

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.209/2022

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

**Sohail Ahmad, Ex-Drill Instructor/Constable No.44, Police Training
College, Hangu. ... (Appellant)**

VERSUS

1. Capital City Police Officer, Peshawar.
2. Superintendent of Police Headquarters, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
... (Respondents)

Mr. Syed Noman Ali Bukhari
Advocate ... For appellant

Mr. District Attorney
District Attorney ... For respondents

Date of Institution.....09.02.2022
Date of Hearing.....12.12.2023
Date of Decision.....12.12.2023

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 this appeal, the impugned orders dated 26.01.2022 of respondent No.1 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.”

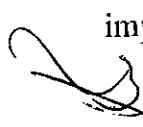
2. Brief facts of the case are that appellant while serving on deputation at Police Training College Hangu was dismissed from service on 15.03.2019 on the allegations of misappropriation of ammunition from PTC Kot, against



which after availing departmental remedy, the appellant approached this Tribunal by filing service appeal which was allowed vide judgment dated 23.06.2021. The appellant was accordingly reinstated in service and departmental proceedings were initiated by issuing charge sheet on 02.08.2021 which was replied by the appellant denying the allegations. Thereafter, appellant was dismissed from service and was also order to deposit the cost of stolen government ammunition into government of treasury. Feeling aggrieved he filed departmental appeal on 18.10.2021 which was rejected on 26.01.2022, hence, the instant service appeal.

2. 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 for the respondents and perused the case file with connected documents in detail.

3. Learned counsel for the appellant argued that the appellant had not been treated in accordance with law and rules. He further argued that impugned orders are against the law, facts, norms of natural justice and materials on record, hence not tenable in the eyes of law. He contended that no statement of witnesses have been recorded by the respondents nor chance of cross examination has been provided to the appellant and appellant was condemned unheard. He further contended that denovo inquiry was not completed in the stipulated period as per judgment of this Tribunal. He further argued that no opportunity of hearing was afforded to the appellant and he was condemned unheard. He submitted that no evidence was collected during so called inquiry regarding the involvement of the appellant in the alleged misappropriation, that the appellant was posted as constable as such had to serve in sub-ordination and was not responsible as alleged, hence the impugned order might be set aside.



4. Conversely, learned Deputy District Attorney argued that appellant was found involved in mis-appropriation of huge quantity of ammunition, therefore, disciplinary action was taken against the appellant and was rightly dismissed from service. He also argued that the inquiry was conducted in a legal manner by providing opportunity of hearing to the appellant. He further contended that after conducting of proper inquiry against the appellant, the inquiry committee came to the conclusion that the charges against the appellant were proved, therefore, competent authority has rightly dismissed from service.

6. Perusal of record reveals that the appellant while serving on deputation at Police Training Hangu and performing duty in Kot PTC Hangu was proceeded against departmentally on the allegation of missing 87369/- SMG rounds from the ammunition kot. Appellant alongwith two official were dismissed from service vide impugned order dated 30.09.2021. Appellant filed service appeal bearing No 931/2019 wherein impugned order was setaside by reinstating appellant into service vide judgment & order dated 23.06.2021. Respondent after receipt of judgment of this Tribunal reinstated the appellant into service for the purpose of denovo inquiry. Again Commandant Police Training College Hangu appoint Mr. Arshad Mehmood SP/Investigation as Enquiry Officer despite the fact that this Tribunal holds that competent authority for giving punishment to IHC is SSP/DPO/SP and not below of the rank of DIG. So again inquiry was initiated by an incompetent authority in accordance with schedule-1 of Police Rules, 1975. Moreover, it is mentioned in inquiry report of Mr. Arshad Mehmood;

"The undersigned has come to the conclusion that the enquiry already proved against the accused officers/officials as they were found involved in embezzlement of Government property i.e 7.62 MM genuine



rounds of PTC Kot which caused to huge loss of Government exchequer. They have provided full opportunity of cross examination during enquiry but they failed to prove/show their blamelessness/innocence and grant loss to the Government exchequer. They being members of Police Force their professionalism is condemnable and their act are not apologize. As they are not permanent employees of PTC Hangu therefore, their home district may be communicated for giving major punishment as per rules.

The case registered against them have been cancelled from district Hangu and were sent to Anti Corruption Establishment in the year 2019, which is not properly pursue by District Police nor the complainant party i.e PTC Hangu staff and neither ACE made nay correspondence with local police the fresh up date of the case, up till now on that way not punishment given to the defaulter official in the criminal act.


So, from it is clear that no proper inquiry was conducted by the authority without providing opportunity of cross examination, self-defense and personal hearing was provided to the appellant despite direction by this Tribunal vide order dated 23.06.2021.

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 has held that in case of imposing major penalty, the principles of natural justice require 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 who was 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.

8. For what has been discussed above, we are unison to set aside the impugned orders dated 30.09.2021 and 26.01.2022 and reinstate the appellant for the purpose of denovo inquiry with direction to respondents to provide proper chance of self-defense, personal hearing and cross examination to the appellant to fulfill requirement of a fair trial. Respondents are further directed to conclude inquiry within 60 days of receipt of copy of this judgment. Costs shall follow the event. Consign.


9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER
12.12.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Mr. Mohammad Raziq, H.C for the respondents present.
2. Vide our detailed judgement of today placed on file, we are unison to set aside the impugned orders dated 30.09.2021 and 26.01.2022 and reinstate the appellant for the purpose of denovo inquiry with direction to respondents to provide proper chance of self-defense, personal hearing and cross examination to the appellant to fulfill requirement of a fair trial. Respondents are further directed to conclude inquiry within 60 days of receipt of copy of this judgment. Costs shall follow the event. Consign.
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(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)