

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 282/2017

Jamshed Khan Afridi, Senior Government Pleader, Hangu.
(Appellant)

Versus

Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber
Pakhtunkhwa, Peshawar and 02 others. (Respondents)

Present:

Muhammad Asif Yousafzai, Advocate.....For the appellant
Mr. Habib Anwar, Additional Advocate GeneralFor the respondents

Date of presentation of Appeal.....28.03.2017
Date of Hearing.....17.11.2023
Date of Decision.....17.11.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: Precise facts giving rise to the instant appeal are that departmental action was taken against the appellant on the allegations that case FIR No. 605 dated 08.06.2014 was registered against him in Police Station Chamkani District Peshawar, however he did not brought this fact into the notice of head of the department as required under Rule-20 of Khyber Pakhtunkhwa Conduct Rules, 1987. On conclusion of the inquiry, minor penalty of withholding of two annual increments for two years was imposed upon the appellant by the competent Authority vide order dated 13.12.2016. The penalty so awarded to the appellant was challenged

by him through filing of review petition, however the same was rejected vide order dated 03.03.2017, hence the instant appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant contended that the inquiry officer had not at all held the appellant guilty of the charge leveled against him and had only recommended that all the personnel in the in the technical cadre may be sent for training. He next contended that the inquiry officer had categorically mentioned in his inquiry report that the case registered against the appellant was that of accident, which could not be equated with criminal cases of other nature. He further contended that the appellant being a responsible officer had himself taken the injured to the hospital and had also himself lodged the report regarding the accident. He also contended that the matter was brought into the knowledge of head of the department and the inquiry officer had opined in his report that such stance of the appellant could not be doubted. He next argued that the appellant was initially awarded minor penalty of withholding of two annual increments for two years vide order dated 18.08.2016 without issuing him final show-cause notice or providing him an opportunity of personal hearing but later on show-cause notice was issued to him on 22.08.2016 for rectification of the said illegality. He further argued that although the said illegality was rectified but this was evident that

the competent Authority had already made up its mind for awarding minor penalty to the appellant without providing him opportunity of personal hearing. In the last he requested that the impugned orders may be set-aside and the appellant may be restored two annual increments with all consequential benefits.

4. On the other hand, learned Additional Advocate General argued that the appellant was charged in case FIR No. 605 dated 08.06.2014 Police Station Chamkani District Peshawar and he was required to have brought the said fact into knowledge of head of the department but he failed to do so. He next contended that the appellant was provided opportunity of personal hearing as well as self defence but he failed to produce any documentary proof to the inquiry officer that he had informed the head of the department regarding the registration of case against him. He further contended that a regular inquiry was conducted in the matter by providing opportunity of personal hearing as well as self defence to the appellant and as the allegation against him stood proved in a regular inquiry, therefore, he was rightly awarded minor penalty of withholding of two annual increments for two years.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that the appellant had met an accident on 08.06.2014 and case FIR No. 605 dated 08.06.2014 under Sections 279/337-G PPC was registered in this respect in Police Station Chamkani District Peshawar. Copy of the concerned FIR is

available on the record, which would show that the appellant had not only taken the injured to the hospital but had also himself lodged the report regarding the accident. The aforementioned fact clearly shows that the appellant was having no intention to conceal the fact of the accident. The offence leveled against the appellant is bailable in nature and nothing is available on the record to show that he was sent behind the bars. Similarly, nothing is available on the record to show that the appellant had remained absent from duty on account of his involvement in the concerned case.

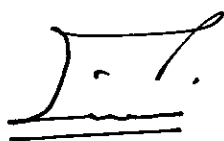
7. According to Rule-20 of Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987, a government servant is required to bring the matter into notice of head of the office or department regarding his involvement or conviction in any criminal case. The inquiry report would show that the appellant had taken the plea that he had informed his high-ups but the information might have not been reached to the concerned quarter. Regarding such stance of the appellant, the inquiry officer has opined in his report that he does not doubt such claim of the appellant as he was holding a responsible position. Furthermore in his recommendations, the inquiry officer has nowhere mentioned that any punishment was required to be awarded to the appellant. The inquiry officer while giving his analysis in the inquiry report has observed as below:-

“If the provision of this Rule is interpreted within the context of the traffic accident/road incidents then the provisions do not appear to be very strict as compared to other criminal cases like murder, kidnapping, moral turpitude etc. The traffic accidents by its nature is unintended and

having lesser chances to avoid. Similarly the driver or the person who is driving the car is not to be held solely responsible for the incident. As everybody who drives a car might have observed it at least once in their life time.

As regarding information of the Head of Office is a provision within the interest of the civil servant. Because a civil servant can either be on leave or absent. In case of arrest in a criminal case this information to the Head of Office becomes very meaningful and protecting the civil servant from being marked as absent. In such eventualities the civil servants is put on suspension so as to cover his absence from official duties.

As the none reporting of this incidence to the Head office in under inquiry. The accused, though, stated that he informed the Department but this information report could not have reached or might not have reached to the Head of office. The inquiry officer do not doubt his claim because the accused officer is holding a responsible position and protecting the interest of the State, the Government in the verity of very important court cases. On the other side, being a responsible officer, the accused was expected to have produced a documentary evidence of the fact to testify that he had fulfilled his responsibility of informing the higher ups."




8. Furthermore, on submission of the inquiry report, the competent Authority had issued Notification dated 18.08.2016, whereby the appellant was awarded minor penalty of withholding of two annual increments for two years without issuing him show-cause notice as required under Rule-7 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The appellant was then issued show-cause notice on 22.08.2016 and subsequently another Notification dated 13.12.2016 was issued whereby the appellant was awarded the same penalty as was previously awarded to him vide Notification dated 18.08.2016. All this would led to the conclusion

that the competent Authority had already made up its mind for awarding minor penalty to the appellant even before issuing of the show-cause notice and opportunity of personal hearing.

9. In view of the above discussion, the impugned orders are set-aside and the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
17.11.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

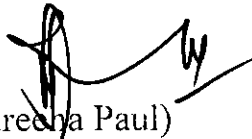
Naeem Amin

ORDER
17.11.2023

Learned counsel for the appellant present. Mr. Jamshaid Khan, Superintendent alongwith Mr. Habib Anwar, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the impugned orders are set-aside and the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
17.11.2023



(Fareeha Paul)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)