

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 489/2022

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

Mr. Hidayat Ullah, Sub-Inspector No. 427-P, Police Lines,  
Peshawar. .... (Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector General of Police HQr, Khyber Pakhtunkhwa ,  
Peshawar.
3. Capital Police Officer, Peshawar.

.... (Respondents)

Mr. Mir Zaman Safi  
Advocate ... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney ... For respondents

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Date of Institution.....06.04.2022  
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 impugned orders dated 25.08.2021 and 11.03.2022 may very kindly be set aside and the forfeited service of the appellant be**



**restored/counted in service of the appellant w.e.f the date of issuance of impugned order i.e dated 25.08.2021.”**

2. Brief facts of the case, as given in the memorandum of appeal are that appellant is serving the respondent department as Sub Inspector at Police Station Mattani quite efficiently and upto the entire satisfaction of his superiors. The appellant while posted at PS Mattani an FIR No. 413 lodged against unknown criminals U/S 392/412 on 08.04.2021. Later on the complaint recorded statement before the Illaqa Magistrate U/S 164 Cr.PC whereby criminals/accused involved in the aforementioned criminal act was nominated in FIR. Appellant produced said accused in court for obtaining his custody which was accordingly granted. Bother the accused alleged that appellant through mobile call demand of bribe for his favour. A show cause notice was issued on 02.07.2021 which was replied by the appellant. Thereafter, impugned order dated 25.08.2021 was issued and forfeiture of one year approved service has been imposed upon the appellant. Feeling aggrieved, he filed departmental appeal, which was rejected vide order dated 11.03.2022, 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 the impugned order passed by the respondents is against the law, facts, norms of natural justice,

hence, not tenable and liable to be set aside. He further argued that

appellant has not been treated in accordance with law and rules and as such respondents violated the Article 4 & 25 of the Constitution of Islamic Republic of Pakistan. He contended that before issuing impugned order neither statement of the accused has been recorded nor any chance of cross examination has been provided. He further contended that no preliminary enquiry has been conducted.

5. Conversely, learned Deputy District Attorney for the respondents contended that appellant was proceeded departmentally on the charges when an audio clip got viral on social media where appellant was taking via phone with the brother of arrested accused Asif and demanding gratification in lieu of extending relief to the accused in Police Custody who was arrested in case FIR No. 473, dated 08.04.2021 U/S 392/412 and FIR No. 787 dated 11.06.2021 U/S 15AA/11BNCNSA PS Mattani. Thereafter, show cause notice was issued to which he replied but his explanation was found unsatisfactory and the allegations stand proved, and after fulfillment of all codal formalities, minor penalty was imposed upon the appellant.


6. Perusal of record reveals that appellant is serving in respondent department as Sub-Inspector and was posted at P.S Mattani as Investigation Officer in the year 2021. When a criminal case FIR No 413 under section 392/412 PPC on 08.04.2021 was lodged against unknown person/culprits in Police Station Mattani , where one Asif S/O Habibullah R/O Sheri kera was arrested in another criminal case of 15 AA/11B CnSA vide FIR No 787 dated 11.06.2021 of Police Station Mattani who was also proceed before Judicial Magistrate for obtaining his physical custody in FIR No 413 by the appellant where two days police custody was granted by court concerned.



Appellant was served with show cause notice dated 02.07.2021 issued by Capital City Police Officer with the allegation that “that a video went viral on social media in which an accused namely Asif Khan R/O Mattani has stated that the OII has called his brother and demanded money/bribe by giving relaxation /concession in Police Custody” CCPO dispensed with regular inquiry and after receiving reply of the appellant awarded punishment of forfeiture of approved service for one year vide order dated 25.08.2021. Appellant is Sub Inspector and competent authority to award punishment of forfeiture of service upto two years is the DPO/SSP/SP, while Capital City Police Officer is officer of the rank of DIG in accordance with schedule 1 of Police Rules, 1975. Therefore, punishment awarded to appellant is not by the competent authority. Moreover, no plausible reason was given by the CCPO for dispensing with regular inquiry, which is also not in accordance with settled rules & principle of fair trial.

7. For what has been discussed above, we set aside the impugned order & remit the case back to respondents to conduct proper inquiry by the order of competent authority within ninety days after receipt of copy of this judgment. 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 8<sup>th</sup> day of November, 2023.*


  
(Muhammad Akbar Khan)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**

08.11.2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, we set aside the impugned order & remit the case back to respondent to conduct proper inquiry by the order of competent authority within ninety 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 8<sup>th</sup> day of November, 2023.*



**(Muhammad Akbar Khan)**  
Member (E)



**(Rashida Bano)**  
Member (J)