

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)
MUHAMMAD AKBAR KHAN...MEMBER (Executive)

Service Appeal No. 102/2023

Zubair-ur-Rehman S/O Habib-ur-Rehman (Constable No. 4947 of FRP
Kohat Range) R/O Shah Poor Kohat. (Appellant)

Versus

Inspector General of Police (IGP), Khyber Pakhtunkhwa, Peshawar and
02 others. (Respondents)

Present:

Mr. Hassan_U.K_Afridi, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor respondents

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Date of presentation of Appeal.....10.01.2023

Date of Hearing.....19.01.2024

Date of Decision.....19.01.2024

JUDGMENT

SALAH-UD-DIN, MEMBER: Precise facts giving rise to the
instant appeal are that departmental action was taken against the
appellant on the allegations reproduced as below:-

*“a) That as reported by Muharrar FRP
District Lines Kohat vide DD No. 07 dated
08.10.2022, you were detailed for special duty in
D.I.Khan for the occasion of 12th Rabi Ul Awal
but you absented yourself from said duty.*

*b) That as reported vide DD No. 09 dated
08.10.2022 Roznamcha District Lines Kohat,
you after absence from special duty came to
Roznamcha for arrival report and quarreled
with Muharrar and aimed your loaded pistol on
him. Your this act shows very undisciplined and
unprofessional attitude. Thus you have
committed a gross “Misconduct” as defined in
Rule 2 (iii) of Police Rules 1975.”*


2. On conclusion of the inquiry, the appellant was awarded major
punishment of compulsory retirement from service vide order
bearing OB No. 713 dated 01.11.2022. The punishment so awarded



to the appellant, was challenged by him through filing of departmental appeal, which was rejected vide order dated 13.12.2022. The appellant then approached this Tribunal through filing of the instant appeal for redressal of his grievance.

3. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

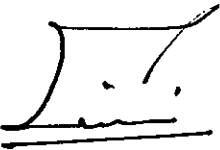
4. Learned counsel for the appellant contended that the appellant was neither informed by Muharrar of FRP Kohat Region Kohat regarding his special duty for the occasion of 12th Rabi-ul-Awal nor he had quarreled with Muharrar and aimed his loaded pistol at him.



He next argued that the allegations leveled against the appellant were wrong and baseless. He next contended that neither show cause notice was issued to the appellant nor was he provided copy of the inquiry report. He further argued that the appellant was not provided opportunity of personal hearing as well as self defence. He further contended that the inquiry proceedings were conducted in derogation of mandatory provisions of Police Rules, 1975 as the appellant was neither provided any opportunity of cross-examination of the witnesses. In the last he requested that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

5. Conversely, learned Assistant Advocate General for the respondents contended that despite being a member of disciplined

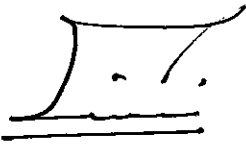
force, the appellant had not only remained absent from special duty but had also quarreled with Muharrar and had aimed his loaded unlicensed pistol at the Muharrar which was a gross misconduct. He next contended that charge sheet as well as statement of allegations were issued to the appellant and the allegations leveled against him stood proved in a regular inquiry conducted against the appellant. He further contended that the appellant was having 13 bad entries in his service record since his induction in Police Department in the year 2006. In the last he argued, that all the legal and codal formalities were fulfilling before passing the impugned orders, therefore, the same may be kept intact and the appeal in hand may be dismissed with costs.


6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. A perusal of the record would show that the appellant was not provided an opportunity of cross-examination of the witnesses examined during the inquiry. Moreover, the available record does not show that the witnesses were examined by the inquiry officer in presence of the appellant. In such a situation, the evidence of the witnesses recorded during the inquiry could not be legally taken in to consideration for awarding penalty to the appellant. August Supreme Court of Pakistan in its judgment reported as 2023 SCMR 603 has observed as below:-

“10. The scrutiny and analysis of the aforesaid Rules and the procedure set forth therein (present or repealed) unambiguously divulge that the right of proper defence and cross-examination of witnesses by the accused is a vested right. Whether the

evidence is trustworthy or inspiring confidence could only be determined with the tool and measure of cross-examination. The purpose of the cross-examination is to check the credibility of witnesses to elicit truth or expose falsehood. When the statement of a witness is not subjected to the cross-examination, its evidentiary value cannot be equated and synchronized with such statement that was made subject to cross-examination, which is not a mere formality; but is a valuable right to bring the truth out. If the inquiry officer or inquiry committee is appointed for conducting inquiry in the disciplinary proceedings, it is an onerous duty of such Inquiry Officer or Inquiry Committee to explore every avenue so that the inquiry may be conducted in a fair and impartial manner and should avoid razing and annihilating the principle of natural justice which may ensue in the miscarriage of justice. The possibility cannot be ruled out in the inquiry that the witness may raise untrue and dishonest allegations due to some animosity against the accused which cannot be accepted unless he undergoes the test of cross-examination which indeed helps to expose the truth and veracity of allegations. The whys and wherefores of cross-examination lead to a pathway which may dismantle and impeach the accurateness and trustworthiness of the testimony given against the accused and also uncovers the contradictions and discrepancies. Not providing an ample opportunity of defence and depriving the accused officer from right of cross-examination to departmental representative who lead evidence and produced documents against the accused is also against Article 10-A of the Constitution in which the right to a fair trial is a fundamental right. What is more, the principles of natural justice require that the delinquent should be afforded a fair opportunity to coverage, give explanation and contest it before he is found guilty and condemned. The doctrine of natural justice is destined to safeguard individuals and whenever the civil rights, human rights, Constitutional rights and other guaranteed rights under any law are found to be at stake, it is the religious duty of the Court to act promptly to shield and protect such fundamental rights of every citizen of this country. The principle of natural justice and fair-mindedness is grounded in the philosophy of affording a right of audience before any detrimental action is taken, in tandem with its ensuing constituent that the foundation of



any adjudication or order of a quasi-judicial authority, statutory body or any departmental authority regulated under some law must be rational and impartial and the decision maker has an adequate amount of decision making independence and the reasons of the decisions arrived at should be amply well-defined, just, right and understandable, therefore, it is incumbent that all judicial, quasi-judicial and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principle of natural justice. (Ref: Sohail Ahmad v. Government of Pakistan through Secretary of Interior Ministry, Islamabad and others (2022 SCMR 1387) and Inspector General of Police, Quetta and another v. Fida Muhammad and others (2022 SCMR 1583)."

8. Moreover, the available record does not show that final show-cause notice alongwith inquiry report was given to the appellant. Although there exist no provision in Police Rule, 1975 whereby giving final show-cause notice alongwith inquiry report was required, however worthy apex court in its judgment reported as PLD 1981 Supreme Court 176 has held that the rules devoid of provision of final show-cause notice alongwith inquiry report were not valid rules. Similarly, this Tribunal has already delivered a judgment in Appeal No. 1040/2014 titled "*Gulab Khan versus Provincial Police Officer*" decided on 26.09.2017 wherein it has been decided that the issuance of final show-cause notice alongwith inquiry report is must under police rules. Non issuance of final show cause notice and non-supply of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as in such a situation, he was not in a position to properly defend himself in respect of the allegations leveled against him. Keeping in

view the facts and circumstances of the case, conducting of de-novo inquiry is necessary for just and right decision of the issue in question.


9. In view of the above discussion, the impugned orders are set-aside and the matter is remitted back to the competent Authority for conducting of de-novo inquiry in accordance with relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings by providing him opportunity of self defence as well as personal hearing. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

19.01.2024



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)


Naeem Amin


ORDER
19.01.2024

Appellant alongwith his counsel present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the impugned orders are set-aside and the matter is remitted back to the competent Authority for conducting of de-novo inquiry in accordance with relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings by providing him opportunity of self defence as well as personal hearing. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
19.01.2024


(Muhammad Akbar Khan)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)