

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**  
**AT CAMP COURT, ABBOTTABAD**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**SALAH UD DIN ... MEMBER (Judicial)**

*Service Appeal No.1436/2023*

Date of presentation of Appeal.....05.07.2023  
Date of Hearing.....26.02.2024  
Date of Decision.....26.02.2024

**Umar Abdullah, Head Constable, Ex-ASI, Presently Head Constable  
No.256, Police Station Balakot, Mansehra.....(Appellant)**

Versus

1. **The Appellate Board (Police)**, through Inspector General of Police, Head Quarter Khyber Pakhtunkhwa, Peshawar.
2. **The Additional Inspector General Police**, Khyber Pakhtunkhwa, Peshawar.
3. **The Regional Police Officer**, Hazara Division, Abbottabad.
4. **The District Police Officer**, Manshra.....(**Respondents**)

Present:

Mr. Muhammad Asjad Parvez Abbasi, Advocate.....For the appellant  
Mr. Asad Ali Khan, Assistant Advocate General .....For respondents

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**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974  
AGAINST THE ORDER DATED 10.11.2023 PASSED  
BY THE RESPONDENT NO.4 VIDE WHICH THE  
APPELLANT WAS ORDERED TO BE DISMISSED  
FROM SERVICE, AND ORDER DATED 20.12.2022,  
PASSED BY THE RESPONDENT NO.3, IN  
DEPARTMENTAL APPEAL, WHEREBY  
PUNISHMENT OF DISMISSED FROM SERVICE  
OF APPELLANT WAS CONVERTED INTO ONE  
STEP DEDUCTION IN RANK, AND ORDER  
DATED 15.06.2023 PASSED RESPONDENT NO.1  
THROUGH RESPONDENT NO.2 IN APPEAL,  
THROUGH WHICH FURTHER APPEAL OF  
APPELLANT WAS DISMISSED AND ORDER**



**DATED 20.12.2022 WAS UPHELD. QUA  
PUNISHMENT OF ONE STEP REDUCTION.**

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**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case are that appellant was serving as Assistant Sub Inspector in the Police Department; that on 19.08.2022 during Naka Bandi, the constables under his command stopped a Toyota Hiace and during search a person who disclosed his name as Zaid Ali was searched, and the Police found a 30 bore pistol with 2 live cartridges; that the police official asked him to proceed to cabin, where the appellant was present; that before sitting in the cabin, he fled away and the police team followed him but could not catch him; that on 10.10.2022 Rab Nawaz FC of Police Station Mirpur, Abbottabad visited the Police Station Mansehra and took in his possession all the articles recovered from Zaid Ali as he was wanted in some case registered in Mirpur Police Station, Abbottabad; that on 29.08.2022, appellant was served with charge sheet on the allegations that he had let go a Proclaimed Offender namely Arsalan; that vide order dated 10.11.2022, he was dismissed from service; that in response to the departmental appeal of the appellant, his punishment was converted into reduction to lower rank vide order dated 20.12.2023; that feeling aggrieved, he filed revision petition, which was not responded, hence, the instant service appeal.



02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

04. The appellant was proceeded departmentally on the charge sheet, wherein it was alleged that

*"On 28.08.2022 Proclaimed Offender Arsalan s/o of Farooq r/o Baila Subai Shinkiari was stopped at Check Post Toll Plaza and was released. It shows extreme negligence and inefficiency on your part"*

Whereas, the Inquiry Officer did not utter a single word regarding any incident of 28.08.2022, rather the reference was made to an incident brought in the notice of the Inquiry Officer by the appellant himself which pertains to 19.08.2022 and not to 28.08.2022. Similarly, in this charge sheet, there is an allegation that one Arsalan P.O (Proclaimed Offender) was let go by the appellant, whereas, the incident of 19.08.2022 shows apprehending of one Zaid Ali, copy of whose CNIC is on the file alongwith copy of the picture of mobile phone and pistol allegedly recovered from him. As the appellant was proceeded and penalized for his alleged letting one Arsalan P.O scott free and there is nothing in the inquiry report regarding any of the allegations against the appellant regarding the above occurrence, the appellant

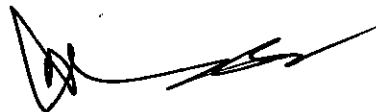


seems to have been penalized for another incident and not the one he was charged with. There is nothing on the file in the shape of FIR Proclamation U/S 87 warned U/S 204 of the Cr.PC or any order of the court of competent jurisdiction U/S 512 of the Cr.PC declaring the person named as Arsalan as proclaimed offender, who, according to departmental proceedings, was allegedly apprehended and let go by the appellant. The inquiry proceeding is thus full of dents.

05. The Supreme Court of Pakistan in a case reported as 2023 SCMR 603 titled "*Federal of Pakistan through Chairman Federal Board of Revenue FRB House, Islamabad and others*" held that

*"8. The primary objective of conducting departmental inquiry is to grasp whether a clear-cut case of misconduct is made out against the accused or not. The guilt or innocence is founded on the end result of the inquiry. The learned Service Tribunal may observe whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). In a regular inquiry, it is a precondition that an evenhanded and fair opportunity should be provided to the accused and if any witness is examined against him then a fair opportunity C.A.33-K/2018 5 should also be afforded to cross examine the witnesses. In a departmental inquiry on the charges of misconduct, the standard of proof is that of balance of probabilities or preponderance of evidence. Where any authority regulates and performs its affairs under a statute which requires the compliance of the principles of natural justice then it should have been adhered to inflexibly.*

*12. As a fall back argument, the learned counsel for the appellant insisted that if the learned Tribunal had detected some discrepancy or lacuna in the inquiry proceedings due to non-recording of evidence or not affording the right of cross examination to the respondent, then the right avenue was to remand the matter to the competent authority to conduct de novo inquiry, rather than granting the relief of reinstatement with conversion of major penalty into minor penalty. In our considerate insight, the remand of a case to the lower fora cannot be claimed as a vested right, but it is always the province of the Court or Tribunal to first figure out*



*whether any material error or defect was committed by the Court in the order or judgment which really and adversely affected the corpus of the case and caused serious prejudice or injustice to the party requesting remand on some essential questions of law or fact which was ignored by the courts below while deciding the lis. In our analysis, we have not found any error on the part of the learned Tribunal, rather it is the inquiry officer who had committed grave procedural errors. We are sanguine that the inquiry officer cannot be expected to be trained as a judicial officer, but when the inquiry is conducted under some statute or enabling rules, then it is the onerous duty and responsibility of the C.A.33-K/2018 9 inquiry officer that he should be conversant with the applicable rules before accepting and performing the task of an inquiry officer and should also observe the principle of natural justice and due process of law. Due to the defective inquiry (deliberately or undeliberately), the ultimate sufferer would be the department which initiated the departmental proceedings on the charges of misconduct. Sometimes by dint of patent faults, blunders and/or procedural lapses, the accused is exonerated with the blessing of benefit of doubt. While conducting the inquiry, the procedure and parameters provided under E&D Rules should have been followed. The purpose of remand is not to provide an opportunity to rectify the lacunas or deliberate omissions or violations in the inquiry despite availability of unequivocal rules enumerating the procedure for guidance of inquiry officer. However, we feel it appropriate to note down that the matter of a departmental inquiry should not be conducted in a cursory or perfunctory manner and in order to improvise the norms and standards of departmental inquiry under the Civil Servants Act, 1973 and E&D Rules or in other enabling Rules, it would be advantageous that a "Handbook" of inquiry procedure be compiled by the appellant with the excerpts of all relevant Rules including the rule of natural justice and due process of law enshrined under Article 10-A of the Constitution for the step-by-step help and assistance of inquiry officers or inquiry committees so that in future, they may be well conversant with the precise procedure before embarking on the task of an inquiry and conduct the inquiry proceedings without ambiguities."*

06. Moreover, vide the impugned order dated 20.12.2022 the appellant was reverted from the rank of Assistant Sub-Inspector to the rank of Head Constable without mentioning the period for which the same shall remain effective, which is in violation of FR-29. The same is reproduced for ready reference as below:-



*"F. R. 29. If a Government servant is, on account of misconduct or inefficiency, reduced to a lower grade or post, or to a lower stage in his time -scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, it shall operate to postpone future increments and if so, to what extent."*

07. Therefore, the instant matter could not be remitted for filling the lacunas, especially when on acceptance of departmental appeal of the appellant converting his dismissal into reduction of his scale itself shows that the stance of the appellant was correct while the impugned action of the department was not appropriate.

08. In view of the above situation, we are unison on acceptance of this appeal and to set aside the impugned order dated 20.12.2022. Costs shall follow the event. Consign.

09. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 26<sup>th</sup> day of February, 2023.*



**KALIM ARSHAD KHAN**  
Chairman  
Camp Court, Abbottabad



**SALAH UD DIN**  
Member (Judicial)  
Camp Court, Abbottabad

*\*Mutazem Shah \**

ORDER

26<sup>th</sup> Feb, 2024

1. Learned counsel for the appellant and Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Akhlaq Ahmad, DSP (Legal) for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison on acceptance of this appeal and to set aside the impugned order dated 20.12.2022. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 26<sup>th</sup> day of February, 2024.*



(Salah Ud Din)

Member (J)

Camp Court Abbottabad



(Kalim Arshad Khan)

Chairman

Camp Court Abbottabad