

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT SWAT

Service Appeal No. 1675/2022

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

Muhammad Ali, Ex Constable NO.765) S/O Muhammad Nazir r/o
Faizabad Saidu Sharif District Swat c/o S.P Elite Force Malakand Region
Swat. (Appellant)

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
2. The Additional Inspector General of Police, Elite Force/Commandant Elite Force Police Khyber Pakhtunkhwa, Peshawar.
3. Deputy Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.
4. The Superintendent of Police Elite Force, Malakand Region Swat.
..... (Respondents)

Mr. Hammad Hussain
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....25.11.2022
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 the instant service appeal, the impugned order dated 26.10.2022 issued by Superintendent of Police Elite Force, Malakand region, Swat as well as order dated 10.11.2022 may kindly be set aside and the appellant may please be re-instated into service with all consequential/back benefits.”




2. Brief facts of the case, as given in the memorandum of appeal, are that appellant is serving as constable in police department under the command of Superintendent of Police, Elite Force Malakand Region, Swat. During service appellant was charged in case FIR No. 308 U/S 324/34/337 A(IV)337-F dated 30.04.2022 at Police Station Saidu Sharif, Swat. Departmental proceedings were initiated against the appellant and he was dismissed from service vide impugned order dated 26.10.2022. Feeling aggrieved, appellant filed departmental appeal on 31.10.2022 which was rejected on 10.11.2022, 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 impugned orders are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside. He contended that no regular inquiry was conducted by the respondents and even no opportunity of self-defence was provided to him. He further contended that the department was in knowledge about the fact that appellant was in judicial lockup and the department could not communicate charge sheet/statement of allegation and show cause notice to the appellant nor statement of the appellant was recorded. He further contended that no opportunity of personal hearing was afforded to the appellant and he was condemned unheard, which is clear violation of the norms of justice. Reliance is placed on 2019 PLC (CS) 255.

5. Conversely, learned District Attorney contended that the appellant was treated in accordance with law and rules. He further contended that appellant



was charged in FIR No. 308, he was also remained absent from lawful duty without any leave or prior permission from the competent authority with effect from 26.04.2022 till 28.10.2022. In this regard inquiry was conducted, by appointing Mr. Fahad Khan, DSP as inquiry officer to dig out the real facts of the case after fulfilling all codal formalities the appellant was found guilty. He submitted that departmental enquiry and judicial trial are two separate matters which can be run parallel without affecting each other.

6. Perusal of record reveal that appellant was serving as constable in the respondent department when he was charged in criminal case bearing FIR No.308 U/S 324/34/337-F(ii)(vi)A(iv)/15-AA PPC of Police Station Saidu Sharif, Swat, who was arrested by the Police and was behind the bar. Appellant was dismissed from service on ground of his involvement in criminal case and absence from duty vide impugned order dated 26.10.2022 against which appellant's departmental appeal was also rejected vide impugned order dated 10.11.2022.

7. It is admitted fact that respondent department had knowledge about involvement of appellant in criminal case then to proceed with the allegation of absence does not make sense. Main allegation against the appellant is his involvement in criminal case bearing FIR No.308 u/s 324/34/337-FA(iv)/15-AA PPC of Police Station Saidu Sharif, Swat dated 30.04.2022. At the time of conclusion of departmental inquiry against the appellant said criminal case was pending adjudication in the competent court of law and was not yet decided then in such a situation it will be appropriate to keep pending the same till the conclusion of criminal trial, but respondent in hurry awarded to the appellant impugned penalty of dismissal from service, which is not in accordance with the principal of justice and law on the subject.




7. It is also evident from the inquiry report that appellant was behind the bar during proceeding of the inquiry and no chance of self-defense and cross examination was provided to the appellant which is the foremost requirement of fair trial. Appellant was acquitted vide judgment dated 25.10.2022. The vary reason/basis upon which appellant was proceeded comes to an end as he was acquitted from charges leveled against him in a criminal case.

8. 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 on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.

9. 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.

10. For what has been discussed above, we set aside the impugned orders and reinstate the appellant by converting major penalty of dismissal from service into minor penalty of stoppage of two annual increments and treat the intervening period as leave without pay. Costs shall follow the event. Consign.

11. *Pronounced in open court at camp court swat and given under our hands and seal of the Tribunal on this 7th day of December, 2023.*


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



(RASHIDA BANO)
Member (J)
Camp Court Swat


ORDER

07.12.2023 1 Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Mr. Niaz Gul, DSP (Legal) for the respondents present.

2. Vide our detailed judgement of today placed on file, we set aside the impugned orders and reinstate the appellant by converting major penalty of dismissal from service into minor penalty of stoppage of two annual increments and treat the intervening period as leave without pay. 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 7th day of December, 2023.*


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


(RASHIDA BANO)
Member (J)
Camp Court Swat