

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 461/2022

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

Muhammad Javed Khan, ASI No. 661 MR, PP Eathem, PS Kalu
Khan, District Swabi. (*Appellant*)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Mardan Region Mardan.
3. District Police Officer, Mardan.

.... (*Respondents*)

Mr. Taimoor Ali Khan
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....21.03.2022
Date of Hearing.....08.11.2023
Date of Decision.....08.11.2023

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 instant appeal, the orders dated 11.03.2019, 03.03.2020 and 03.03.2022 may kindly be set aside and the forfeited 02 years approved service of



the appellant may kindly be restored with all back and consequential benefits.”

2. Brief facts of the case, as given in the memorandum of appeal are that appellant joined the police department as constable in the year 1992 and was performing his duty with the entire satisfaction of his superiors. During service, while posted as in-charge Police Station Hathian, appellant was served with a charge sheet alongwith statement of allegation, which he properly replied. Thereafter, inquiry was conducted against the appellant on the basis of which, minor punishment of forfeiture of two years approvedservice has been imposed upon the appellant vide order dated 11.03.2019. Feeling aggrieved, appellant filed departmental appeal which was rejected on 03.03.2020. Then he filed revision petition on 29.01.2022 which also met same fate, 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that impugned order is against the law facts, norms of justice and material on record, therefore, not tenable and are liable to be set aside. He contended that inquiry was not conducted according to the prescribe procedure as no opportunity of defence was provided to the appellant as neither statements were recorded in the presence of the appellant nor give him opportunity of cross examination, which is violation of law and rules on the subject.



5. Conversely, learned Deputy District Attorney for the respondents contended that appellant has been treated in accordance with law and rules. He further contended that appellant was charge sheeted on account of self generated the remarks of Mr. Ali Bin Tariq the then SDPO Takht Bahi in his ACR and enquiry was entrusted to the then DSP Security Mardan for probing into the matter. During the course of enquiry he submitted his reply but found unsatisfactory, hence, after fulfillment of all legal and codal formalities the enquiry officer recommended minor penalty.


6. Perusal of record reveals that appellant when serving in the respondent department as ASI was served with charge sheet and statement of allegation on 01/11/2018. That appellant while posting as in charge police post Hathian, self-generated the remarks of Mr. Ali Bin Tariq the then SDPO of Tahkht Bhani in his ACR for the year 2017. Authority Regional Office Mardan vide Endst No. 385/PA dated 05.10.2018 appointed Mr. Sher Rehman DSP/Security as Enquiry Officer who submitted his report on 17.12.2018 to the authority but competent authority ordered Denovo Inquiry. Report of which was submitted on 22.01.2019 to the authority who vide impugned order dated 11.03.2019 awarded appellant minor punishment of forfeiture of two years approved service of the appellant. Appellant was properly provided with an opportunity of hearing & explaining his position. Appellant contention is that he had given his ACR forms to one official available at the FC HQr office the Mr. Ali Bin Tariq and he had no knowledge whether his ACR form was signed by Mr. Ali Bin Tariq or not. He had not given the name of the police official to whom he had given his ACR form in the office of ASP at F.C Headquarter.



Appellant was duty bound to provide details and name of the said official to the Enquiry Officer for the purpose to probe validity and genuineness of appellant plea but interestingly he even does not remember name of that official. Otherwise too, ACR was of the appellant & why said officer signed himself or got managed to signed from someone else, especially when remarks in the appellant's ACR cannot give not any benefit to alleged police officer. Appellant is beneficiary of the ACR not that police official, who was deputed at the gate of ASP Office at FC Head Quarter. Penalty awarded to the appellant is appropriate having regard to nature of misconduct committed by him.

7. For what has been discussed above we dismissed instant appeal being devoid of merits. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 8th day of November, 2023.*



(MUHAMMAD AKBAR KAHN)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER

08.11.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Atta Ur Rehman, Inspector for the respondents present.
2. Vide our detailed judgement of today placed on file, we dismissed instant appeal being devoid of merits. 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 8th day of November, 2023.*



(Muhammad Akbar Kahn)
Member (E)



(Rashida Bano)
Member (J)