

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 3190/2020

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

Naimat Khan, Ex-Police Constable No.499 of Operating Staff, Kohat.
.... (Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police Kohat Region, Kohat.
3. District Police Officer, Kohat.

.... (Respondents)

Mr. Syed Mudasir Pirzada
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....21.04.2020
Date of Hearing.....07.11.2023
Date of Decision.....07.11.2023

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 impugned order dated 29.11.2019 may please be set aside for the end of justice and the appellant may please be graciously reinstate with full back benefits.”

2. Precise facts forming the background of the instant service appeal are that the appellant while posted as Constable in Police Post Sumari Bala was proceeded against on the charges reproduced as below:



- i. On 06.09.2019 a musical program had arranged to notorious Proclaimed offender Anwar Hayat group at Police Post Sumari Bala.
- ii. A video of the program was viral in which illegal activities are shown, but you did not informed your seniors regarding the illegal program and hide the facts, which shows your inefficiency and gross misconduct.

The appellant submitted reply to the charge sheet. On conclusion of the inquiry, the appellant was awarded major penalty of dismissal from service vide OB No. 1609 dated 29.11.2019. The appellant challenged the order dated 08.11.2019 through filing of departmental appeal, which were also rejected vide order dated 03.03.2019, 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 and perused the case file with connected documents in detail.

4. Learned counsel for the appellant contended that the appellant is quite innocent and disciplinary action was taken against him for ulterior motive; that the appellant has not at all been confronted with the alleged video on the basis of which, departmental proceedings were taken against him; that the date and time on which the alleged musical program was arranged in the Police Post Sumari Bala have not at all been mentioned in the charge sheet or statement of allegations which by itself makes the entire story as doubtful; that as per the alleged inquiry proceedings, the alleged incident occurred on 06.09.2019 at night time, however the Incharge Police Post remained mum and did not report the alleged incident to his high-ups; that no opportunity of cross-examination of the witnesses was provided to the appellant, which has caused



prejudice to the appellant; that the inquiry proceedings were conducted in sheer violation of Khyber Pakhtunkhwa Police Rules, 1975 and the appellant has been condemned unheard. In the last, he requested that the impugned orders may be set-aside and the appellant may be reinstated into service with all back benefits.

5. Conversely, learned District Attorney for the respondents has contended that the appellant had arranged musical show for proclaimed offenders belonging to Anwar Hayat Group inside Police Post Sumari Bala and had thus committed grave misconduct; that video of the musical program got viral and on inquiry against the appellant, he was found guilty of the charges leveled against him, therefore, he has rightly been dismissed from service; that proper regular inquiry was conducted against the appellant by observing all legal and codal formalities and there exist no legal lacunae in the inquiry proceedings. In the last, he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with costs.


6. Perusal of record reveals that the alleged incident of arranging of musical program inside premises of P.P Sumari Bala had occurred on 06.09.2019, however the Incharge as well as other officials did not report the matter to their high-ups. It was after issuing of charge sheet to one Zeshan Shah, LHC on 26.09.2019 that a report was registered vide Mad No. 21 dated 28.09.2019, wherein the SHO Police Station Lachi reported that a video showing the musical program arranged inside the Police Post Sumari Bala has been received. Copy of the aforementioned Mad is available on the record. The inquiry officer has not recorded statement of the concerned SHO to affirm that the footage of the appellant could be seen in the concerned video. Statements of Khan



Saleem FC/97, and Sher Zaman Ex/3602 have been recorded by the inquiry officer, however no opportunity has been provided to the appellant to cross-examine the said witnesses. The said witnesses were posted in the concerned police post and were allegedly present in the police post at the time of the alleged musical show, however they did not report the matter to their high-ups. The testimony of the said witnesses thus could not be taken into consideration, particularly when the appellant has not been provided any opportunity to cross-examine them. The inquiry officer has not provided opportunity of cross-examination to the appellant, which fact has created material dent in the inquiry proceedings. Moreover, the appellant has not been confronted with the very video, which was made a ground for taking disciplinary action against the appellant. In view of material available on record, the impugned orders are not sustainable in the eye of law and are liable to be set-aside.

7. In view of the above discussion, the impugned orders are set-aside and the appellant is reinstated in service with all back benefits. 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 7th day of November, 2023.*


(Muhammad Akbar Khan)
Member (M)


(Rashida Bano)
Member (J)

ORDER
07.11.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Arif Saleem, Stenographer for the respondents present.
2. Vide our detailed judgment of today placed on file, the impugned orders are set-aside and the appellant is reinstated in service with all back benefits. 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 7th day of November, 2023.*


(Muhammad Akbar Khan)
Member (M)


(Rashida Bano)
Member (J)