

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No. 16417/2020

Syed Suleman Shah No. 1551 Ex-Constable CTD Police Khyber
Pakhtunkhwa Peshawar. *(Appellant)*

Versus

Deputy Inspector General of Police CTD Khyber Pakhtunkhwa
Peshawar and 01 other. *(Respondents)*

Present:

Ms. Roeeda Khan, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

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Date of presentation of Appeal.....24.12.2020

Date of Hearing.....10.01.2024

Date of Decision.....10.01.2024

JUDGMENT

SALAH-UD-DIN, MEMBER: Precise facts forming the background of the instant appeal are that departmental action was taken against the appellant on the allegations that he was involved in case FIR No. 447 dated 02.04.2020 under sections 302/324/458/148/149 PPC Police Station Mathra Peshawar and had also remained absent from duty vide daily diary No. 447 dated 02.04.2020. On conclusion of the inquiry, he was awarded major penalty of dismissal from service vide the impugned order bearing OB No. 220/CTD dated 21.09.2020. The punishment so awarded to the appellant was challenged by him through filing of departmental appeal, however the same was also declined vide order dated 03.12.2020. The appellant then approached this

Tribunal by way of filing the instant appeal for redressal of his grievance.


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 argued that the appellant was behind the bars at the time of inquiry and was not in a position to properly defend himself. He next argued that as the appellant was behind the bars, therefore, the inquiry proceedings were conducted at his back and no opportunity was provided to him to cross-examine the witness examined during the inquiry. He further argued that the appellant was not provided copy of the inquiry report and show-cause notice was also not issued to him, which fact has created serious dent in the inquiry proceedings rendering it as wrong and illegal. He also argued that the appellant was not even provided any opportunity of personal hearing and was thus condemned unheard. He also argued that the appellant was falsely charged in the concerned criminal case and the fact of his false involvement has been proved on his acquittal in the said case. He next contended that 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.

4. On the other hand, learned Deputy District Attorney for the respondents argued that the appellant was directly charged in a

heinous crime, therefore, departmental action was taken against him under the Khyber Pakhtunkhwa Police Rules, 1975. He next argued that a regular inquiry was conducted in the matter by complying all legal and codal formalities as prescribed under the Khyber Pakhtunkhwa Police Rules, 1975. He further argued that charge sheet as well as statement of allegations were served upon the appellant, however he remained unable to put forward any plausible reasons in rebuttal of the allegations leveled against him. He next contended that the allegations against the appellant stood proved in a regular inquiry, therefore, he was rightly dismissed from service.

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

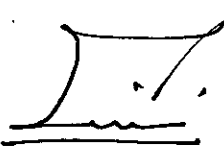


6. A perusal of the record would show that the appellant alongwith some other co-accused were charged in case FIR No. 447 dated 02.04.2020 under sections 302/324/458/148/149 PPC Police Station Mathra, Peshawar and he was placed under suspension vide order dated 06.04.2020. The DSP Headquarter CTD Khyber Pakhtunkhwa Peshawar, was appointed as inquiry officer in the matter. The inquiry report so submitted by the inquiry officer is available on the record, which would show that it is an admitted fact that charge sheet as well as statement of allegations were served upon the appellant, while he was in custody in central jail Peshawar. The inquiry officer had examined the investigation officer of the concerned criminal case as the only witness in the inquiry proceedings. The appellant was admittedly in custody in jail and no opportunity was provided to him to cross examine the said

witness. Furthermore, the appellant was lying in jail but it is astonishing that the inquiry officer in the inquiry report has mentioned that he had willfully remained absent from duty till the date of submission of the inquiry report. The available record does not show that the appellant was provided any opportunity to defend himself in the inquiry proceedings.

7. While going the inquiry report, it can be observed that the inquiry was conducted in a cursory and perfunctory manners as if the inquiry officer was just complying a formality. This Tribunal has already held in numerous judgments that issuing of final show-cause notice as well as providing of copy of the inquiry report to the delinquent official/officer is must. Reliance is also placed on judgment of august Supreme Court of Pakistan reported as PLD 1981 Supreme Court 176, wherein it has been held that rules devoid of provision of final show cause notice alongwith inquiry report were not valid rules. Non issuance of final show cause notice and non-supply of copy of the inquiry report to the appellant has caused miscarriage of justice as in such a situation, the appellant was not in a position to properly defend himself regarding the allegations leveled against him.

8. The appellant was dismissed from service vide the impugned order dated 21.09.2020 passed by Superintendent of Police HQrs; CTD Khyber Pakhtunkhwa Peshawar. It has been mentioned in the said order that the appellant was called to appear in person for personal hearing but he did not appear before the competent Authority. The aforementioned observations recorded in the

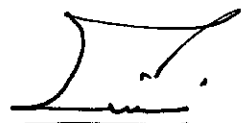


impugned order dated 21.09.2020 are quite astonishing and shows the casual attitude of the competent Authority for the reason that the appellant was behind the bars at that time and it could not be expected that he was capable to appear before the competent Authority for personal hearing. We are thus of the view that the appellant was not provided opportunity of personal hearing and he was condemned unheard.

9. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
10.01.2024


(FAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

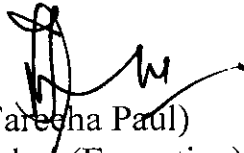
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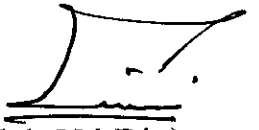
ORDER
10.01.2024

Learned counsel for the appellant present. Syed Amir Abbas, DSP (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

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

ANNOUNCED
10.01.2024


(Fareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)