

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No. 4997/2021

Ibrar Ullah, Ex-Constable No. 1629, posted at Police Station Takht Bahi, Mardan (now dead) through Mst. Ruqiyya (Widow), Mst. Shamim Bibi (Widow), Iqrar Ullah, Waqar Ullah and Izhar Ullah (Sons) Residents of Moti Banda Post Office Dheri Lakpani Tehsil Katlang District Mardan. (Appellants)

Versus

Inspector General of Police/Provincial Police Officer (PPO) Khyber Pakhtunkhwa, Central Police Office (CPO) Peshawar and 02 others. (Respondents)

Present:

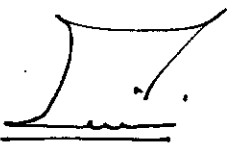
Muhammad Usman Khan Turlandi, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor respondents

.....

Date of presentation of Appeal.....06.05.2021
Date of Hearing.....08.12.2023
Date of Decision.....08.12.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: Precise facts giving rise to the instant appeal are the departmental action was taken against the appellant on the allegations that he while posted at Police Station Takht Bhai, Mardan was found involved in case FIR No. 1494 dated 23.12.2020 under Section 62 Antiquity Act, 2016 read with Section 15AA registered at Police Station Kalu Khan District Swabi. On conclusion of the inquiry, he was awarded major punishment of dismissal from service vide order bearing OB No. 415 dated 26.02.2021 passed by District Police Officer



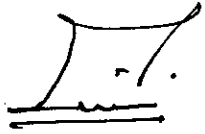
Mardan. The punishment so awarded to the appellant was challenged by him through filing of departmental appeal, however the same was also rejected vide order dated 22.04.2021 passed by Regional Police Officer Mardan. The appellant then approached this Tribunal through filing of the instant appeal for redressal of his grievance.

2. 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.

3. It is pertinent to mention here that the appellant died during the pendency of the instant appeal and his L.Rs were impleaded as appellants vide order dated 22.08.2022.

4. Learned counsel for the appellant contended that disciplinary proceedings were taken against the appellant only on the allegations of his involvement in case FIR No. 1494 dated 23.12.2020 under Section 62 Antiquity Act 2016 read with Section 15AA registered at Police Station Kalu Khan District Swabi, however he was discharged vide order dated 10.03.2022 passed by competent court of law. He next contended that as the appellant has been discharged in the criminal case registered against him, therefore, the very ground, on the basis of which disciplinary action was taken against the appellant, has vanished away. He further contended that statements of the witnesses were recorded in absence of the appellant without providing him an opportunity of

cross-examination, therefore, the same could not be legally taken into consideration for awarding major punishment to the appellant. He also contended that neither final show-cause notice was issued to the appellant nor copy of the inquiry report was provided to him and he was thus not in a position to properly defend himself in the inquiry proceedings. He next argued that the mandatory provisions of Police Rules, 1975 were not complied with, therefore, the impugned orders are not sustainable in the eye of law. He further argued that the appellant has though died during pendency of the instant appeal, however his L.Rs are legally entitled to pursue the appeal as in case of acceptance of the same, they might be entitled for pensionary benefits, which is a survivable right.




5. On the other hand, learned Assistant Advocate General for the respondents contended that the appellant was involved in case FIR No. 1494 dated 23.12.2020 under Section 62 Antiquity Act, 2016 read with Section 15AA registered at Police Station Kalu Khan District Swabi, therefore, departmental action was taken against him and as the allegations against him stood proved in a regular inquiry, therefore, he was rightly dismissed from service. He next contended that charge sheet as well as statement of allegations were issued to the appellant and a regular inquiry was conducted in the matter by complying all legal and codal formalities. He further argued that the appellant was provided opportunity of personal hearing as well as self defence, however he failed to produce any cogent material in rebuttal of the allegations leveled against

him. 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 heard the arguments of learned counsel for the parties and have perused the record.

7. A perusal of the record would show that disciplinary action was taken against the appellant on the sole allegation of his involvement in case FIR No. 1494 dated 23.12.2020 under Section 62 Antiquity Act, 2016 read with Section 15AA registered at Police Station Kalu Khan District Swabi. During the departmental proceedings, statements of Shad Muhammad S.I (complainant of the concerned criminal case) as well as statement of Raees Khan ASI (I.O of the concerned criminal case) were recorded, however no opportunity was afforded to the appellant for cross-examination of the said witnesses, therefore, their evidence could not be legally taken into consideration for awarding major punishment to the appellant. Moreover, the appellant was neither issued final show-cause notice nor was he provided copy of inquiry report. This Tribunal has already held in its various judgments that issuance of final show-cause notice along with the inquiry report is must even under Police Rules, 1975. Reliance is also placed on the judgment of worthy apex court reported as PLD 1981 SC-176, wherein it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of final show cause notice and non-supply of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as



in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him.


8. Furthermore, there is no denial of the facts that the appellant was discharged in the said criminal case vide order dated 10.03.2022 passed by competent court of law. The copy of the said order is available on the record, which would show that the case against the appellant was so weak that the State had itself submitted an application for discharge of the appellant as well as other co-accused under Section 4C (II) of the Prosecution Act, 2005 read with Section 494 Cr.PC.

9. As a sequel to what has been discussed above, we consider that the appeal in hand merits acceptance. It is, therefore, allowed as prayed for.

10. Before parting, we deem it necessary to expound for removal of difficulties in giving effect to operative part of the judgment that due to death of the appellant during pendency of appeal, his posthumous reinstatement into service will be ordered and he will be treated to have died during service. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
08.12.2023


(KALIM ARSHAD KHAN)
CHAIRMAN


(SALAH-UD-DIN)
MEMBER (JUDICIAL)



ORDER
08.12.2023

Learned counsel for the appellants present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed as prayed for.

Before parting, we deem it necessary to expound for removal of difficulties in giving effect to operative part of the judgment that due to death of the appellant during pendency of appeal, his posthumous reinstatement into service will be ordered and he will be treated to have died during service. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
08.12.2023

(Kalim Arshad Khan)
Chairman

(Salah-Ud-Din)
Member (Judicial)