

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No. 1552/2023

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN  
MISS FAREEHA PAUL ... MEMBER(E)

Yaseen Khan (Ex-Constable No. 549/1029) son of Bahadar Khan permanent resident village Kharkanai, Warsak Tehsil Adenzai, District Dir Lower, currently residing at House No. 1017, Nothia Jadid, Nasir Bagh, Mohallah Hafiz Minhaj Uddin, Peshawar. .... (Appellant)

Versus

1. Deputy Inspector General of Police, Telecommunication and Transport, Khyber Pakhtunkhwa, Police Lines Peshawar.
2. Superintendent of Police Telecommunication and Transport, Khyber Pakhtunkhwa, Police Lines Peshawar.
3. Muhammad Saeed Deputy Superintendent of Police, Telecommunication and Transport, Khyber Pakhtunkhwa, Police Lines Peshawar (Inquiry Officer).
4. Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
5. Government of Khyber Pakhtunkhwa through Secretary Home Peshawar. .... (Respondents)

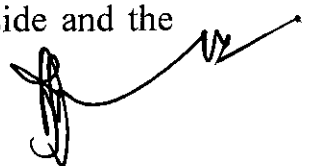
Mr. Kashif Naseem,  
Advocate ... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney ... For respondents

Date of Institution.....	24.07.2023
Date of Hearing.....	19.02.2024
Date of Decision.....	19.02.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 10.07.2023 whereby departmental appeal of the appellant, filed against the order dated 02.06.2023 of his dismissal from service, was rejected. It has been prayed that on acceptance of the appeal, the impugned orders of respondents No. 1 & 2 might be set aside and the



appellant might be reinstated into service from the date of his dismissal with all back benefits, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant ,was appointed as constable on 27.05.2013 in BPS- 07. He served in the Police Department for more than 10 years and during his service, he was not awarded any minor or major punishment and had unblemished service record. Initially he was deputed in Lower Dir and in the year 2022, he was transferred on deputation to Telecommunication and Transport Department and was serving in control room Dir Lower till his dismissal. After the incidents of 9<sup>th</sup> May, a person namely Jawad Ali S/O Badshah Zaman R/O Oski Loora Kharki, Ouch, District Lower Dir filed a complaint against the appellant that he had WhatsApp contact with him and through a message he told him that he had been nominated in the 9<sup>th</sup> May 2023 protest/incident. To exclude his name from the list of protestants, the appellant made an unlawful demand from him. On 31.05.2023, the appellant received a call from DPO office and was told that the DPO wanted to meet him. When he reached the office of the DPO Lower Dir, he was told by the DPO that a complaint had been filed against him and was detained in quarter guard. When the appellant asked for the details of the complaint, the DPO clearly stated that he did not know the details of the complaint. On the same day i.e. 31.05.2023, the cell phone of the appellant was taken into custody by the DSP Headquarter. The appellant was kept in illegal confinement in quarter guard till 02.06.2023. When he was brought out of the quarter guard,



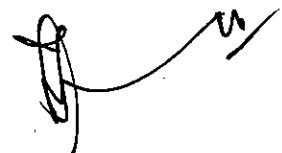
respondent No. 3 handed over charge sheet and statement of allegations to the appellant and was asked to give written reply to the same, however, complaint was not provided to him. He submitted his written reply and clarified his position. According to him, the complainant was involved in 9<sup>th</sup> May protest incident and his name was in the list of people involved in the protest and attacks on different installations and he asked the appellant to help in removing his name from that list. In response, the appellant told him that he was a constable and working in control room and had no authority to do the same. According to the appellant, being a neighbor he had brotherly relations with the complainant. The whole inquiry proceedings were carried out in 15 to 20 minutes and on the same day i.e 02.06.2023, in the evening, the appellant was set free from the quarter guard and order of his dismissal was handed over to him. Respondent No. 2 was also present at the time of inquiry with the Inquiry Officer. Feeling aggrieved, the appellant filed a departmental appeal on 06.06.2023 before the respondent No. 1 which was rejected on 10.07.2023; hence the instant service appeal.

3. Respondents were put on notice but they did not submit their written reply till the date fixed for hearing. On the request of the learned counsel for the appellant, the names of respondents No. 3 & 5, being unnecessary parties, were deleted from the panel of respondents and respondents No. 1, 2 and 4 were placed ex-parte vide order sheet dated 01.11.2023 on the ground that despite being served with notices, no one was present. Before initiating the process of hearing of the instant service appeal, an application No. 114/2024, dated 30.01.2024 was placed before the bench vide which a



request was made for setting aside the ex-parte proceedings. Even no one from the applicants of the said application bothered to put appearance. The learned Deputy District Attorney was also not aware of any such application, nor he had a copy of the same with him. As no one was present on behalf of the respondents and the application was not within time, the same was dismissed. However, the learned Deputy District Attorney was granted full opportunity to present, defend and argue the case which he availed and argued accordingly.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders were arbitrary, whimsical, illegal, fanciful, and void ab-initio, hence not tenable in the eyes of law and liable to be set aside. He further argued that the appellant was neither served with any show cause notice nor was given any opportunity to be fully associated with the inquiry proceedings. Neither any statements were recorded on oath nor any opportunity was provided to him to cross examine the complainant or any other witnesses produced against him. Learned counsel contended that even the complaint was not provided to him and the whole proceedings were carried out in just 15-20 minutes in an extremely haphazard manner. He further argued that the appellant was kept in illegal confinement and was punished twice for one and the same offence and the whole proceedings were carried out at the time when he was detained in illegal custody and was not provided ample opportunity to present his defence. He requested that the appeal might be accepted as prayed for.



5. As the learned Deputy District Attorney neither had any record of the case with him, nor any departmental representative attended the Tribunal at the time of hearing, he relied on the record presented by the learned counsel for the appellant. He, however, supported the impugned order.

6. Arguments and record presented before us reveals that the appellant, in his capacity as Constable, while serving in the Telecommunication and Transport Department of the provincial police, was proceeded against departmentally on the basis of a complaint filed against him and was dismissed from service. When the complaint was received, the appellant was called by the District Police Officer Lower Dir on 31.05.2023 and was detained in the Quarter Guard. His cell phone was also taken into custody by the DSP Headquarter. On 01.06.2023, he was served with a charge sheet with the allegation as follows:-

*“That Complainant Jawad Ali s/o Badshah Zaman r/o Oski Loora Kharki Ouch District Lower Dir submitted a complaint against you that you have whatapps Contact with him and through whatapps message you told him that you have been nominated in the 9<sup>th</sup> May 2023 protest/incident and to exclude his name from the list of protestant you have made unlawful demand from him.”*

He was given seven days to submit his written defence to the Inquiry Officer, Mohammad Saeed, DSP, Telecommunication and Transport Department. He submitted his reply to the charge sheet and on 02.06.2023, some inquiry was stated to have been conducted, the proceedings of which are however, not available on record nor produced and the appellant was dismissed from service on the same day. The order of dismissal from service




is silent whether any show cause notice was served upon him, which is mandatory under the rules. Moreover it also does not show that any opportunity of personal hearing was provided to the appellant by the Superintendent of Police Telecommunication & Transport before awarding the major punishment. Hence the legal requirements have not been fulfilled by the competent authority. It is quite strange that a major punishment has been awarded just within two days; on the first day, proceedings started and on the second day, major punishment of dismissal from service was awarded.

7. After going through the details of the case, it is evident that the respondents acted in an extremely arbitrary manner. They not only failed to fulfill the conditions of their own rules but also kept aside the requirements of a fair trial. They detained the appellant in the first instance and later on awarded major penalty of dismissal from service without proving the allegations against him. They failed to adopt the due process and the appellant was neither given a fair chance to present his case and defend himself nor any opportunity of cross examination was provided to him.

8. In view of the above discussion, the service appeal is allowed as prayed for. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19<sup>th</sup> day of February, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
Chairman


SA 1552/2023

Order

19<sup>th</sup> Feb. 2024 01. Mr. Kashif Naseem, Advocate for the appellant present.  
Mr. Asif Masood Ali Shah, Deputy District Attorney for the  
respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the  
service appeal is allowed as prayed for. Cost shall follow the  
event. Consign.

03. *Pronounced in open court in Peshawar and given under  
our hands and seal of the Tribunal on this 19<sup>th</sup> day of  
February, 2024. .*

  
(FAREEHA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
Chairman

\*Fazal Subhan PS\*