

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
AT CAMP COURT ABBOTTABAD

Service Appeal No. 555/2022

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

Qasim Chandio (Ex-Constable No. 732, District Police Haripur) R/o
 Village Darwaish, Tehsil & District Haripur. (*Appellant*)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
 2. Regional Police Officer, Hazara Region, Abbottabad.
 3. District Police Officer, Haripur.
- (*Respondents*)

Present:

Muhammad Aslam Tanoli
 Advocate --- For appellant

Asif Masood Ali Shah,
 Deputy District Attorney --- For respondents

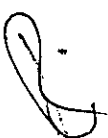
Date of Institution.....11.03.2022
 Date of Hearing..... 23.01.2024
 Date of Decision.....23.01.2024

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 under;

“On acceptance of the instant service appeal both impugned orders dated 04.01.2022 and 11.02.2022 of respondents may kindly be set aside and appellant be reinstated in his service from the date of dismissal with all consequential service back benefits.”

02. Our this single judgment shall dispose of the instant service appeal as well as connected service appeal bearing No. 554/2022 titled “Shahzeb Vs.



Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others as common question of law and facts are involved therein.

03. Brief facts, as averred in the memorandum of service appeal, are that the appellant was serving as Constable in the police department and posted at Police Station Ghazi Haripur. A complaint was filed against the appellant and other officials of PS Ghazi that they were picked up an innocent citizen namely Muhammad Tariq S/o Gazal Ghani R/o Charsadda. Based on the complaint, disciplinary proceedings were initiated against the appellant and he was issued charge sheet and statement of allegations vide order dated 09.12.2021; that Mr. Fida Muhammad Khan SDPO Circle Hqrs. Haripur was nominated as inquiry officer who conducted inquiry and the appellant was awarded minor punishment of "stoppage of two years increment with cumulative effect" vide order dated 04.01.2022 by respondent No. 3 (District Police Officer, Haripur). Thereafter, the respondent No. 2 i.e Regional Police Officer, Hazara Region, Abbottabad issued show cause notice dated 27.01.2022 which was replied by the appellant on 31.01.2022 at his own and he denied the allegations leveled against him. The respondent No. 2 issued impugned order dated 11.02.2022 whereby the appellant was dismissed from service; that after obtaining dismissal order dated 11.02.2022 from the respondent No. 2 it disclose to appellant that earlier the respondent No. 3 vide his order dated 04.01.2022 had awarded him the minor punishment of "stoppage of two increment with cumulative effect". The appellant filed application on 15.02.2022 to respondent No. 3 for issuance of order dated 04.01.2022 which was delivered to the appellant on 16.02.2022. Thereafter the appellant filed the instant service appeal on 11.03.2022.

04. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney and have gone through the record with their valuable assistance.

05. Learned counsel for the appellant contended that the impugned orders dated 04.01.2022 & 11.02.2022 are illegal, unlawful against the norms of natural justice hence liable to be set aside; that no proper inquiry has been conducted nor witnesses were examined in presence of the appellant nor the appellant was ever confronted with any compliant during departmental inquiry; that opportunity of personal hearing was not provided to the appellant. He has therefore, been condemned unheard; that the impugned order of appellate authority is contrary to the law as laid down in Police Rules, 1975 read with Section 24-A of General Clauses Act, 1897 and Article 10 A of the Constitutional of Islamic Republic of Pakistan.

06. Learned Deputy District Attorney for the respondents controverted the assertions made in the service appeal as well as arguments of the learned counsel for appellant and contended that the order of respondents dated 04.01.2022 & 11.02.2022 are quite legal, in accordance with Khyber Pakhtunkhwa Police Rules, 1975 (amended 2014) based on facts, evidence and principles of natural justice, hence the orders are lawful and maintainable; that the appellate authority abode by the law/rules and took into consideration all facts, circumstances and relevant evidence while passing the punishment; that the appellant was treated in accordance with law, rules, policy & norms of natural justice; that proper departmental

inquiry was conducted into the allegations against the appellant. He was also provided opportunity of self defense but he failed to prove his innocence. Since all the codal formalities were fulfilled before passing the impugned order, the appeal in hand may therefore, be dismissed.

07. Perusal of record reveals that disciplinary proceedings were initiated against the appellant upon complaint of private person and accused in case FIR No.304 under section 9C CNSA dated 19.06.2021 registered at Police Station Ghazi who submitted application on 2.11.2021 to the DIG Hazara by mentioning therein that appellants along with one others while posted at Police Station Ghazi picked up him from Haripur by pass near Panian and implicate him in a heinous nature case vide FIR No.304 dated 19.06.2021 under section 9C CNSA of PS Ghazi and also took from his pocket Rs.247380 and demanded Rs.100000/- from him for his release which was brought by his brother in law Nisar who handed over to them, wherein appellants denied from all the allegation by submitting their replies but without considering plea of the appellants they were awarded punishment of stoppage of two years increments with cumulative effect vide order 4.1.2022.

08. Regional Police Officer at his own requisitioned record without falling of any appeal or revision by the appellant issued show cause notice dated 27.1.2022 to the appellant by mentioning that he is not satisfied with award of minor punishment of stoppage of two years increments with cumulative effects which does not commensurate with alleged misconduct and asked him to show cause why his punishment will not be enhanced as misconduct as provided in the Police Rules, 1975 which read as:

1. *That by taking cognizance of the matter, the undersigned as competent authority under the said rules, has decided to take action against you by awarding one or more of the kind punishments as provided in the rules.*
2. *Now, you are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with Rule 11-A of the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred above.*
3. *You should submit reply to this Show Cause Notice within 07 days of the receipt of the notice failing which an ex-parte action shall be taken against you.*

It is pertinent to mention Regional Police Officer, Hazara at his own, without any application from any quarter take cognizance of the matter even before delivery of copy of order of stoppage of two years increments to appellant which show interest of the RPO Hazara in the matter which is not warranted by an officer of his caliber and level. It is also important to note that inquiry officer during inquiry recorded statement of Tariq, his wife Mst. Naila, Nisar Ahmad brother in law of Tariq, Muhammad Sajid, Yasir Son in law of Tariq. Their statement were neither recorded in presence of appellants nor any chance of cross examination upon them was provided to appellants which is against the basic rule and principle of fair trial and inquiry which means appellants were condemned unheard and RPO vide impugned order dated 04.02.2022 imposed upon appellant major punishment of dismissal from service by enhancing it from minor punishment of stoppage of two years increments with cumulative effect,


09. 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 has 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 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.

10. As a sequel to above, the impugned orders are set aside and the appellants are reinstated in service for the purpose of denovo enquiry by providing chance of hearing and defence and conclude the inquiry within 60 days after receipt of copy of this order. The issue of back benefits shall be decided subject to the outcome of denovo enquiry. Costs shall follow the events. Consign.

11. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 23rd day of January, 2024.*


(Muhammad Akbar Khan)
Member (B)
Camp Court Abboottabad


(Rashida Bano)
Member (B)
Camp Court Abboottabad

ORDER

- 23.01.2024 1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Israr Shah, ASI for the respondents present.
2. Vide our detailed judgment of today placed on file, the impugned orders are set aside and the appellant is reinstated into service for the purpose of denovo enquiry by providing chance of hearing and defence and conclude the inquiry within 60 days after receipt of copy of this order. The issue of back benefits shall be decided subject to the outcome of denovo enquiry. Costs shall follow the events. Consign.
3. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 23rd day of January, 2024.*



(Muhammad Akbar Khan)
Member (E)
Camp Court Abbottabad



(Rashida Bano)
Member (J)
Camp Court Abbottabad