

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR, AT
CAMP COURT SWAT

Service Appeal No. 651/2023

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

Munawar Khan S/o Hazrat Ali Khan R/o WalaiKhanzana, Tehsil Munda,
District Dir Lower posted as Constable at District Police Line Dir Lower
at Timergara.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Police Government of Khyber Pakhtunkhwa at Peshawar.
3. Deputy Inspector General of Police at Saidu Sharif Swat.
4. Additional Inspector General of Police Headquarter KP at Peshawar.
5. District Police Officer, District Dir Lower at Timergara.

.... (Respondents)

Syed Abdul Haq
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....15.03.2023
Date of Hearing.....06.12.2023
Date of Decision.....06.12.2023

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 passed by the respondent No.5 on 24.09.2021 and the subsequent orders mentioned in the memo of appeal may kindly be set




aside i.e reduction in pay by two stages be declared illegal, against the spirit of law/rules.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Constable in Police Department vide order dated 17.03.2010 and was performing his duty upto the entire satisfaction of his superiors. Appellant being a member of Narcotics Control Team after getting information about one contraband dealer Hamid Ullah demand contraband from him just for the purpose of arresting him, who handed over contraband to one Shabir who was arrested alongwith contraband by Tahir Khan S.I. and FIR bearing No. 165 under section KP 9C CNSA dated 19.10.2020 of PS Balambat was registered against Shabir Khan and after his release on bail he filed petition under section 22-A Cr.PC to the Justice of peace who constituted inquiry team with direction to reinvestigate the matter. Inquiry team submitted their report. Hamid Ullah and Shabir nominated in FIR was discharged by the Session Judge, Dir-Lower on 29.10.2021 and on the strength of inquiry appellant was awarded major penalty of reduction of pay by two stages vide order dated 24.09.2021. Appellant filed departmental appeal which was rejected vide impugned order dated 28.12.2021. He filed revision petition which was dismissed vide impugned order dated 09.02.2023, 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 and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the penalty imposed upon the appellant is illegal and against the spirit of law/rule, hence



liable to be set aside. He further argued that Khyber Pakhtunkhwa Police Rules 1975, have not been complied with in the case of appellant so, the penalty awarded is harsh, hence liable to be set aside. He submitted that appellant has never committed any offence and he exercised his duty under the mandate of law and the act of appellant does not amounts to misconduct but the respondents penalized him without any justification so, the penalty imposed upon the appellant is against the policy/rules, hence liable to be set aside.


5. Learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that the appellant service record is tainted with bad entries and being member of discipline force he committed gross misconduct. He further contended that proper charge sheet, statement of allegations and final show cause notice has been issued to the appellant and the appellant was provided proper opportunity to defend himself. Competent authority after fulfillment of all codal formalities awarded major punishment of reduction in pay by two stages.

6. Perusal of record reveals that appellant was serving in the respondent department as constable and was member of Narcotics Control Team. After getting information about one contraband dealer Hamidullah demand contraband from him just for the purpose of arresting contraband dealer, who handed over contraband to one Shabir Khan, shabir khan along contraband was arrested by Tahir Khan S.I. and FIR bearing No. 165 under section KP 9C CNSA dated 19.10.2020 of PS Balambat was registered against Shabir Khan and Hamidullah, accused after his release on bail filed petition under section 22ACr.PC to Justice of peace who constituted inquiry team with

direction to reinvestigate the matter. inquiry team submitted their report. Hamid Ullah and Shabir Khan nominated in FIR was discharge by the Session Judge, Dir-Lower on 29.10.2021 and on the strength of said inquiry appellant was awarded major penalty of reduction of pay by two stages vide impugned order dated 24.09.2021. Appellant filed departmental appeal which was rejected vide impugned order dated 28.12. 2021. Appellant filed revision petition which was dismissed vide impugned order dated 09.02.2023, hence, the instant service appeal.

7. Record further reveals that appellant admitted that he contacted contraband dealer Hamid Ullah and Shabir Khan on the day of occurrence of FIR just for the purpose of arresting him and to curb the evil of narcotics from the society. It was incumbent upon inquiry officer to probe genuineness of the plea advance by the appellant. Record is silent that whether any such efforts were made by the inquiry officer. When FIR was lodged against the Shabir Khan and inquiry team was constituted upon his application by Justice of Peace. Said inquiry committee/review board had recorded statement. Inquiry Officer himself had not record any independent statement and he relied upon the statement recorded by review board. As no statement of any concerned was recorded by the inquiry officer, therefore, no chance of self defence and cross examination was provided to the appellant, which is against the law and appellant was condemned unheard.


8. 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.

9. In light of above, when no such opportunity was given to the appellant beside penalty given to the appellant is too harsh, which does not commensurate with the quantum of misconduct committed by the appellant. Therefore, we are unison to convert major penalty of reduction in pay by two stages into minor penalty of stoppage of three annual increments. Costs shall follow the event. Consign.

10. *Pronounced in open court at camp court swat and given under our hands and seal of the Tribunal on this 6th day of December, 2023.*


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



(RASHIDA BANO)
Member (J)
Camp Court Swat


02.10.2023

Appellant in person present. Mr. Zahir Shah, S.I (Legal) alongwith Mr. Inayatullah Khan, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the Hon'ble Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat. Adjourned. To come up for arguments on 06.12.2023 before the D.B at Camp Court Swat. Parcha Peshi is given to the parties.

SCANNED
KPST
Peshawar


(Rashida Bano)
Member (J)
Camp Court Swat


(Salahud-Din)
Member (J)
Camp Court Swat

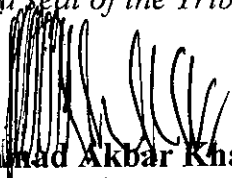
Nasim Amin
ORDER


06.12.2023 1

Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Zahir Shah, S.I for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to convert major penalty of reduction in pay by two stages into minor penalty of stoppage of three annual increments. Costs shall follow the event. Consign.

3. *Pronounced in open court at camp court swat and given under our hands and seal of the Tribunal on this 6th day of December, 2023.*


(Muhammad Akbar Khan)
Member (J)
Camp Court Swat


(Rashida Bano)
Member (J)
Camp Court Swat