

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT  
CAMP COURT SWAT

Service Appeal No. 1696.2022

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

Abdul Wahab (ASI) No.364 Department of Police District, Dir Lower, S.o Abdul Qayum R.o Khadk Gazi Payeen Tehsil Adenzai & District Dir Lower.

.... (Appellant)

VERSUS

1. Inspector General of Police/Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Malakand Region, Saidu Sharif, Swat
3. District Police Officer, Dir Lower.

....(Respondents)

Mr. Rahim Ullah Chitrali  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

Date of Institution.....14.11.2022  
Date of Hearing.....07.12.2022  
Date of Decision.....07.12.2023

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 service appeal, the orders passed by the respondents be declared as illegal, discriminatory, against law, void ab-inito and the respondents may kindly be directed to count the service in the intervening period of the appellant**



**from dismissal till re-instated dated 30-03-2022, and further be directed to granting salaries other benefit (three Year's Service) of the appellant. Any other remedy which deems fit by this Hon'ble Tribunal in the interest of justice, may also be granted in favor of appellant."**

2. Brief facts of the case are that the appellant was appointed as constable in police department and was performing his duty upto to the entire satisfaction of his superiors. During service appellant was charged in case FIR No. 15 dated 12.02.2021 U/S 489, 365, 347, 120-b, 34 PPC 119 Police Act, 2017 in Police Station Talash, District Dir Lower. During trial disciplinary proceedings were initiated against the appellant and he was dismissed from service vide order dated 09.04.2019. The appellant was acquitted by the competent court of law on 26.01.2022. After acquittal appellant filed departmental appeal, which was partially allowed by converting penalty of dismissal from service into forfeiture of three years approved service and intervening period was treated as leave without pay on 30.03.2022. Feeling aggrieved, he filed revision petition, which was not responded to, 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, rules and policy. He further argued that appellant has not be given right of salaries alongwith forfeiture of three year approved service of appellant which is against the fundamental right.

4. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant being member of discipline force committed gross misconduct by implicating innocent person in criminal cases, handing over the accused to private persons and colluding with other accused in commission of offence, therefore, he was charged in criminal case and after fulfilling all codal formalities he was dismissed from service. He further contended that appellant filed appeal and the competent authority by taking lenient view reinstated him in service by converting the dismissal from service into forfeiture of three years approved service. He further contended that authority filed revision petition under rule 11-A, being badly barred by time.

5. Perusal of record reveals that appellant was serving in respondent department as ASI when on 12.02.2021. He arrested one Aslam from whom he recovered fake currency amounting to Rs.189000.- laying in the dashboard of his car. Appellant in a capacity of complainant sent murasilla for registering of case FIR bearing No.15 dated 12.02.2021 under section 489-C of Police Station Talash, Dir Lower, but accused of the said case filed application to DPO Dir Lower against the appellant along with three others on the ground that they had hatched conspiracy against him as appellant put two envelope on the dashboard of his car which contain fake currency. He also alleged that he was abducted and kept in illegal confinement by the appellant then also demanded money for his release. As a result of acceptance of application of the nominate accused Arsalan, appellant alongwith two others were nominated in criminal case mentioned above. Appellant was arrested in FIR No.15 and also proceeded against departmentally on the charge of misconduct and negligence. Charge sheet and statement of



allegations was issued to the appellant on 10.03.2023 and inquiry was entrusted to Mr. Mushtaq Ahmad, SP Investigation, Dir Lower who submitted his finding report on 30.05.2021 by holding appellant guilty of misconduct.

6 Competent authority awarded major penalty of dismissal from service with immediate effect vide 01.06.2021 on the ground of his involvement in criminal case against which appellant fixed departmental appeal which was partially allowed dated 30.03.2022 wherein appellant reinstated into service by converting his major penalty into forfeiture of three years approved service while intervening period was treated as leave without pay.

7. Appellant filed revision petition on 21.04.2022 through his immediate boss but same was return to the appellant vide order dated 11.06.2022 sent on 07.07.2022 to Police Station where appellant was posted. Appellant again filed revision petition on 13.07.2022, which was dismissed time barred. First we will resolve question of limitation raised by the learned District Attorney. Appellant filed revision petition on 21.04.2022 against the order of appellate authority dated 30.03.2022 through his immediate boss RPO who return it to the appellant vide order dated 13.06.2022 communicated to the appellant on 07.07.2022 which is evident from attested copy of the order of return available on file. As per law it is duty of the immediate boss/officer to whom appellant filed revision petition, to send it to the revisional authority along with covering letter but he instead of sending it to the revisional authority return it to the appellant which is violation of law on the subject. As per Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, a civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms & conditions of his

service may file departmental appeal/representation within 30 days but revision filed by the appellant not time barred as he will not be punished for the negligence of RPO his immediate boss.

8. It is admitted fact that appellant was behind the bar at the time of disciplinary proceedings and trial was also pending adjudication before the competent forum. It will be more safe and equitable that departmental disciplinary proceeding be kept pending till decision of the criminal trial, but respondents in hurry decided fate of appellant by passing impugned order. As appellant was in judicial custody behind the bar therefore no opportunity of self-defense and cross examination was provided to the appellant which is foremost requirement of a fair trial. Appellant was acquitted from charges of hatching a conspiracy, involvement/charging innocent citizen and planting a fake currency recovery by the court of Additional Session Judge, Dir Lower vide order dated 26.01.2022. Learned Judge in the said judgment clearly mentioned that the then accused/now complainant miserably failed to prove his allegations against the appellant that's why absconder accused was also acquitted in absentia.


9. 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 has subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.


10. 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.



11. For what has been discussed above, the appeal in hand is accepted as prayed for. Costs shall follow the events. Consign.

12. *Pronounced in open court at Camp Court Swat and given under our hands and seal of the Tribunal on this 7<sup>th</sup> day of December, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (J)  
Camp Court Swat

  
(RASHIDA BANO)  
Member (J)  
Camp Court Swat