

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1495/2018

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

Salman, Ex- Constable, No. 3270, Police Line Mardan.

... (Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Mardan Region Mardan.
3. District Police Officer, Mardan.

... (Respondents)

Mr. Taimoor Ali Khan
Advocate

... For appellant

Mr. District Attorney
District Attorney

... For respondents

Date of Institution.....28.11.2018
Date of Hearing.....29.11.2023
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 orders dated 01.11.2018 and 15.08.2018 may be set aside and the appellant may be reinstated into service with all back and consequential benefits. Any other remedy which this tribunal deems fit and appropriate that may also be awarded in favor of appellant.”

2. Brief facts of the case as given in the memorandum of appeal are that appellant was appointed as Constable in Police Department in the year 2011 and performed duties upto the entire satisfaction of his superiors. The appellant while posted in Police Lines Mardan, was charged in FIR No. 1318 dated 30.12.2017



under section 381-A Police Station Mingora, in case FIR No. 18 dated 09.01.2018 u/s, 381-A PS Rahim Abad and in case FIR No. 1016 dated 29.12.2017 u/s 381-A PS Rahim Abad on the basis of which appellant was suspended. Charge sheet was issued to appellant which was duly replied. Thereafter, appellant was dismissed from service under police rules 1975 vide order dated 15.08.2018. Feeling aggrieved, he filed departmental appeal, which was rejected on 01.11.2018, 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 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, 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 no show cause notice was issued to the appellant before issuance of impugned order which is violation of rules and norms of justice. He contended that suspension of the appellant should be kept intact till the conclusion of trial pending against him by the respondents, but the appellant was dismissed without waiting to the conclusion of trial which is violation of CSR-194.

5. Conversely, learned Deputy District Attorney argued that appellant has been treated in accordance with law and rules. He further contended that appellant being member of discipline force involved in criminal case. He further



contended that appellant was provided opportunity of hearing as well as self defence but he failed to put forward any plausible reason. He further contended that criminal and departmental proceedings can be run parallel and mere acquittal of the appellant of the appellant in the criminal case would not be entitled him to his exoneration in the departmental proceedings. He also argued that proper inquiry was conducted in the matter and all the legal and codal formalities were complied with.

6. Perusal of record reveals that appellant was serving in respondent department as Constable since his enlistment in year 2011 till 29.12.2017 when he was involved in criminal case FIR No. 1318 dated 30.12.2017 under section 381-A Police Station Mingora, in case FIR No. 18 dated 09.01.2018 u/s 381-A PS Rahim Abad and in case FIR No. 1016 dated 29.12.2017 u/s 381-A PS Rahim Abad Swat dated 09.01.2018 upon which he was suspended by the authority. Appellant was issued with charge sheet and statement of allegation on 18.04.2018 which was replied by the appellant. Inquiry Officer summoned appellant and witness Mohibullah ASI 10 of police Station Mingora who contended investigation in Case FIR. No. 1318 dated 30.12.2017 under section 38-A PPC and Sheryar ASI/I.O of police station Rahim Abad who conducted investigation of FIR No. 18 dated 09.01.2018 under section 38-A dated 04.01.34 PPC who submitted his inquiry to the authority who issued impugned order dated 13.08.2018 wherein appellant was dismissed from service. Appellant filed departmental appeal, which was rejected vide order dated 01.11.2018.


7. Record further reveals that appellant was provided with an opportunity of cross examination upon both the witness but he failed to rebut them during cross examination. Moreover, appellant was acquitted from the charges in case FIR No.

1016/2017 and 1318/2017 on the basis of compromise and not on merit as it will

not give any benefit to appellant for his reinstatement in service, in accordance with verdicts of Supreme Court reported in 2021 PLC (C.S) 1531, 2021 PLC (C.S)587 and 2017 SCMR 965. It is also pertinent to mention here that appellant was involved in three different FIRs of same nature of moral turpitude due to which police force earned bad name in the society. If appellant was acquitted on merit due to being falsely, malafiedly charged by the complaint then his acquittal in criminal case will give benefits to him for his reinstatement. Compromise in other words means admission of commission of offence by the person involved in crimes retention of such person in service will destroy the public piece and is dangerous for the life and property of the general public, because when custodian and guards of safety of the public life and property became enemies of the property of public by indulging themselves in criminal activities then who will save them from dacoits etc.

8. For what has been discussed, we are unison to hold that impugned orders are in accordance with law, rules, circumstances of the case and are right need no interference by this Tribunal.

9. *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 learned District Attorneyfor the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to hold that impugned orders are in accordance with law, rules, circumstances of the case and are right need no interference by this Tribunal.
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)

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