

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

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

Service Appeal No.1675/2023

Date of presentation of appeal.....17.08.2023

Dates of Hearing.....22.02.2024

Date of Decision.....22.02.2024

Muhammad Kifayat Ullah S/O Muhammad Yousaf (Late) R/O Mohallah Istangol Village Koghuzi, Tehsil & District Chitral Lower (Ex. Sub Inspector Elite Force, Chitral).....(Appellant)

Versus

1. **Deputy Commandant**, Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. **Commandant**, Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. **Provincial Police Officer**, Khyber Pakhtunkhwa, Peshawar..(**Respondents**)

Present:

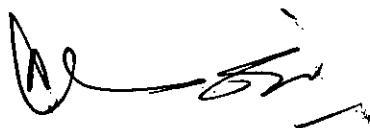
Mr. Arbab Saiful Kamal, Advocate.....For appellant

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

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 08.05.2023, WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE AND NOT TAKING ACTION ON DEPARTMENTAL APPEAL/REPRESENTATION DATED 15.05.2023 OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF THREE MONTHS.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, the appellant was appointed as Constable in the year 1991 and was promoted step wise to the post of Sub Inspector was, lastly posted as Incharge Platoon No.57 at Elite Force, Dir Lower, when on 24.04.2023, a bomb blast took place in Swat, wherein, a number of officials were martyred and a Constable namely Tariq Aziz (being in Platoon No.57) gave a statement on Media regarding the mentioned blast, accusing the officers for the mishap. That taking action on the said statement, the respondents issued show cause notice to the appellant for the



reason that Constable Tariq Aziz who gave the statement was under his command. That the appellant submitted reply to the show cause notice by explaining that the said Constable was on leave and that was his personal act. That vide order dated 08.05.2023, he was dismissed from service. That feeling aggrieved, he filed departmental appeal, 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. Perusal of record reveals that the mishap of bomb blast occurred in Swat on 24.04.2023, wherein several officials got martyred and an employee of Police Department namely Tariq Aziz gave a statement accusing his officers for the occurrence. In response, the authority held the appellant guilty on the basis of that statement for the reason that Constable Tariq Aziz was under his command in Platoon No.57. In this regard a show cause notice was also issued to him. In reply to the said show cause notice, the appellant had categorically denied for the responsibility of that statement as the mentioned constable was on leave and that was his personal act. However, the authority on 03.05.2023 issued show cause notice and on 08.05.2023 (after five days) dismissed the appellant from service. This act of the respondents shows that no inquiry was conducted nor any codal formality had ever been fulfilled as nothing is available on file which could show

that any inquiry had been conducted wherein, the Inquiry Officer had tried to record statement of any witness to prove the involvement of appellant in the statement given by Constable Tariq Aziz. The record further reflects that the appellant has not been given any chance of defense and all the proceedings were done in a haste 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 and as such on setting aside the impugned orders we direct reinstatement of 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 duly associated with the inquiry proceedings, providing him fair 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 22nd day of February, 2024.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

ORDER

22nd Feb. 2024

1. Learned counsel for the appellant and Mr. Asif Masood Ali Shah, Deputy District Attorney 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 and as such on setting aside the impugned orders we direct reinstatement of the appellant for the purpose of de-novo inquiry to be conducted within 60 days of the receipt of the judgment. Needless to mention here that the appellant shall be duly associated with the inquiry proceedings, providing him fair 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 22nd day of February, 2024.*


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman