

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6876/2020

BEFORE: MR. KALIM ARSHAD KHAN... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Zahid Ali, Ex-Senior Clerk, Special Branch, Peshawar. (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa, Peshawar. (Respondents)

Mr. Noor Muhammad Khattak
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....18.01.2020
Date of Hearing.....08.01.2024
Date of Decision.....08.01.2024

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:

“That on acceptance of this appeal the impugned order dated 27.01.2020 may very kindly be set aside and the appellant be re-instated into service with all back benefits. Any other remedy which this August Tribunal deems fit that may also be awarded in favor of the appellant.”


2. Brief facts of the case are that appellant was serving in the Police Department when he was charged in FIR No.436 dated 24.05.2017 and accordingly was arrested. That on 28.07.2017 he was released on bail by the Peshawar High Court. That on 19.08.2018 he was dismissed from service, therefore, he filed Service Appeal No.590/2018 and vide order dated

04.10.2019 of this Tribunal, he was reinstated into service for the purpose of de-novo inquiry. Consequently, de-novo inquiry was conducted and charge sheet alongwith statement of allegations were issued. That show cause notice was also issued which was replied by the appellant. That vide impugned order dated 27.01.2020, he was dismissed from service. Feeling aggrieved, he filed departmental appeal, which was not responded, 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.

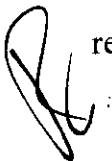
4. Learned counsel for the appellant argued that the impugned order dated 27.01.2020 was against law, facts and norms of natural justice, hence, liable to be set aside. He submitted that the appellant had not been treated in accordance with law and rules and the respondents had violated Articles-4 & 10 of the Constitution of Islamic Republic of Pakistan, 1973. Further argued that no regular inquiry had been conducted before issuing the impugned order dated 27.01.2020 which act was not in accordance with law. Lastly, he concluded that no chance of personal hearing had been given to the appellant and the impugned order was liable to be set aside.

5. Conversely, learned District Attorney submitted that proper procedure under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was adopted. He submitted the impugned order was in accordance with law and rules and no violation had been committed. Further submitted that after proper de-novo inquiry and after fulfillment of all codal formalities, the impugned order was passed, hence, the appellant had rightly been dismissed from service. Therefore, he requested for dismissal of the instant service appeal.



6. Perusal of record reveals that appellant was serving in respondent/department as Senior Clerk when on 24.05.2017, he was charged in a criminal case registered vide bearing FIR No.436 under sections 460/452/302 PPC of Police Station Mathra, Peshawar. Appellant was arrested on the day of occurrence and was released on bail by worthy Peshawar High Court vide order 28.07.2017. Appellant was issued with charge sheet and statement of allegation upon his involvement in the criminal case and after observance of codal formalities, he was dismissed from service vide order dated 19.01.2018, which dismissal was challenged by the appellant in service appeal bearing No.590/2018, which was partially accepted for purpose of de-novo inquiry vide order dated 04.10.2019. Appellant was again charge sheeted on 22.11.2019 with the same charge of involvement of that FIR No.436 mentioned above, inquiry committee, after providing chance of hearing and defense, submitted report wherein appellant was held responsible for misconduct on the ground of his involvement in the criminal case.

7. Authority vide order dated 27.01.2020 imposed upon appellant major penalty of dismissal from service. The only charge against the appellant is his involvement in a criminal case bearing FIR No.436 dated 24.05.2017 under section 302/457 PPC on the basis of which appellant was departmentally proceeded culminating into his dismissal from service vide impugned order. Appellant was also tried by the competent court of law on the charge mentioned in FIR No.436, and after completion of trial, the appellant was acquitted from the charge on the ground that appellant, in his self-defense, opened fire upon the deceased, who had entered his house at night. The relevant para of the judgment of trial court i.e. AD&SJ VII Peshawar dated 29.11.2023 is reported here for ready reference;



Keeping in view the state of affairs discussed above, the prosecution badly failed to discharge its duty of proving the charge against the accused, rather sufficient material is available on case file to substantiate initial report of the accused to the effect that the occurrence has taken place in exercise of right of private defence of body and property which right of private defence was further fortified even to the extent of causing death of trespasser, therefore, the accused facing trial Zahid Ali s/o Sardar Ali is hereby acquitted of the charges leveled against him vide captioned case FIR.

8. It is also pertinent to mentioned here that in accordance with S.96 PPC general exception mentioned in Pakistan Penal Code 1860 act done in private defense is not offense section 96 & 97 are given as under.

“Nothing is an offence which is done in the exercise of a right of private defense”.

“Right of private defense of the body and of property. Every person has a right subject to restriction contained in Section 99, to defend, First; His own body, and the body of any other person, against any offence the human body. Second; the property, whether moveable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass. The trial court in its judgment dated 29.11.2023 held in a clear words that appellant exercise his right of self and private defense. So the very reason on the basis of which appellant was departmentally proceeded that commission of offence mentioned in FIR No.436 declare not an offence by the trial court of that criminal case and there is no other charge against the appellant then appellant deserve reinstatement.”

9. 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

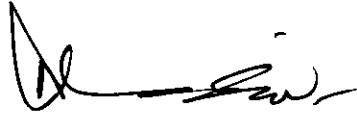


person entitled to continue his service, especially when the occurrence had not taken place during discharge of official duties nor is ~~there~~ ^{there} any allegation that the appellant had misused his official position.

10. It is established from the record that charges of his involvement in murder case ultimately culminated in 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.

11. For what has been discussed above, we are unison to set aside the impugned order and reinstate appellant with all back benefits. Costs shall follow the event. Consign.

12. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 8th day of January, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(RASHIDA BANO)
Member (J)