

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.594/2019

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Faqir Hussain, Ex. Constable No. 4171 Capital City Police Officer Peshawar.
.... (Appellant)

VERSUS

1. The Capital City Police Officer, Peshawar.
 2. The Superintendent of Police Headquarters, Peshawar.
 3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- ... (Respondents)

Mr. Fazal Shah Mohmand
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....29.03.2019
Date of Hearing.....01.12.2023
Date of Decision.....01.12.2023

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 24.04.2019 and order dated 31.01.2019 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.”

2. Brief facts of the case are that the appellant was enlisted as constable in police department on 23.07.2007 and was performing duty upto the entire satisfaction of his superiors. During service he was charged in case FIR No. 1185 dated 04.10.2018 U/S 9(C) CNSA/15AA registered at Police Station Sher Garh. Departmental proceedings were initiated against the appellant




which is resulted into his dismissal from service. Feeling aggrieved, appellant filed departmental appeal on 19.02.2019 which was rejected vide order dated 24.04.2019, hence, 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 for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the impugned orders are illegal and void ab-initio and appellant has not been treated in accordance with law and rules. He further argued that no proper inquiry was conducted in the matter which is mandatory requirement of law. He submitted that respondents were required to wait till the decision of criminal case, as charges against the appellant was only involvement in criminal case. Lastly, he submitted the neither opportunity of personal hearing was afforded to the appellant nor he was cross examined he was condemned unheard, therefore, he requested that instant appeal might be accepted.


5. Conversely, learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that the appellant while posted at police station Badhaber Peshawar was involved in criminal case vide FIR No. 1185 dated 04.10.2018. In this regard he was issued with charge sheet and statement of allegations. DSP/Coordination was appointed as enquiry officer who conducted detail enquiry into the charges framed against him and was found guilty and recommended him for major punishment. After completion of all codal formalities he was awarded major punishment of dismissal from service.



6. Perusal of record reveals that appellant was enlisted as constable in District Police Peshawar vide order dated 23.07.2007 and performed his duties to the entire satisfaction of his superiors till 04.10.2018 when he was charged in criminal case FIR No. 1185 under section 9CNSA/15AA registered at police station Sher Garh Mardan. Appellant was released on bail vide order dated 28.11.2011 by the court of competent jurisdiction. Departmental proceedings were initiated against the appellant by issuing charge sheet and statement of allegation on 07.11.2018 on the ground of involvement in a criminal narcotics case which was replied by the appellant who refuted the allegations. Where after appellant was issued final show cause notice on 29.11.2018 and finally appellant was dismissed from service vide impugned order dated 30.01.2019.

7. Perusal of record transpired that although the charges against the appellant in FIR is that only one unlicensed pistol was recovered from the possession of the appellant while contraband was recovered from beneath the seat of the co-accused Amir Khan. Pistol which was shown in the FIR unlicensed by the complainant of FIR No. 1185 was returned to the appellant as same was licensed one by competent court of law. Appellant was acquitted from the charges leveled against him by the court of competent jurisdiction vide order dated 22.02.2021.

8. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Conviction of the appellant in criminal case was the only ground that has subsequently disappeared through his acquittal, making him re-emerge as a fit

 and proper person entitled to continue his service.


9. 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. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

10. Moreover, inquiry officer recorded statement of Mr. Shafiq Ahmad complainant of FIR No. 1185, alleged recovery witnesses Constable Imran, Constable Majid, Constable Wahab and no opportunity of cross examination was provided to the appellant which is essential for regular inquiry and fair trial and appellant was condemned unheard.

10. The main allegation against the appellant was not proved and he was acquitted then in accordance with settled law and principle of justice dismissal from service is very harsh punishment which does not commensurate with the punishment of misconduct. Therefore, we set aside the impugned orders and reinstate the appellant into service and convert major penalty of dismissal from *service* into minor penalty of stoppage of increment for two years while inventing period was treated as leave without pay. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 1st day of December, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER


01.12.2023 1. Appellant alongwith his counsel present. Mr. Muhammad Jan, District

Attorney Mr. Ihsan Ullah, ASI for the respondents present.

2. Vide our detailed judgement of today placed on file, we set aside the impugned orders and reinstate the appellant into service and convert major penalty of dismissal from into minor penalty of stoppage of increment for two years while inventing period was treated as leave without pay. 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 1st day of December, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)