

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.13587/2020

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

Farooq Ali Shah S/o Kamal Shah, R/o Utrish, Chitral, Ex-LHC No.472,
Police Station, Chitral.

.... (Appellant)

VERSUS

1. District Police Officer, Chitral.
2. Regional Police Officer, Malakand Region at Swat.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
.... (Respondents)

Mr. Arbab Saiful Kamal
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....20-10-2020
Date of Hearing.....14-11-2023
Date of Decision.....14-11-2023

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:

“It is therefore most humbly prayed that on acceptance of the appeal, orders dated 09-04-2019, 08-11-2019 and 04-08-2020 of the respondents be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant while serving in the Police Department as Constable, was served with

Charge sheet and statement of allegations on 08.02.2019 that he had links with drug dealers. That on the same day, he replied to the said charge sheet by denying the allegations. That inquiry was conducted and lastly, he was dismissed from service vide order dated 09.04.2019. Feeling aggrieved, he submitted departmental appeal which was filed. The appellant submitted revision petition but the same was rejected on 04.08.2020, 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 argued that appellant has not been treated in accordance with law and rules and the impugned orders are not per the mandate of law, hence liable to be set aside. He further argued that SHO of the Police Station was involved in such like activities but he was let free and appellant was made escape-goat. He further argued that no enquiry was conducted by the inquiry officer as per the mandate of law. He further argued that neither statement of any concerned was recorded in presence of appellant nor he was afforded opportunity of personal hearing. He submitted that no final show cause notice was issued to the appellant.

5. Conversely, learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that during proceeding the charge against the appellant have proved and being a DFC his involvement in such like activity was more probable and was proved beyond reasonable doubt. He further contended that proper departmental enquiry has been conducted and after fulfillment of all codal formalities

appellant was dismissed from service.

6. Perusal of record reveals that appellant was enlisted as Constable in the year 2004 and qualified recruitment course in year 2005. Appellant was served with charge sheet and statement of allegation on 08.02.2019 on the ground that he extended close contacts with drug dealers and reportedly getting money, chargs and other favour from drug dealers and providing them legal assistance in getting bail. Appellant replied the charge sheet on 08.02.2019 and denied allegation leveled against him. Inquiry officer submitted his report by conducting inquiry at the back of the appellant without associating him with enquiry proceeding. Inquiry Officer submitted his report to the authority who without issuing final show cause notice dismissed appellant from service vide impugned order dated 09.04.2019. Appellant filed departmental appeal challenging validity of his dismissal from service order which was filed on 08.11.2019. Appellant challenged both order in revision petition under Rule 11-A of Police Rules, 1975 on 13.07.2019 which too, was rejected vide impugned order dated 04.09.2020.

7. Record further transpires that appellant was DFC (Detective Foot Constable) and his duty was to serve concerned with summons and notice assigned for proceeding either in the court of law or by the police official or authorities, in this matter DFC had contact with local whether they are drug pleaders or some other law violators. Appellant in his statement recorded by enquiry officer specifically stated that he was directed by the then SHO Maftah-Ud-Din to contact with drug pleaders and to deal with them in term of money, so he as per direction of his immediate boss and deal for him, he had given money to SHO which he had received from drug dealers in consequence of deal. It is also merit to mention here that one drug dealer Mujeeb Ur Rehman also recorded his statement before inquiry officer who stated that one

time he had given money i.e. Rs.10000/- to appellant for its further transmission to SHO and second time he came to SHO Maftah Ud Din and told him that he had sent money for him (SHO) who confirmed its receiving and drug pleader also given an additional amount of Rs.10000/- to SHO which he had received.

8. It is pertinent to mention here that SHO is the in-charge of Police Station and is responsible police official as compare to appellant but SHO just to safe his skin, lodge complaint against appellant. Miftah Din, SHO who was also proceeded against upon the same allegation, was awarded minor penalty of forfeiture of one year increment for a period of two years vide order dated 05.04.2019 but appellant was awarded major penalty of dismissal from service vide impugned order dated 09.04.2019, which is injustice having regard to nature and level of responsibilities. So contention of appellant that he was made escape goat just to safe skin of Miftah Ud Din, SHO being sub-ordinate official seem correct. Both are equally responsible, therefore, they will have to dealt with one yard stick. Although enquiry officer record statement of appellant and one Mujeeb-Ur-Rehman Narcotics dealer, but no chance of cross examination was provided to the appellant even upon the Miftah-Ud-Din, SHO who lodge complaint against the complainant just to safe his skin.

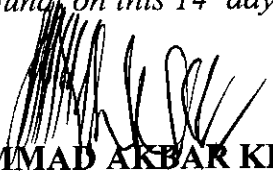
9. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles 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.

10. For what has been discussed above, we are unison to set aside the impugned orders by converting major penalty of dismissal from service into minor penalty of forfeiture of one annual year increment for a period of two years and reinstate the appellant into service and the intervening period will be treated as leave without pay. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER

14.11.2023 1

Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Waseem Abbass, H.C for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to set aside the impugned orders by converting major penalty of dismissal from service into minor penalty of forfeiture of one annual year increment for a period of two years and reinstate the appellant into service and the intervening period will be treated as leave without pay. 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 14th day of November, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)