

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
FAREEHA PAUL ...MEMBER (Executive)

Service Appeal No.1060/2022

Date of presentation of appeal.....27.06.2022
Dates of Hearing.....21.02.2024
Date of Decision.....21.02.2024

Muhammad Manzoor Khan (Ex-Constable/HC T.O Traffic Police Peshawar) resident of Village Qasim (Toru) District Mardan(*Appellant*)

Versus

1. **The Secretary** Home Department, Khyber Pakhtunkhwa, Peshawar.
2. **The Chief Traffic Officer**, Police Department, Peshawar.
3. **The Chief Capital Police Officer**, Peshawar.....(*Respondents*)

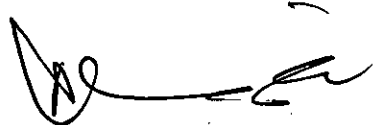
Present:

Mr. Muhammad Adam Khan, Advocate.....For appellant
Mr. Muhammad Jan, District Attorney.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 THE ORDER OF THE CTO/RESPONDENT NO.2, WHEREBY THE APPELLANT IS AWARDED THE PUNISHMENT OF DISMISSAL FROM SERVICE AND THE PERIOD OF ALLEGED ABSENCE PERIOD IS TREATED WITHOUT PAY.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, the appellant was appointed as Constable (BPS-05) in the Police Department. That respondent No.2 vide endorsement No.1703/PA dated 03.12.2021 served the appellant with charge sheet and summary of allegations of misconduct. That the appellant submitted reply in his defense and denied the allegations. That vide order dated 14.02.2022, the appellant was dismissed from service by treating the period w.e.f 01.12.2021 till 03.12.2021 as leave without pay. Feeling aggrieved,



he filed departmental appeal on 07.03.2022, which was not responded, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were issued notices. They put appearance and submitted reply.

3. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order.

5. From the record, it is evident that the appellant was serving in the Police Department and was on duty at Shimali Market, Hayatabad, Peshawar. He was issued charge sheet on the following allegations:

- "i. That you have stolen the wallet contained of cash amount of Rs.12000/-, CNIC, Service Card, ATM Card of ASI Nusrat Khan which was lying under his pillow at P.P Industrial Hayatabad.*
- ii. That you were also seen in CCTV Cameras of the bank while drawing the amount of Rs.1000/- through ATM from his (ASI Nusrat Khan) account.*
- iii. That your this act has badly tarnished the image of police department.*
- iv. That you have also absented yourself from 01.12.2021 till date, from your duty point Shimali Market.*
- v. All this amounts to gross misconduct on your part."*

The said charge sheet was replied by the appellant, wherein, he had denied the charges of theft. As regards the charge of absence, the appellant had stated that being indisposed, he was unable to attend the duties. The appellant has annexed medical prescriptions regarding his illness. After issuance of the said charge sheet, the appellant was dismissed from service vide order dated 14.02.2022. File shows that inquiry had been conducted and the Inquiry Officer had not tried to record statement of any witness including the statement of (ASI Nusrat Khan) whose

wallet was allegedly stolen by the appellant. He had also not been not asked to prove his innocence regarding his illness. Even admittedly no show cause notice was issued after the alleged inquiry. The record is silent in respect of proper inquiry, show cause notice which shows that no proper inquiry was conducted and all the proceedings were done against the rules. Appellant was not afforded an opportunity of cross examination or even personal hearing as is required under rules rendering the entire departmental action fruitless and enabling the Tribunal to remit the matter back to the Competent Authority to conduct de-novo inquiry.

6. Keeping in view the entire record, we are left with no option but to accept this appeal by setting aside the impugned orders and reinstating the appellant for the purpose of de-novo inquiry to be conducted within 60 days of the receipt of this judgment. Needless to mention here that the appellant shall be dully associated with the inquiry proceedings, providing him opportunity of cross examination and then proceeding and concluding the same in accordance with law and rules. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Consign.

7. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 21st day of February, 2024.*



KALIM ARSHAD KHAN
Chairman





FAREEHA PAUL
Member (Executive)

15.12.2023 1. Appellant in person present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for argument on 21.02.2024 before D.B. P.P given to the parties.

SCANNED
KALEEM
PESHAWAR


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)


KaleemUllah


ORDER

21st Feb. 2024 1. Learned counsel for the appellant and Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Aamir Sayyaf, DSP (Legal) for the respondents present.

2. Vide our detailed judgment of today placed on file, we are left with no option but to accept this appeal by setting aside the impugned orders and reinstating the appellant for the purpose of de-novo inquiry to be conducted within 60 days of the receipt of this judgment. Needless to mention here that the appellant shall be dully associated with the inquiry proceedings, providing him opportunity of cross examination and then proceeding and concluding the same in accordance with law and rules. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 21st day of February, 2024.*


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Mutazem Shah