

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 789/2022

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

Hakim Khan, Ex-Constable No.2999, Mohmand Tribal District.

.... (Appellant)

VERSUS

1. Regional Police Officer, Mardan.
2. District Police Officer, Mohmand Tribal District.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Fazal Shah Mohmand  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

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Date of Institution.....13.05.2022  
Date of Hearing.....20.12.2023  
Date of Decision.....20.12.2023

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:

**“On acceptance of this appeal, the impugned order dated 29.04.2022 of respondent No.1 and order dated 21.12.2021 of respondent No.2 may kindly be set-aside and the appellant may kindly be ordered to be reinstated in service with all back benefits or the appellant may kindly be retired prematurely as per his request with all retiring benefits including pension etc.”**

2. Facts of the instant case are that appellant was initially inducted in the Khasadari vide order dated 21.08.1998. After 25<sup>th</sup> Amendment in the Constitution of Islamic Republic of Pakistan, 1973, Khasadar Force was merged in the Khyber Pakhtunkhwa Police. The appellant was also merged in the Police Department. In the meanwhile, he fell ill and remained unable to attend the duties. Therefore, he filed application on 17.08.2021 for retirement from service. That instead of rejecting or accepting the application of the appellant, an inquiry was conducted at the back of the appellant and he was dismissed from service vide order dated 21.12.2021. Feeling aggrieved, the appellant preferred departmental appeal on 13.01.2022 but the same was rejected vide order dated 29.04.2022. Hence, he filed 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 the impugned orders passed by the respondents are illegal and void ab-initio being passed without legal authority. He further argued that he was never absent from duty except his ailment period regarding which he informed the respondents through application. He submitted that charge sheet and show cause notice was served upon the appellant; that ex-parte inquiry was conducted and the appellant was never associated with the inquiry proceedings; that no opportunity of personal hearing was afforded to him and he was condemned unheard.

5. Conversely, learned District Attorney contended that the appellant has



been treated in accordance with law and rules. He further contended that appellant was selected for basic recruit course and in this regard he was time and again directed via District Control Room to report at respective training centre for basic recruit training, but he turned deaf ear to the order and failed to report at the center. Proper inquiry was conducted against the appellant regarding his absence wherein the enquiry officer reported that the appellant was contacted time and again to appear before the enquiry officer, but he failed and remained absent which showed that he was no more interested in Police Service, hence dismissed from service.

6. Perusal of record reveals that appellant belongs to District Mohmand who was appointed as Khasadar on 21.08.1998 in Levies Force and after 25<sup>th</sup> amendment the erstwhile Federally Administered Tribal Areas including the Mohmand agency were merged in to province of Khyber Pakhtunkhwa and resultantly Khasadar Force was also absorbed into Police Department of Khyber Pakhtunkhwa. Appellant is performing his duties since absorption but in the month of June, 2021 he fell ill and was admitted to hospital and remained under treatment. He submitted his medical prescription with application on 21.06.2021. He is also disabled and over 55 years of age but respondents instead of accepting his request for leave or retirement on medical grounds, proceeded against him departmentally in an ex-parte inquiry without associating him with inquiry proceeding and providing chance of hearing and dismissed him from service vide impugned order dated 21.12.2021. Appellant filed departmental appeal on 13.01.2022 which was rejected on 29.04.2022.

6. Record further reveals that appellant is disabled having disability certificate duly issued by Social Welfare Officer. Besides he was also ill

which is evident from discharge slip and doctor prescription dated

15.06.2021 and 21.06.2021 annexed with the appeal and submitted with information regarding his illness and for medical leave addressed to DPO Mohmand dated 21.06.2021. Appellant also requested for retirement through an application on 17.08.2021 duly submitted as it had on it diary No.1513 of DPO/M, as he had on his credit about 30 years of service, much before passing of impugned order of dismissal. When inquiry was in progress, the same was not considered by the respondent, which is injustice and against settled principles of law and rules on the subject.


7. Admittedly appellant was not associated with inquiry proceeding which was conducted ex-parte while no chance of hearing and self defense was provided to the appellant and he was condemned unheard. 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 has 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 who was 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 embedded 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.

8. For what has been discussed above, we are unison to set-aside



impugned orders, reinstate the appellant for the purpose of de-novo inquiry with direction to the respondents to provide opportunity of hearing & self-defense and consider his valid legal plea in accordance with law. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 20<sup>th</sup> day of December, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah

24<sup>th</sup> Aug, 2023

1. Junior to counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Junior to counsel for the appellant seeks adjournment on the ground that learned senior counsel is not available today.

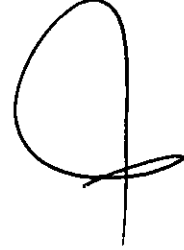
Adjourned. To come up for arguments on 20.12.2023 before D.B. P.P given to the parties.

SCANNED  
KPST  
Peshawar

\*Adnan Shah\*



(Salah Ud Din)  
Member (Judicial)



(Kalim Arshad Khan)  
Chairman

**ORDER**

20.12.2023 1. Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Mr. Waqar Ahmad, ASI for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to set-aside impugned orders, reinstate the appellant for the purpose of de-novo inquiry with direction to the respondents, to provide opportunity of hearing & self-defense and consider his valid legal plea in accordance with law. 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 20<sup>th</sup> day of December, 2023.*



(FARZEHA PAUL)  
Member (E)



(RASHIDA BANO)  
Member (J)

\*Kaleemullah