

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.883/2023

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

Muhammad Tahir, Sub Inspector, No. P/290 S/o Muhammad Akram R/o Mohallah Mitta Khel, Khesshgi Bala, P.P Kheeshgi Payan, Tehsil & District Nowshera.

.... (*Appellant*)

VERSUS

1. Inspector General of Police/ Provincial Police Chief, Central Police Officer, Khyber Road, Peshawar.
2. Commandant, Special Security Unit (CPEC) Khyber Pakhtunkhwa, Peshawar.
3. Deputy Commandant, Special Security Unit (CPEC) Khyber Pakhtunkhwa, Peshawar. .... (*Respondents*)

Mr. Khiyal Muhammad  
Advocate

.... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

.... For respondents

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Date of Institution..... 17.04.2023  
Date of Hearing..... 07.02.2024  
Date of Decision..... 07.02.2024

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:

**“On acceptance of this appeal, the impugned order dated 12.04.2023 and reduction in rank order dated 08.03.2023 may kindly be set aside and the appellant may please be restored/reinstated on his post of Inspector in service withal back benefits/consequently relief.”**


1. Brief facts of the case as given in the memorandum of appeal are that the appellant was inducted in police department as Constable on 25.08.1987 and

was promoted to the rank of Inspector. The appellant was performing his duties with zeal and zest. During service departmental proceedings were initiated against the appellant on the ground that he provided SSU official to private business man without proper permission of competent authority which culminated into reduction in rank from inspector to Sub-Inspector vide order dated 08.03.2023. Feeling aggrieved, he filed departmental appeal which was rejected on 12.04.2023, 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned orders passed by the respondents are *Corum non judice*, illegal, without jurisdiction, lawful authority and against the principle of justice, hence not tenable in the eyes of law. He further argued that in inquiry not proper procedure has been adopted and the appellant neither given any opportunity of defence nor cross examination of witnesses was provided to the appellant which against the law and rules. Lastly, he submitted that no opportunity of personal hearing was afforded to appellant and he condemned unheard. He therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant was proceeded against departmentally on the grounds of the he had provided SSU officials as gunner to a private businessman at Islamabad without any proper permission of the competent authority. A proper departmental enquiry into the matter was initiated against him by appointing Mr. Amir Hussain SP

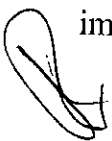


SSU, Mardan as enquiry Officer and after fulfillment of all codal formalities the competent authority awarded major penalty of reduction in rank.

6. Perusal of record reveals that appellant was enlisted as constable in respondent department on 25.08.1987 who was lastly promoted as Inspector. Appellant was served with charge sheet and statement of allegation on 21.12.2022 with the allegation that he had deputed/provided his gunner namely Akif Hussain No. 781, Usman No. 8085 and Kamran No. 906 for security of a private business man namely Sheryar Memon at Islamabad and he on the eve of his transfer from Mardan to Balakot took his gunner to Balakot without prior permission or order of his high-ups. Appellant properly replied charge sheet wherein appellant denied from the fact of giving his gunner to any businessman and stated that he himself was residing in rented house at Islamabad due to his enmity at his native village. Inquiry officer submitted report and found him guilty.

7. Authority without issuing final show cause notice imposed major punishment of reduction in rank from Inspector to Sub Inspector. Perusal of Enquiry report reveals that statement of Akif Khan, Constable No. 781, Usman No. 808 and Muhammad Kamran No. 906 were recorded by the Enquiry Officer neither chance of cross examination was provided to the appellant nor his statement were recorded in the presence of appellant which is against the basic rule of fair trial and inquiry. Moreover, inquiry officer also mentioned in inquiry about data of cell phone of constable which was also not provided to the appellant, which means appellant was condemned unheard. It is also pertinent to mention here that neither final show cause was issued nor any chance of personal hearing was provided to the appellant which is against the rules on the subject.


8. 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 alterm partem* was always deemed to be imbedded 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.

9. For what has been discussed above, we are unison to set aside the impugned order dated 08.03.2023 and appellate order dated 12.04.2023 with direction to the respondents to conduct denovo and provide proper chance of hearing, self defence and more specifically cross examination of fair trial with further direction to conclude inquiry within sixty days receipt of this order. Costs shall follow the events. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 7<sup>th</sup> day of February, 2024.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)


  
(RASHIDA BANO)  
Member (J)

**ORDER**

07.02.2024 1 Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Khayal Roz, Inspector for the respondents present..

2. Vide our detailed judgement of today placed on file, we are unison to set aside the impugned order dated 08.03.2023 and appellate order dated 12.04.2023 with direction to the respondents to conduct denovo and provide proper chance of hearing, self defence and more specifically cross examination of fair trial with further direction to conclude inquiry within sixty days receipt of this order. Costs shall follow the events. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 7<sup>th</sup> day of February, 2024.*

  
(Muhammad Akbar Khan)  
Member (E)

  
(Rashida Bano)  
Member (J)