

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1926/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Abdul Haleem, Ex-Constable No.867, District Charsadda.

.... (*Appellant*)

VERSUS

1. Regional Police Officer, District Mardan.
2. District Police Officer, Charsadda

.... (*Respondents*)

Mr. Ali Azim Afridi  
Advocate

...

For appellant

Mr. Muhammad Jan  
District Attorney

...

For respondents

Date of Institution.....20.09.2023

Date of Hearing.....19.12.2023

Date of Decision.....19.12.2023

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:

**“It is therefore humbly prayed that on acceptance of this appeal:**

1. The impugned order dated 12/09/2023 of respondent No.1; premised upon an appeal preferred against the order dated 06.07.2023 passed by respondent No.2; may please be set-at-naught and the appellant may please be restored with all back-cum-consequential benefits.
2. Any such order be passed with the court/tribunal deems fit and appropriated as the circumstances may require for determination of the subject at hand”.

2. Brief facts of the case are that appellant was serving as Constable and was posted in Mandani as Gunner with SHO P.S Mandani. While serving in the said capacity, charge sheet alongwith statement of allegations were issued to him that he had links with smugglers and was involved in corrupt practices. That after issuance of show cause notice, he was dismissed from service vide order dated 06.07.2023. Feeling aggrieved, he filed departmental appeal , which was rejected vide order dated 12.09.2023 by the Regional Police Officer, Mardan, therefore, he approached this Tribunal by filing 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 appellant was condemned unheard in violation of settle norms and rules on the subject because he was not provided with an opportunity of confronting evidence, if any, used against him. He further argued that impugned order was issued just on the basis of assumption, having no nexus with the reality. He further argued that the Fielder car was in use of SHO, who used it for patrolling purpose and not in the personal use of the appellant, so allegations levelled against the appellant are baseless.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that while posted as gunner to SHO Police Station Mandani, the appellant reportedly developed links with international drug peddlers and was often seen performing duties in the area in a Fielder Car as well as receiving illegal gratification from smugglers. In this regard he was issued show cause notice, reply to which was received and found unsatisfactory. Then he was issued charge



sheet along with statement of allegations and enquiry was conducted through Mr. Sanobar Khan, DSP. During course of enquiry, enquiry officer obtained CDR of the appellant whereby he was found to have contacts with drug peddlers. Thereafter, appellant was issued final show cause notice to which he submitted reply which was found unsatisfactory, therefore, he was awarded major punishment of dismissal from service.

6. Perusal of record reveals that appellant was serving as Constable in respondent department when vide order No.196PA dated 24/03/2023 he was charge sheeted on the allegations that he while posted as gunner to S.H.O Police Station Mandani reportedly had links with international drugs peddlers and often witnessed performing duties in their area in a Fielder Car and receiving kick backs from smugglers. Appellant specifically in reply to charge sheet mentioned that fielder car was in the use of S.H.O who used it for patrolling purpose and appellant had never went out of Police Station alone and always went out in the company of SHO. Appellant also denied from allegations of having linkages with international drug peddlers. Inquiry Officer obtained written statement of SHO with whom appellant remained gunner and elders of locality, which are in favor of the appellant. It means that no one recorded his statement against the appellant. Inquiry officer held the appellant responsible for misconduct on the basis of CDR data. The first question is that where from respondent came to know about international drugs peddlers and cell phone number in their use because on record no detail of any criminal narcotics cases registration against alleged narcotics drug peddlers is available. Secondly through which source inquiry officer came to know about alleged drug peddlers cell phone number and dates of contact which was made basis for connecting appellant with them. Moreover, when appellant in clear words mentioned that Fielder car was in use of SHO, then it is incumbent upon the inquiry officer to associate SHO with inquiry proceeding for confirmation or otherwise of this; non association of the SHO with inquiry on this



point creates further dent in the inquiry. Appellant on the basis of CDR report was awarded major punishment of dismissal from service which is not in accordance with rules and law on the subject as no opportunity of hearing, defense and cross examination was provided to the he which means appellant was condemned unheard.


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 had 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 the absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of '*audi alteram partem*' was always deemed to be embedded 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 impugned order and reinstate appellant into service for the purpose of denovo inquiry.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19<sup>th</sup> day of December, 2023.*

  
(FAREEHA PAUL)  
Member (E)


\*Kaleemullah

  
(RASHIDA BANO)  
Member (J)

18.12.2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Assistant Advocate General for the respondents present.

2. Learned counsel for the appellant requested for adjournment in order to further prepare the brief. To come up for arguments on 19.12.2023 before the D.B. Parcha Peshi given to the parties.

  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)

\*Kaleemullah\*

**ORDER**

19.12.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to set-aside impugned order and reinstate appellant into service for the purpose of denovo inquiry.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19<sup>th</sup> day of December, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah\*