

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.873/2022

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

Bashir Muhammad, Ex-Assistant Sub-Inspector No. 840/MR, District Police Office Mardan. ... (Appellant)

VERSUS

1. District Police Officer, Mardan.
 2. Regional Police Officer, Mardan Region Mardan.
 3. Commandant Police Training College, Hangu.
 4. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- ... (Respondents)

Mr. Fazal Shah Mohmand
Advocate ... For Appellant

Mr. District Attorney
District Attorney ... For Respondents

Date of Institution.....30.05.2022
Date of Hearing.....12.12.2023
Date of Decision.....12.12.2023

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 orders dated 15.02.2022 of respondent No.1 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 appellant while serving as incharge ammunition Kot at Hangu was dismissed from service on the allegations of misappropriation of ammunition from PTC Kot, against which after availing departmental remedy, the appellant approached this Tribunal by filing service



appeal which was allowed vide judgment dated 23.06.2021. The appellant was accordingly reinstated in service and departmental proceedings were initiated by issuing charge sheet on 02.08.2021 which was replied by the appellant denying the allegations. Thereafter, appellant was dismissed from service and was also order to deposit the cost of stolen government ammunition into government of treasury. Feeling aggrieved he filed departmental appeal on 22.02.2022 which was not responded, hence, the instant service appeal.

2. 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.

3. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973. He further argued that impugned orders are against the law, facts, norms of natural justice and materials on record, hence not tenable and liable to be set aside. He contended that no statement of witnesses have been recorded by the respondents nor chance of cross examination has been provided to the appellant and appellant was condemned unheard. He further contended that denovo inquiry was not completed in the stipulated period as per judgment of this Tribunal. Reliance is placed on 1984 PLC (C.S) 379, 2011 PLC (C.S) 1111 and 1989 PLC (C.S) 336.

4. Conversely, learned Deputy District Attorney argued that appellant was found involved in mis-appropriation of huge quantity of ammunition, therefore, disciplinary action was taken against the appellant and was rightly dismissed from service. He also argued that the inquiry was conducted in a



legal manner by providing opportunity of hearing to the appellant. He further contended that after conducting of proper inquiry against the appellant, the inquiry committee came to the conclusion that the charges against the appellant were proved, therefore, competent authority has rightly dismissed from service.

6. Perusal of record reveals that appellant served as IHC respondent/department for more than 18 years. When appellant was posted as Incharge Ammunition Kot in Police Training College Hangu, on allegation of missing 78369/- SMG rounds from the ammunition kot was leveled against the appellant, who alongwith two others were proceeded against by the department. Appellant alongwith two official were dismissed from service vide impugned order dated 15.02.2019. Appellant filed service appeal bearing No 745/2019 wherein impugned order was set aside by reinstating appellant into service vide judgment & order dated 23.06.2021. Respondent after receipt of judgment of this Tribunal reinstated the appellant into service for the purpose of denovo inquiry. Again Commandant Police Training College Hangu appoint Mr. Arshad Mehmood SP/Investigation as Enquiry Officer despite the fact that this Tribunal holds that competent authority for giving punishment to IHC is SSP/DPO/SP and not below of the rank of DIG. So again inquiry was initiated by an incompetent authority in accordance with schedule-1 of Police Rules, 1975. Moreover, it is mentioned in inquiry report of Mr. Arshad Mehmood;

"The undersigned has come to the conclusion that the enquiry already proved against the accused officers/officials as they were found involved in embezzlement of Government property i.e 7.62 MM genuine



rounds of PTC Kot which caused to huge loss of Government exchequer. They have provided full opportunity of cross examination during enquiry but they failed to prove/show their blamelessness/innocence and grant loss to the Government exchequer. They being members of Police Force their professionalism is condemnable and their act are not apologize. As they are not permanent employees of PTC Hangu therefore, their home district may be communicated for giving major punishment as per rules.

The case registered against them have been cancelled from district Hangu and were sent to Anti Corruption Establishment in the year 2019, which is not properly purse by District Police nor the complainant party i.e PTC Hangu staff and neither ACE made nay correspondence with local police the fresh up date of the case, up till now on that way not punishment given to the defaulter official in the criminal act.

So, from it is clear that no proper inquiry was conducted by the authority without providing opportunity of cross examination, self-defense and personal hearing was provided to the appellant despite direction by this Tribunal vide order dated 23.06.2021.


7. 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 have 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 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 imbedded 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 the impugned order dated 15.02.2022 and reinstate the appellant for the purpose of denovo inquiry with direction to respondents to provide proper chance of self-defense, personal hearing and cross examination to the appellant to fulfill requirement of a fair trial. Respondents are further directed to conclude inquiry within 90 days, of receipt of copy of this judgment. 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 12th day of December, 2023.*



(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER

12.12.2023

1. Appellant alongwith his counsel present. Mr. Muhammad Jan learned District Attorney alongwith Atta Ur Rehman, Inspector (Legal) for the respondents present.
2. Vide our detailed judgement of today placed on file, we are unison to set aside the impugned order dated 15.02.2022 and reinstate the appellant for the purpose of denovo inquiry with direction to respondents to provide proper chance of self-defense, personal hearing and cross examination to the appellant to fulfill requirement of a fair trial. Respondents are further directed to conclude inquiry within 90 days, of receipt of copy of this judgment. 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 12th day of December, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)