

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.7942/2021**

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

**Shah Nawaz S/O Mohammad Nawaz R/O Garhi Ismail Zai P/O Garhi Kapora  
Tehsil & District Mardan. ... (Appellant)**

**VERSUS**

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

... (Respondents)

Miss Roeeda Khan  
Advocate ... For Appellant

Mr. Muhammad Jan  
District Attorney ... For Respondents

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Date of Institution.....24.12.2021  
Date of Hearing.....02.11.2023  
Date of Decision.....02.11.2023

**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 order dated 01.01.2021, rejection orders dated 01.03.2021 and 26.11.2021 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 serving the respondent department upto the entire satisfaction of his superiors. That while performing his official duty, respondents passed impugned order dated 01.01.2021 whereby appellant has been dismissed from service. Feeling aggrieved,



appellant filed departmental appeal which was rejected. Thereafter, appellant filed revision petition which has also met the 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 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 argued that appellant has been treated in accordance with law and rules. He contended that appellant while posted at PP Michni PS Rustam Mardan, as placed under suspension as per report of SDPO Rural Mardan office letter dated 06.10.2020, complaining therein that the appellant is habitual ice smoker and absentee with taking no interest in official duty. On the basis of that allegation he was issued charge sheet alongwith statement of allegation. Inquiry committee was constituted but neither he appear before the committee nor submit his reply. After fulfillment of all legal and codal formalities major penalty of dismissal from service was imposed upon the appellant.
6. Perusal of record would reveals that appellant was serving in respondent department as constable when on 06.10.2020, Deputy Superintendent of

 Police Rural Circle Mardan recommended strict departmental action against

appellant as he was irresponsible and does not take interest in his duty beside giving his official rifle to one private person namely Akib Khan on routine basis and on 05.10.2020 Akib Khan injured himself from official rifle of appellant on the basis which respondent No. 1 issued charge sheet alongwith statement of allegations by appointing Mr. Qazi Azmat Ullah DSP, Katlang as Enquiry Officer on 11.11.2020. Enquiry Officer submitted his inquiry report on 20.11.2020, wherein finding was concluded that "the alleged was contacted time and again to appear before the enquiry officer and produce his written statement, but in vain, which reveals that he was not interested in official duty. It is, therefore, requested that he may be treated as ex-parte action, if agreed, please."

7. It is clear from the finding of enquiry officer in his report mentioned above that appellant was not provided with an opportunity of self defense, personal hearing and most importantly cross-examination which is pre-requisite for a fair trial. The only proof on record in this respect is the one notice issued by enquiry officer to the SHO of the Police Station Garhi Kapora with direction to contact the appellant and informed him to come and collect charge sheet. In our humble view, enquiry officer will have to follow the procedure laid down in Rule 5 & 6 of Police Rules, 1975 and make sure effective service of charge sheet and statement of allegation upon the appellant and issuing only one notice to SHO for summoning the appellant to collect charge sheet on 11.11.2020 does not serve the mandatory requirement of fair trial and of providing opportunity of self defense. Enquiry officer seems to be in hurry as he concluded inquiry within fortnight without complying with requisite mandatory provision.

8. 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.

9. For what has been discussed above, we are unison to set side impugned orders and reinstate the appellant into service for the purpose of denovo inquiry with direction to respondents to provide opportunity of self-defense, personal hearing and cross-examination to the appellant which is requirement of fair trial. Respondents are further directed to conclude 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 2<sup>nd</sup> day of November, 2023.

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**

02.11.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Atta Ur Rehman, Inspector (Legal) for the respondents present.
2. Vide our detailed judgement of today placed on file, we are unison to set side impugned orders and reinstate the appellant into service for the purpose of denovo inquiry with direction to respondents to provide opportunity of self-defense, personal hearing and cross-examination to the appellant which is requirement of fair trial. Respondents are further directed to conclude 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 2<sup>nd</sup> day of November, 2023.*



**(MUHAMMAD AKBAR KHAN)**  
**Member (E)**



**(RASHIDA BANO)**  
**Member (J)**