

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No. 1676/2023

Rehmatullah Ex-IHC No. 3995, Police Station Hashtnagri, Peshawar.
(Appellant)

Versus

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and
03 others. (Respondents)

Present:

Muhammad Amin Ayub, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor respondents

.....

Date of presentation of Appeal.....18.08.2023
Date of Hearing.....11.01.2024
Date of Decision.....11.01.2024

JUDGMENT

SALAH-UD-DIN, MEMBER: Precise facts giving rise to the instant appeal are that the appellant while posted as Moharrar in Police Station Shaheed Gulfat Hussain, was proceeded against departmentally on the allegations reproduced as below:-

- i) *According to the source report, it has been observed that you were found taking undue advantage of your assigned duty. The fact is evident that you are getting bribe from different smugglers of the area and have developed contacts with anti-social and criminal elements and was receiving illegal gratification from them.*
- ii) *It has also been reported that you did not confining the accused in the lockup and releasing the accused in lieu of huge bribe/amount and are getting hefty sums running of Rupees for encouraging such like elements.
Being hand in glove with smugglers as well as criminal elements you have brought bad name*



to Police in general and SGH Police in particular.

- iii) That you have a persistent reputation of being corrupt and have maintained a standard of living beyond your known sources of income.*
- iv) All this comes within the purview of 'corruption' under Police (E&D) Rules, 1975."*

2. On conclusion of the inquiry, the appellant was awarded major punishment of reversion to the rank of Constable vide the impugned order dated 16.06.2022. The appellant challenged the same by way of filing departmental appeal, which was disposed of vide the impugned order dated 27.10.2022, passed by Capital City Police Officer Peshawar, whereby the penalty awarded to the appellant was enhanced and he was dismissed from service. The appellant then preferred revision petition under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 before the Inspector General of Police Khyber Pakhtunkhwa Peshawar, which was also rejected vide order dated 21.07.2023, hence the instant appeal.

3. 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.

4. Learned counsel for the appellant contended that the allegations against the appellant were false and not a single witness in support of the same was examined during the inquiry. He next contended that no regular inquiry was conducted in the matter and the findings of the inquiry officer regarding guilt of the appellant were not based on any evidence what-so-ever. He further contended




that no final show-cause notice was issued to the appellant and he was also not provided copy of the inquiry report, which fact has caused prejudice to the appellant. He also argued that the appellant was condemned unheard as no opportunity of personal hearing or self defence was provided to him. He next argued that vide the impugned order dated 27.10.2022 passed by the appellate Authority, the punishment awarded to the appellant was enhanced without issuing him show-cause notice as required under Rule-11 of Khyber Pakhtunkhwa Police Rules, 1975, therefore, the order dated 27.10.2022 is wrong and illegal. He further argued that the appellant has not been dealt with in accordance with law and his rights guaranteed under Articles 4 & 10-A of the Constitution of Islamic Republic of Pakistan, 1973 have been violated. He also argued that as the impugned orders are wrong and illegal, therefore, the same may be set-aside and the appellant may be reinstated in service with all back benefits. Reliance was placed on 1995 SCMR 16, 2013 SCMR 1053, 2019 PLC (C.S.) 224, 2020 SCMR 1245, 2021 SCMR 1162, 2022 PLC (C.S.) 985 and 2023 PLC (C.S.) 198.

5. Conversely, learned Assistant Advocate General for the respondents contended that despite being a member of disciplined force, the appellant kept contacts with smugglers as well as other criminals and used to get bribe from them for their facilitation in commission of criminal acts. He next contended that the appellant was corrupt and was having a living standard beyond his means, therefore, disciplinary action was taken against him. He

further contended that a regular inquiry was conducted in the matter and as the allegations against the appellant stood proved in the inquiry, therefore, he was rightly dismissed from service.

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

7. A perusal of the record would show that Superintendent of Police City, Peshawar was appointed as inquiry officer in the matter, who submitted the inquiry report to Senior Superintendent of Police (Operations) Peshawar on 15.06.2022. While going through the inquiry report, we have observed that the inquiry officer has not examined a single witness in support of the allegations leveled against the appellant. The findings/recommendations para of the inquiry report is reproduced as below:-



"I have perused all the relevant papers and the accused Head Constable was heard in person, but he failed to defend himself against the allegations leveled against him. Therefore, I came to the conclusion that Head Constable Rehmat Ullah No. 3995 is guilty of all accusations leveled against him."

8. The allegations against the appellant were grave and serious in nature but no evidence what-so-ever in support of the same was put to the appellant in the inquiry proceedings. It is not understandable that without examining any single witness in support of the allegations against the appellant, how the inquiry officer came to the conclusion that the allegations against the appellant stood proved. The inquiry officer has conducted the inquiry in a cursory

and perfunctory manner and his findings regarding guilt of the appellant are not supported through any oral or documentary evidence in support of the allegations leveled against the appellant. The appellant was not provided any opportunity of personal hearing by the competent Authority prior to awarding him the punishment of reversion to the rank of Constable vide impugned order dated 16.06.2022. Moreover, the available record does not show that final show-cause notice was issued to the appellant and he was provided copy of the inquiry report. This Tribunal has already held in numerous judgments that issuance of final show-cause notice along with the inquiry report is must under Police Rules, 1975. Reliance is also placed on the judgment delivered by august Supreme Court of Pakistan reported as PLD 1981 SC-176, wherein it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of final show cause notice and non-supply of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him.

9. Vide the impugned order dated 16.06.2022 the appellant was reverted from the rank of Head Constable to the rank of Constable without mentioning the period for which the same shall remain effective, which is violation of FR-29. The same is reproduced for ready reference as below:-

"F. R. 29. If a Government servant is, on account of misconduct or inefficiency,

reduced to a lower grade or post, or to a lower stage in his time -scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, it shall operate to postpone future increments and if so, to what extent.”


10. Furthermore, vide the impugned order dated 27.10.2022 passed by the Capital City Police Officer Peshawar, upon the departmental appeal of the appellant, the punishment awarded to the appellant was enhanced and he was dismissed from service. According to proviso to clause-(d) of sub-rule 4 of rule-11 of Khyber Pakhtunkhwa Police Rules, 1975, where appellate Authority or Review Authority, as the case may be, proposes to enhance the penalty, it shall by an order in writing inform the accused of the action proposed to be taken against him and the ground of such action. The appellate Authority or Review Authority, as the case may be, was required to provide reasonable opportunity to an accused to show-cause against the action and afford him an opportunity of personal hearing also. While going through the record, we have observed that the requirements mentioned in proviso to clause-(d) of sub-rule 4 of rule-11 of Khyber Pakhtunkhwa Police Rules, 1975 were not complied with by the appellate Authority, therefore, on this score alone, the impugned order dated 27.10.2022 passed by the appellate Authority is not sustainable in the eye of law.

11. Consequently, the appeal in hand is accepted by setting-aside the impugned orders and the appellant stands reinstated in service

with all back benefits. Parties are left to bear their own costs. File
be consigned to the record room.

ANNOUNCED
11.01.2024


(FAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


Naeem Amin


ORDER
11.01.2024

Appellant alongwith his counsel present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. The appeal in hand was fixed for arguments on 15.04.2024, however the application submitted by the appellant for early hearing was allowed on 04.01.2024 and today's date was fixed for arguments. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is accepted by setting-aside the impugned orders and the appellant stands reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.01.2024


(Fareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)