

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 191/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Shakeel Nasir S/o Nasir Jan, R/o Kaski Banda, Shawa Nasrati, Ex-
Constable Special Branch, Tal Hangu. (*Appellant*)

VERSUS

1. Senior Superintendent of Police, Special Branch, Peshawar.
2. Deputy Inspector General of Police, Special Branch, Peshawar.
3. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
.... (*Respondents*)

Mr. Arbab Saiful Kamal
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....06.01.2023
Date of Hearing.....19.12.2023
Date of Decision.....19.12.2023

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 25.06.2020, 04.08.2020 and 17.03.2021 or the respondents be set aside and appellant be reinstated in service with all consequential benefits.”

2. Brief facts of the case are that appellant was serving as Constable in the Police Department, when an FIR No.6 dated 05.01.2020 was lodged against him. That on the same date, he got BBA from Session Judge

Hangu with Transitory Bail and was directed to approach before the proper forum at District Karak on 13.02.2020. In the meanwhile, BBA was recalled by the Additional Sessions Judge, Karak and then he applied for regular bail which was also rejected on 03.04.2020. That the appellant was served with charge sheet on 24.01.2020 which was replied by him by denying the charges leveled against him. On 07.03.2020, the appellant applied for bail before the Peshawar High Court and he got released on bail. That inquiry was in progress and the appellant was served with final show cause notice regarding involvement in criminal case. He replied to the final show cause notice. Lastly, he was given major punishment of dismissal from service vide order dated 25.06.2020. That the appellant submitted representation which was rejected on 04.08.2020. In the meantime, the appellant was acquitted in the said FIR, therefore, he again filed representation before the respondent No.2, which was not responded, hence, the instant 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 the impugned order is against the law, facts, norms of natural justice, hence not tenable and liable to be set aside. He further argued that upon registration of FIR against the appellant, the respondents were required to suspend the appellant under CSR-194, till conclusion of criminal case, but respondent did not wait for conclusion of the criminal case, rather



initiated disciplinary proceedings at the back of the appellant. He further argued that neither proper inquiry was conducted nor the appellant was provided opportunity of personal and he was condemned unheard; that no charge sheet/statement of allegation was served upon the appellant. He further argued that he was acquitted by the competent court of law vide order dated 11.11.2022.

5. Conversely, learned District Attorney contended that appellant while posted in field office SB AGO Hangu got directly charged/involved in criminal case vide FIR No.6 dated 05.01.2020 wherein he committed culpable homicide murder of Ajmal Khan by using his pistol. He further contended that on the basis of involvement in criminal case, departmental proceedings were initiated against the appellant by issuing charge sheet and statement of allegation. He further contended that after fulfillment of all codal formalities, he was awarded major penalty of dismissal from service.

6. Perusal of record reveals that appellant was enlisted as constable in respondent department on 08.05.2009 and was performing his duties to the best of his abilities till 05.01.2020 when he was dragged in a false criminal case bearing FIR No.6 dated 05.10.2020 under section 302, 324, 148, 149 and 34 PPC registered at police station Yaqoob Khan Shaheed District Karrak by one Mujeeb Ullah on the alleged day of occurrence appellant was serving at Police Hangu and appellant got transitory/procreative bail from Session Judge, Hangu on 06.01.2020 and approached courts at Karrak. BBA of the appellant was recalled by court of Additional Session Judge vide order dated 13.02.2020. Appellant was



refused bail on 03.04.2020 by Additional Session Judge. He was served with charge sheet on 24.01.2020 on the allegation that;

“You while posted at field office SB AGO/Hangu, got involved in criminal case bearing FIR No.6 dated 05/01/2020 U/s 302/324/148/149 PPC PS Yaqoob Khan Shaheed Takhti Nasrati, District Karrak, wherein you were charged for committing culpable homicide/murder of Ajmal Khan S/o Shamamir R/o Kisaki Banda Karrak by using his pistol. By reason of the above, you appear to be guilty of misconduct under Khyber Pakhtunkhwa Police Rules 1975 and have rendered yourself liable to all or any of the penalties specified in the said Rules.”

7. Appellant submitted reply and denied from the allegation. He was granted bail by worthy Peshawar High Court, Peshawar Bannu Bench on 15.04.2020 and was released from jail on 16.04.2020. Inquiry proceeding was in progress and he was served with final show cause notice on 19.06.2020 which too was replied and without waiting for result of criminal case appellant was awarded major penalty of dismissal from service vide impugned order dated 25.06.2020. Appellant submitted departmental appeal to respondent No.2 which was rejected vide order dated 04/08/2020 and revision petition also met the same fate vide order 17.03.2021. He was acquitted from the charge leveled in criminal case in FIR No.6 the very basis of departmental proceeding on 11.11.2022 after which he again submitted subsequent application for his reinstatement which is not decided till date with in statutory period.

8. Perusal of record further reveals that after registration of FIR dated 05.01.2020, departmental proceedings were initiated against the

appellant vide order dated 24.01.2020 and culminated upon his dismissal vide order dated 25.06.2020. Appellant was acquitted from the charges vide order dated 11.11.2022 i.e. much later than impugned order. It is pertinent to mention here that the prudent way and the principle of justice demand that the respondents should have waited for the culmination of criminal proceedings against the appellant and thereafter initiation of departmental proceedings would have been justified, fair and transparent. Besides, it has been held by the superior courts that all acquittals are considered honorable and there can be no acquittals which may be said to be dishonorable. Nomination/involvement of the appellant in the criminal case was the sole ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service. It is established from the record that charges of his involvement in criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. Reliance is placed on 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

9. In view of the above, the appeal in hand is accepted and appellant is reinstated into service with all back benefits. 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 19th day of December, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER

19.12.2023 1. Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Mr. Ayaz Khan, S.I for the respondents present.

2. Vide our detailed judgment of today placed on file, the appeal in hand is accepted and appellant is reinstated into 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 19th day of December, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)