant was dealt under wrong law i.e (E&D) Rules, 2011 instead of Police Rules, 1975 which is evident from show cause notice, hence, order based upon such show cause notice come within definition of void order, therefore, no limitation runs against it. Appellant submitted an application for condonation of delay which is allowed.

9. For what has been discussed above, we are unison to set aside impugned orders and reinstate the appellant into service for the purpose of denovo inquiry by providing opportunity of self-defense, personal hearing and cross-examination to the appellant which is requirement of fair trial. Respondents are further directed to conduct denovo inquiry within 90 days after receipt of copy of this judgment. 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 14<sup>th</sup> day of November, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**

14.11.2023

1. Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, we are unison to set aside impugned orders and reinstate the appellant into service for the purpose of denovo inquiry by providing opportunity of self-defense, personal hearing and cross-examination to the appellant which is requirement of fair trial. Respondents are further directed to conduct denovo 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 14<sup>th</sup> day of November, 2023.*



(MUHAMMAD AKBAR KHAN)  
Member (E)



(RASHIDA BANO)  
Member (J)

\*Kaleemullah